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# Contents

**Federal Register**

Vol. 79, No. 228

Wednesday, November 26, 2014

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**Separate Parts In This Issue**



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**Reader Aids**

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Proclamations:**
9213 ..... 70763

**Administrative Orders:**
Memorandums:
Memorandum of November 21, 2014 ..... 70765
Memorandum of November 21, 2014 ..... 70769

**12 CFR**
327 ..... 70427

**Proposed Rules:**
Ch. I ..... 70474
Ch. II ..... 70474
Ch. III ..... 70474

**14 CFR**
39 (6 documents) ..... 70438, 70441, 70445, 70447, 70453, 70458

**Proposed Rules:**
39 ..... 70475
71 (5 documents) ..... 70477, 70478, 70479, 70480, 70482

**18 CFR**

**Proposed Rules:**
40 ..... 70483

**19 CFR**
4 ..... 70462

**26 CFR**
1 ..... 70464

**33 CFR**

**Proposed Rules:**
100 ..... 70488

**40 CFR**
52 ..... 70470

**45 CFR**

**Proposed Rules:**
144 ..... 70674
146 ..... 70674
147 ..... 70674
148 ..... 70674
153 ..... 70674
154 ..... 70674
155 ..... 70674
156 ..... 70674
158 ..... 70674

**49 CFR**

**Proposed Rules:**
571 ..... 70491

**50 CFR**
648 ..... 70472

**Proposed Rules:**
660 ..... 70497

# Rules and Regulations

Federal Register
Vol. 79, No. 228
Wednesday, November 26, 2014



## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

**RIN 3064–AE16**

### Assessments

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is amending its regulations to revise the ratios and ratio thresholds for capital evaluations used in its risk-based deposit insurance assessment system to conform to the prompt corrective action capital (PCA) ratios and ratio thresholds adopted by the FDIC, the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) (collectively, the Federal banking agencies); revise the assessment base calculation for custodial banks to conform to the asset risk weights adopted by the Federal banking agencies; and require all highly complex institutions to measure counterparty exposure for deposit insurance assessment purposes using the Basel III standardized approach credit equivalent amount for derivatives (with modifications for certain cash collateral) and the Basel III standardized approach exposure amount for securities financing transactions—such as repo-style transactions, margin loans and similar transactions—as adopted by the Federal banking agencies.

**DATES:** *Effective date:* January 1, 2015, except for the amendment to § 327.9 (amendatory instruction 5), which is effective January 1, 2018.

*Applicability date:* The incorporation of the supplementary leverage ratio and corresponding ratio thresholds into the definition of capital evaluations is applicable January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Munsell St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Ashley Mihalik, Senior Financial Economist, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–3793; Nefretete Smith, Senior Attorney, Legal Division, (202) 898–6851; Tanya Otsuka, Senior Attorney, Legal Division, (202) 898–6816.

**SUPPLEMENTARY INFORMATION:**

## I. Notice of Proposed Rulemaking and Comments

On July 15, 2014, the FDIC's Board of Directors authorized publication of a notice of proposed rulemaking (NPR) proposing to: (1) Revise the ratios and ratio thresholds for capital evaluations used in its risk-based deposit insurance assessment system to conform to the PCA capital ratios and ratio thresholds adopted by the Federal banking agencies; (2) revise the assessment base calculation for custodial banks to conform to the asset risk weights adopted by the Federal banking agencies; and (3) require all highly complex institutions to measure counterparty exposure for deposit insurance assessment purposes using the Basel III standardized approach credit equivalent amount for derivatives and the Basel III standardized approach exposure amount for securities financing transactions, such as repo-style transactions, margin loans and similar transactions, as adopted by the Federal banking agencies. These changes were proposed in part to accommodate recent changes to the Federal banking agencies' capital rules that are referenced in portions of the FDIC's assessments regulation.

The NPR was published in the **Federal Register** on July 23, 2014.[1] The FDIC sought comment on every aspect of the proposed rule and on alternatives. The FDIC received a total of 4 comment letters. The FDIC also met with one commenter to improve understanding of the issues raised in the commenter's written comment letter. A summary of the meeting is posted on the FDIC's Web site. Comments are discussed in the relevant sections that follow.

## II. Ratios and Ratio Thresholds Relating to Capital Evaluations

### *A. Background*

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA)[2] required that the FDIC establish a risk-based deposit insurance assessment system. To implement this requirement, the FDIC adopted by regulation a system that placed all insured depository institutions (IDIs or banks) into nine risk classifications based on two criteria: Capital evaluations and supervisory ratings.[3] Each bank was assigned one of three capital evaluations based on data reported in its Consolidated Report of Condition and Income (Call Report): Well capitalized, adequately capitalized, or undercapitalized. The capital ratios and ratio thresholds used to determine each capital evaluation were based on the capital ratios and ratio thresholds adopted for PCA purposes by the FDIC, the OCC, the Federal Reserve, and the Office of Thrift Supervision (OTS)—the Federal banking agencies at that time.[4] In 1993, the ratios and ratio thresholds used to determine each capital evaluation for assessment purposes were as shown in Table 1.

[1] 79 FR 42698 (July 23, 2014).

[2] 12 U.S.C. 1817(b), Pub. L. 102–242, 105 Stat. 2236 (1991).

[3] The FDIC first published a transitional rule that provided the industry guidance during the period of transition from a uniform rate to a risk-based assessment system. 57 FR 45263 (Oct. 1, 1992). The FDIC established the new risk-based assessment system, which became effective on January 1, 1994, to replace the transitional rule. 58 FR 34357 (June 25, 1993); 12 CFR 327.3 (1993).

[4] This final rule, issued by the FDIC, OCC, Federal Reserve, and OTS, in part, established capital ratios and ratio thresholds for the five capital categories for purposes of the PCA rules: Well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. 57 FR 44866 (Sept. 29, 1992). The risk-based assessment system does not use the two lowest capital categories (significantly undercapitalized and critically undercapitalized) under the PCA rules. For assessment purposes, banks that would be in one of these capital categories are treated as undercapitalized.

TABLE 1—CAPITAL RATIOS USED TO DETERMINE CAPITAL EVALUATIONS FOR ASSESSMENT PURPOSES

| Capital evaluations | Total risk-based ratio (%) | Tier 1 risk-based ratio (%) | Tier 1 leverage ratio (%) |
|---|---|---|---|
| Well Capitalized | ≥10 | ≥6 | ≥5 |
| Adequately Capitalized * | ≥8 | ≥4 | ≥4 |
| Undercapitalized | Does not qualify as either Well Capitalized or Adequately Capitalized | | |

* An institution is Adequately Capitalized if it is not Well Capitalized, but satisfies each of the listed capital ratio standards for Adequately Capitalized.

In 2007, the nine risk classifications were consolidated into four risk categories, which continued to be based on capital evaluations and supervisory ratings;[5] the capital ratios and the thresholds used to determine capital evaluations remained unchanged.[6]

In 2011, the FDIC adopted a revised assessment system for large banks—generally, those with at least $10 billion in total assets (Assessments final rule).[7] This system eliminated risk categories for these banks, but PCA capital evaluations continue to be used to determine whether an assessment rate is subject to adjustment for significant amounts of brokered deposits.[8]

The assessment system for small banks, generally those with less than $10 billion in total assets, continues to use risk categories based on capital evaluations and supervisory ratings; the capital ratios and the thresholds used to determine capital evaluations have remained unchanged.

On September 7, 2013, the FDIC adopted an interim final rule[9] and on April 14, 2014, published a final rule that, in part, revises the definition of regulatory capital.[10] The OCC and the Federal Reserve adopted a final rule in October 2013 that is substantially identical to the FDIC's interim final rule and final rule.[11] (The FDIC's interim final rule and final rule and the OCC and Federal Reserve's final rule are referred to collectively hereafter as the Basel III capital rules.) The Basel III capital rules revise the thresholds for the tier 1 risk-based capital ratio used to determine a bank's capital category under the PCA rules (that is, whether the bank is well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized). The Basel III capital rules also add a new ratio, the common equity tier 1 capital ratio, and new thresholds for that ratio to determine a bank's capital category under the PCA rules.[12] The new ratio and ratio thresholds will take effect on January 1, 2015.

The Basel III capital rules also adopt changes to the regulatory capital requirements for banking organizations consistent with section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), often referred to as the ''Collins Amendment.'' [13] Under section 171 of the Dodd-Frank Act, the generally applicable risk-based capital requirements serve as a risk-based capital floor for banking organizations subject to the advanced approaches risk-based capital rules[14] (advanced approaches banks[15]). Under the Basel III capital rules effective January 1, 2015, the minimum capital requirements as determined by the regulatory capital ratios based on the standardized approach[16] become the ''generally applicable'' capital requirements under section 171 of the Dodd-Frank Act.

All banks, including advanced approaches banks, must calculate risk-weighted assets under the standardized approach and report these risk-weighted assets, for capital purposes, in Schedule RC–R of the Call Report effective January 1, 2015. Advanced approaches banks also must calculate risk weights using the advanced approaches and report risk-weighted assets in the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101). Revisions to the advanced approaches risk-weight calculations became effective January 1, 2014. An advanced approaches bank that has successfully completed the parallel run process[17] must determine whether it meets its minimum risk-based capital requirements by calculating the three risk-based capital ratios using total risk-weighted assets under the general risk-based capital rules and, separately, total risk-weighted assets under the advanced

[5] The four risk categories are I, II, III, and IV. Banks posing the least risk are assigned to risk category I. 71 FR 69282 (Nov. 30, 2006).

[6] To the extent that the definitions of components of the ratios—such as tier 1 capital, total capital, and risk-weighted assets—have changed over time for PCA purposes, the assessment system has reflected these changes.

[7] 76 FR 10672 (Feb. 25, 2011). The FDIC amended Part 327 in a subsequent final rule by revising some of the definitions used to determine assessment rates for large and highly complex IDIs. 77 FR 66000 (Oct. 31, 2012). The term ''Assessments final rule'' includes the October 2012 final rule.

[8] In 2009, the FDIC added adjustments to its risk-based pricing methods to improve the way the assessment system differentiates risk among insured institutions. The brokered deposit adjustment (one of the adjustments added in 2009) is applicable only to small institutions in risk categories II, III, and IV, and large institutions that are either less than well capitalized or have a composite CAMELS rating of 3, 4 or 5 (under the Uniform Financial Institution Rating System). The adjustment increases assessment rates for significant amounts of brokered deposits. 74 FR 9525 (Mar. 4, 2009).

[9] 78 FR 55340 (Sept. 10, 2013).

[10] 79 FR 20754 (Apr. 14, 2014).

[11] 78 FR 62018 (Oct. 11, 2013).

[12] 78 FR at 55592 (FDIC) and 78 FR at 62277 and 62283 (OCC and Federal Reserve), codified, in part, at 12 CFR part 324, subpart H (FDIC); 12 CFR part 6 (OCC); and 12 CFR part 208 (Regulation H), subpart D (Federal Reserve).

[13] Pub. L. 111–203, sec. 171, 124 Stat. 1376, 1435 (2010) (codified at 12 U.S.C. 5371).

[14] The FDIC's advanced approaches rule is at 12 CFR part 324, subpart E. The advanced approaches rule is also supplemented by the FDIC's risk-based capital requirements for banks subject to significant exposure to market risk (market risk rule) in 12 CFR part 324, subpart F.

[15] As used herein, an advanced approaches bank means an IDI that is an advanced approaches national bank or Federal savings association under 12 CFR 3.100(b)(1), an advanced approaches Board-regulated institution under 12 CFR 217.100(b)(1), or an advanced approaches FDIC-supervised institution under 12 CFR 324.100(b)(1). In general, an IDI is an advanced approaches bank if it has total consolidated assets of $250 billion or more, has total consolidated on-balance sheet foreign exposures of $10 billion or more, or elects to use or is a subsidiary of an IDI, bank holding company, or savings and loan holding company that uses the advanced approaches to calculate risk-weighted assets.

[16] The FDIC's standardized approach risk-based capital rule is at 12 CFR part 324, subpart D. The standardized-approach risk-based capital rule is supplemented by the FDIC's market risk rule in 12 CFR part 324, subpart F.

[17] Before determining its risk-weighted assets under advanced approaches, a bank must conduct a satisfactory parallel run. A satisfactory parallel run is a period of no less than four consecutive calendar quarters during which the bank complies with the qualification requirements to the satisfaction of its primary Federal regulator. Following completion of a satisfactory parallel run, a bank must receive approval from its primary Federal regulator to calculate risk-based capital requirements under the advanced approaches. See 12 CFR 324.121 (FDIC); 12 CFR 3.121 (OCC); and 12 CFR 217.121 (Federal Reserve).

approaches.[18] The lower ratio for each risk-based capital requirement is the ratio that will be used to determine an advanced approaches bank's compliance with the minimum capital requirements [19] and, beginning on January 1, 2015, for purposes of determining compliance with the new PCA requirements.[20]

For advanced approaches banks, the Basel III capital rules also introduce the supplementary leverage ratio and a threshold for that ratio that advanced approaches banks must meet to be deemed adequately capitalized.[21] (The supplementary leverage ratio as adopted in the Basel III capital rules does not, however, establish a ratio that advanced approaches banks must meet to be deemed well capitalized.) While all advanced approaches banks must calculate and begin reporting the supplementary leverage ratio beginning in the first quarter of 2015, the supplementary leverage ratio does not become effective for PCA purposes until January 1, 2018.[22]

On May 1, 2014, the Federal banking agencies published a final rule (the Enhanced Supplementary Leverage Ratio final rule) that strengthens the supplementary leverage ratio standards for the largest advanced approaches banks.[23] The Enhanced Supplementary Leverage Ratio final rule provides that an IDI that is a subsidiary of a covered bank holding company (BHC) must maintain a supplementary leverage ratio of at least 6 percent to be well capitalized under the Federal banking agencies' PCA framework.[24] On September 26, 2014, the Federal banking agencies published a second final rule that revises the definition of the denominator of the supplementary leverage ratio (total leverage exposure).[25] Again, all advanced approaches banks must calculate and begin reporting the supplementary leverage ratio beginning in the first quarter of 2015, but the supplementary leverage ratio does not become effective for PCA purposes until January 1, 2018.

*B. The Final Rule: Capital Evaluations*

As proposed, the final rule revises the ratios and ratio thresholds relating to capital evaluations for deposit insurance assessment purposes to conform to the new PCA capital rules. This revision maintains the consistency between capital evaluations for deposit insurance assessment purposes and capital ratios and ratio thresholds for PCA purposes that has existed since the creation of the risk-based assessment system over 20 years ago.

Specifically, the final rule revises the definitions of well capitalized and adequately capitalized for deposit insurance assessment purposes to reflect the threshold changes for the tier 1 risk-based capital ratio, to incorporate the common equity tier 1 capital ratio and its thresholds and, for those banks subject to the supplementary leverage ratio for PCA purposes, to incorporate the supplementary leverage ratio and its thresholds.[26] The definition of undercapitalized remains unchanged. The final rule revises the definitions of well capitalized and adequately capitalized for deposit insurance assessment purposes effective when the new PCA capital rules become effective. Therefore, some of the revisions for deposit insurance assessment purposes will become effective January 1, 2015 and the remaining revisions will become effective January 1, 2018.

Effective January 1, 2015, for deposit insurance assessment purposes:

1. An institution is well capitalized if it satisfies each of the following capital ratio standards: Total risk-based capital ratio, 10.0 percent or greater; tier 1 risk-based capital ratio, 8.0 percent or greater (as opposed to the current 6.0 percent or greater); leverage ratio, 5.0 percent or greater; and common equity tier 1 capital ratio, 6.5 percent or greater.

2. An institution is adequately capitalized if it is not well capitalized but satisfies each of the following capital ratio standards: Total risk-based capital ratio, 8.0 percent or greater; tier 1 risk-based capital ratio, 6.0 percent or greater (as opposed to the current 4.0 percent or greater); leverage ratio, 4.0 percent or greater; and common equity tier 1 capital ratio, 4.5 percent or greater.

The definition of an undercapitalized institution remains the same: An institution is undercapitalized if it does not qualify as either well capitalized or adequately capitalized.

The final rule makes a technical amendment to Part 327 to replace the terms ''Total risk-based ratio,'' ''Tier 1 risk-based ratio,'' and ''Tier 1 leverage ratio,'' with ''total risk-based capital ratio,'' ''tier 1 risk-based capital ratio,'' and ''leverage ratio,'' respectively, wherever such terms appear.[27]

Table 2 summarizes the ratios and ratio thresholds for determining capital evaluations for deposit insurance assessment purposes, effective January 1, 2015.

[18] Currently, the general risk-based capital rules are found at 12 CFR part 325, appendix A (as supplemented by the risk-based capital requirements for banks subject to the market risk rule in appendix C). Effective January 1, 2015, the general risk-based capital rules will be based on the standardized approach for calculating risk-weighted assets under the Basel III capital rules, 12 CFR part 324, subpart D (as supplemented by the risk-based capital requirements for banks subject to the market risk rule in subpart F).

[19] See 12 CFR 324.10(c) (FDIC); 12 CFR 3.10(c) (OCC); and 12 CFR 217.10(c) (Federal Reserve).

[20] See 12 CFR part 324, subpart H.

[21] The supplementary leverage ratio includes many off-balance sheet exposures in its denominator, while the generally applicable leverage ratio does not.

[22] 78 FR at 55592 (FDIC); 78 FR at 62277 (OCC and Federal Reserve).

[23] 79 FR 24528 (May 1, 2014).

[24] 79 FR at 24530. IDI subsidiaries of a ''covered BHC'' are a subset of IDIs subject to advanced approaches requirements. A covered BHC is any top-tier U.S. BHC with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody. 79 FR at 24538. The list of ''covered BHCs'' is consistent with the list of banking organizations that meet the Basel Committee on Banking Supervision (Basel Committee or BCBS) definition of a Global Systemically Important Bank (G–SIB), based on year-end 2011 data, and consistent with the revised list, based on year-end 2012 data. The revised list is available at *http://www.financialstabilityboard.org/publications/r_131111.pdf*).

[25] 79 FR 57725 (Sept. 26, 2014).

[26] To the extent that the definitions of components of the ratios—such as tier 1 capital, total capital, and risk-weighted assets—change in the future for PCA purposes, the assessment system will automatically incorporate these changes as implemented under the Basel III capital rules.

[27] The FDIC has identified a slight inconsistency in terminology between the PCA capital rules of parts 324 and 325 and the deposit insurance assessment system of part 327. Currently, the risk-based assessment system under part 327 uses the terms ''Total risk-based ratio,'' ''Tier 1 risk-based ratio,'' and ''*Tier 1* leverage ratio.'' The PCA capital rules use the terms ''total risk-based *capital* ratio,'' ''tier 1 risk-based *capital* ratio,'' and ''leverage ratio'' (emphasis added). Despite this minor difference in nomenclature, the underlying calculations for each of these three ratios are the same under parts 324, 325 and 327 of the FDIC regulations.

TABLE 2—CAPITAL RATIOS USED TO DETERMINE CAPITAL EVALUATIONS FOR ASSESSMENT PURPOSES, EFFECTIVE JANUARY 1, 2015

| Capital evaluations | Total risk-based capital ratio (%) | Tier 1 risk-based capital ratio (%) | Common equity tier 1 capital ratio (%) | Leverage ratio (%) |
|---|---|---|---|---|
| Well Capitalized | ≥10 | ≥8 | ≥6.5 | ≥5 |
| Adequately Capitalized * | ≥8 | ≥6 | ≥4.5 | ≥4 |
| Undercapitalized | Does not qualify as either Well Capitalized or Adequately Capitalized. | | | |

* An institution is Adequately Capitalized if it is not Well Capitalized, but satisfies each of the listed capital ratio standards for Adequately Capitalized.

Effective January 1, 2018, the final rule adds the supplementary leverage ratio to its capital evaluations for deposit insurance assessment purposes to conform to the PCA capital rules. For assessment purposes, an advanced approaches bank, including an IDI subsidiary of a covered BHC, must have at least a 3.0 percent supplementary leverage ratio to be adequately capitalized, and an IDI subsidiary of a covered BHC must have at least a 6.0 percent supplementary leverage ratio to be well capitalized.

Table 3 summarizes the ratios and ratio thresholds for determining capital evaluations for deposit insurance assessment purposes, effective January 1, 2018.

TABLE 3—CAPITAL RATIOS USED TO DETERMINE CAPITAL EVALUATIONS FOR ASSESSMENT PURPOSES, EFFECTIVE JANUARY 1, 2018

| Capital evaluations | Total risk-based capital ratio (%) | Tier 1 risk-based capital ratio (%) | Common equity tier 1 capital ratio (%) | Leverage ratio (%) | Supplementary leverage ratio (advanced approaches banking organizations) (%) | Supplementary leverage ratio (subsidiary IDIs of covered BHCs) (%) |
|---|---|---|---|---|---|---|
| Well Capitalized | ≥10 | ≥8 | ≥6.5 | ≥5 | Not applicable | ≥6 |
| Adequately Capitalized * | ≥8 | ≥6 | ≥4.5 | ≥4 | ≥3 | ≥3 |
| Undercapitalized | Does not qualify as either Well Capitalized or Adequately Capitalized. | | | | | |

* An institution is Adequately Capitalized if it is not Well Capitalized, but satisfies each of the listed capital ratio standards for Adequately Capitalized.

*C. Comments Received*

The FDIC sought comments on the proposed ratios and ratio thresholds relating to capital evaluations for deposit insurance assessment purposes. The FDIC received one written comment that supported the proposal to revise the ratios and ratio thresholds for capital evaluations used in the risk-based deposit insurance assessment system to conform to the new PCA capital ratios and ratio thresholds.

In the NPR, the FDIC discussed an alternative that would leave in place the current terminology and capital evaluations for deposit insurance assessment purposes, but the FDIC did not receive any comments on the alternative. In any event, the FDIC believes that the alternative would lead to unnecessary complexity and inconsistency, which could lead to confusion and increase regulatory burden on banks. Therefore, the FDIC will finalize the amendments to Part 327 as proposed.

## III. Assessment Base Calculation for Custodial Banks

*A. Background*

The FDIC charges IDIs an amount for deposit insurance equal to the IDI's deposit insurance assessment base multiplied by its risk-based assessment rate. The Dodd-Frank Act directed the FDIC to amend its regulatory definition of ''assessment base'' for purposes of setting assessments for IDIs. Specifically, the Dodd-Frank Act required the FDIC to define the term ''assessment base'' with respect to a depository institution:

As an amount equal to—

- The average consolidated total assets of the insured depository institution during the assessment period; minus
- The sum of—
  - The average tangible equity of the insured depository institution during the assessment period, and
  - In the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) . . . , an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank . . .[28]

In February 2011, the FDIC implemented this requirement in the Assessments final rule.[29] The Assessments final rule defines a custodial bank and specifies the additional amount to be deducted from a custodial bank's average consolidated total assets for purposes of determining its assessment base. The assessment base deduction for custodial banks is defined as the daily or weekly average (depending upon the way the bank reports its average consolidated total assets) of a specified amount of certain

[28] Pub. L. 111–203, sec. 331(b), 124 Stat. 1538 (codified as amended at 12 U.S.C. 1817(nt)).

[29] 76 FR at 10706.

low-risk, liquid assets, subject to the limitation that the daily or weekly average value of such assets not exceed the average value of deposits that are classified as transaction accounts and are identified by the bank as being directly linked to a fiduciary or custodial and safekeeping account.

Under the Assessments final rule, a custodial bank may deduct all asset types described in the instructions to lines 34, 35, 36, and 37 of Schedule RC–R of the Call Report as of December 31, 2010 with a risk weight of 0 percent, regardless of maturity, and 50 percent of those asset types described in the instructions to those same lines with a risk weight of 20 percent, again regardless of maturity.[30] These assets include cash and balances due from depository institutions, securities, federal funds sold, and securities purchased under agreements to resell.

Under the Basel III capital rules, the standardized approach introduces 2 percent and 4 percent risk weights for cleared transactions with Qualified Central Counterparties (QCCPs), as defined in the Basel III capital rules, subject to certain collateral requirements.[31] The lower risk weights reflect the Federal banking agencies' support for ''incentives designed to encourage clearing of derivative and repo-style transactions through a CCP [central counterparty] wherever possible in order to promote transparency, multilateral netting, and robust risk-management practices.'' [32] Nonetheless, the new 2 percent and 4 percent risk weights (being greater than 0) recognize that, while clearing transactions through a CCP significantly reduces counterparty credit risk, the clearing process does not eliminate risk altogether and that some degree of residual risk is retained.

Section 939A of the Dodd-Frank Act requires the removal of any regulatory reference to or requirement of reliance on credit ratings for assessing the credit-worthiness of a security or money market instrument and the substitution of new standards of credit-worthiness.[33] Consequently, the Basel III capital rules remove references to credit ratings for purposes of determining risk weights for risk-based capital calculations, and the standardized approach introduces a formula-based methodology for calculating risk-weighted assets for many securitization exposures.[34] Risk weights under the standardized approach for certain other assets, including but not limited to exposures to foreign sovereigns, foreign banks, and foreign public sector entities, have also changed.[35]

*B. The Final Rule: Assessment Base Calculation*

As proposed in the NPR, the final rule conforms the assessment base deduction for custodial banks to the new standardized approach for risk-weighted assets adopted in the Basel III capital rules. For purposes of the assessment base deduction for custodial banks, the final rule continues to use the generally applicable risk weights (as revised under the standardized approach, effective January 1, 2015), even for advanced approaches banks.

The assessment base deduction for custodial banks will continue to be defined as the daily or weekly average of a certain amount of specified low-risk, liquid assets, subject to the limitation that the daily or weekly average value of these assets cannot exceed the daily or weekly average value of deposits that are classified as transaction accounts and are identified by the bank as being directly linked to a fiduciary or custodial and safekeeping account asset. Subject to this limitation, effective January 1, 2015, the assessment base deduction will be the daily or weekly average of:

1. 100 percent of those asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Call Report with a standardized approach risk weight of 0 percent, regardless of maturity; plus

2. 50 percent of those asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Call Report, including assets that qualify as securitization exposures, with a standardized approach risk weight greater than 0 and up to and including 20 percent, regardless of maturity.

In general, the assets described in lines 1, 2, and 3 of Schedule RC of the Call Report include cash and balances due from depository institutions, securities (both held-to-maturity and available-for-sale), federal funds sold, and securities purchased under agreements to resell. The inclusion of these asset types in the assessment base deduction for custodial banks is consistent with the asset types included in the current adjustment.

In response to comments, the final rule differs from the NPR in that it includes in the assessment base deduction for custodial banks those asset types described in lines 1, 2, and 3 of Schedule RC of the Call Report that qualify as securitization exposures (as defined in the Basel III capital rules) and have a standardized risk weight of 20 percent.[36] Under current assessment rules, securitizations with a risk weight of 20 percent are included in the assessment base deduction for custodial banks. After further consideration, the FDIC has concluded that assets of this type appear to be sufficiently low risk (as reflected in the 20 percent risk weight) and sufficiently liquid to allow them to continue to be included in the assessment base deduction. This difference from the NPR conforms the final rule more closely with the current assessment rule.

As proposed, 50 percent of assets described in line 3 of Schedule RC of the Call Report that are assigned a 2 or 4 percent risk weight may be included in the assessment base deduction for custodial banks. In the NPR, the FDIC discussed, as an alternative, including 100 percent of these asset types in the adjustment. The FDIC, however, believes that these assets are not risk-free and thus do not merit a 100 percent inclusion in the assessment base deduction for custodial banks.

Last, the final rule makes a technical amendment to the definition of ''custodial bank'' by removing any reference to the Call Report date of December 31, 2010, to ensure conformity with the Basel III capital rules.

*C. Comments Received*

The FDIC received two written comments on the NPR's proposal regarding the assessment base deduction

[30] Risk-weighted assets are generally determined by assigning assets to broad risk-weight categories. The amount of an asset is multiplied by its risk weight (for example, 0 percent or 20 percent) to calculate the risk-weighted asset amount.

[31] See 78 FR at 55502 (FDIC); 78 FR at 62184–85 (OCC and Federal Reserve).

[32] See 78 FR at 55414 (FDIC); 78 FR at 62096 (OCC and Federal Reserve).

[33] See Pub. L. 111–203, sec. 939A, 124 Stat 1887 (codified as amended at 15 U.S.C. 78o–7(nt)).

[34] 78 FR at 55430 (FDIC); 78 FR at 62111 (OCC and Federal Reserve).

[35] See, *e.g.,* 78 FR at 55400–04 (FDIC); 78 FR at 62083–87 (OCC and Federal Reserve).

[36] Under the Basel III capital rules, a securitization exposure generally includes a credit exposure with more than one underlying exposure where the credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority. Specifically, a securitization exposure is defined as an on- or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or a synthetic securitization (including a re-securitization), or an exposure that directly or indirectly references a securitization exposure. See 78 FR at 55482 (FDIC); 78 FR at 62168 (OCC and Federal Reserve). Under the Basel III capital rules' standardized approach, securitized assets of the type described in lines 1, 2, and 3 of Schedule RC of the Call Report cannot have a risk-weight lower than 20 percent. 78 FR at 55515 (FDIC); 78 FR at 62196 (OCC and Federal Reserve).

for custodial banks.[37] Both commenters suggested that the FDIC continue to include low-risk securitization exposures in the assessment base deduction.[38] As discussed above, the FDIC agrees and the change is reflected in the final rule.

In addressing the alternative discussed in the NPR of including 100 percent of cleared transactions with QCCPs in the adjustment, two commenters suggested a different weighting method under which the FDIC would allow custodial banks to deduct 100 percent of a ''qualifying asset'' [39] minus 2½ times the asset's Basel III standardized approach risk weight. Under this approach, for example, a custodial bank could deduct 95 percent of a 2 percent risk-weighted qualifying asset from its assessment base and 25 percent of a 30 percent risk-weighted qualifying asset. Commenters argued that this approach would take into account the increased granularity of risk weights under the Basel III standardized approach, where, for example, a securitization could receive a risk weight of 20.5 percent.

In the FDIC's view, however, this proposal ignores the greater risk reflected in higher risk-weighted assets because it would allow the deduction of assets with risk weights of up to 40 percent. The FDIC has never allowed a deduction from custodial banks' assessment bases for assets with risk weights greater than 20 percent because the deduction is only intended for low-risk assets.

[37] The comments did not address another alternative discussed in the NPR that would maintain the current assessment base deduction. In any event, the alternative would create unnecessary complexity and inconsistency between the asset risk weights used for capital purposes and for deposit insurance assessment purposes, which would lead to confusion and increase burden.

[38] One commenter also suggested an alternative if the FDIC determined that it is appropriate to fully exclude securitization exposures from the assessment base deduction. Under this alternative, the assessment base deduction for assets with a standardized approach risk weight of 20 percent would increase from 50 percent to 85 percent. The commenter reasoned that assets assigned this risk weight and that are not securitization exposures are characterized by strong credit risk profiles and robust structural liquidity that warrant more favorable treatment.

The FDIC disagrees that assets assigned a 20 percent risk weight are sufficiently low risk and liquid to warrant an 85 percent deduction from the assessment base.

[39] Only one of the commenters used the term ''qualifying asset,'' but the substance of the other commenter's suggestion was substantially the same.

## IV. Calculation of Counterparty Exposures in the Highly Complex Institution Scorecard

### *A. Background*

Section 7 of the Federal Deposit Insurance Act (FDI Act) requires the FDIC Board of Directors to adopt a risk-based assessment system based on the probability that the DIF will incur a loss with respect to an institution, the likely amount of any loss to the DIF, and the revenue needs of the DIF.[40] Further, under the FDI Act the FDIC may establish a separate risk-based assessment system for large members of the Deposit Insurance Fund (DIF).[41]

In the Assessments final rule, the FDIC adopted a revised assessment system for large banks—generally, those with at least $10 billion in total assets. This system, which went into effect in the second quarter of 2011, uses scorecards that combine CAMELS ratings and certain financial measures to assess the risk a large institution poses to the DIF. One scorecard applies to most large institutions and another applies to highly complex institutions, those that are structurally and operationally complex or that pose unique challenges and risks to the DIF in the event of failure.[42]

The scorecards for both large and highly complex institutions use quantitative measures that are useful in predicting a large institution's long-term performance. Most of the measures used in the highly complex institution scorecard are similar to the measures used in the large bank scorecard. The scorecard for highly complex institutions, however, includes additional measures, such as the ratio of top 20 counterparty exposures to Tier 1 capital and reserves and the ratio of the largest counterparty exposure to Tier 1 capital and reserves (collectively, the counterparty exposure measures). Both ratios are defined in the Assessments final rule.[43]

The Assessments final rule defines counterparty exposure as the sum of exposure at default (EAD) associated with derivatives trading [44] and securities financing transactions (SFTs) [45] and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level.[46] Generally, since June 30, 2011, when highly complex institutions began reporting for scorecard purposes, they have determined and reported their counterparty exposures for assessment purposes using certain methods permitted under the Assessments final rule.[47] The Assessments final rule allows use of an approach based on internal models (the Internal Models Method, or IMM) to calculate counterparty exposures subject to approval by an institution's primary federal regulator, but until recently no highly complex institution was permitted to use the IMM.

The IMM is one component of the advanced approaches risk-based capital framework. Banking organizations that have received approval to use the advanced approaches do not automatically have approval to use the IMM, which requires a separate approval. Seven of the nine highly complex institutions received approval from their primary federal regulators to use the advanced approaches for regulatory capital beginning in the first quarter of 2014. Of these seven banks, some, but not all, received approval from their primary federal regulators to use the IMM for calculating EAD for counterparty credit risk for derivatives beginning in the second quarter of 2014. Thus, some of the nine banks using the highly complex institution scorecard began calculating their counterparty exposure in the second quarter of 2014 using the IMM, while the others still use non-IMM methods.

Based on assessments data, the adoption of the IMM by itself has caused a significant reduction in measured counterparty exposure amounts and changed the scorecard

[40] 12 U.S.C. 1817(b)(1)(C).

[41] 12 U.S.C. 1817(b)(1)(D).

[42] A ''highly complex institution'' is defined as: (1) An IDI (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters that either is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters; or (2) a processing bank or trust company. 12 CFR 327.8(g).

[43] 76 FR at 10721; 12 CFR part 327, subpart A, App. A.

[44] Derivatives trading exposures include both over-the-counter (OTC) derivatives and derivative contracts that an IDI has entered into with a CCP.

[45] SFTs include repurchase agreements, reverse repurchase agreements, security lending and borrowing, and margin lending transactions, where the value of the transactions depends on market valuations and the transactions are often subject to margin agreements.

[46] 76 FR at 10721. Counterparty exposure excludes all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States.

[47] For example, permitted methods for derivatives exposures have included the credit equivalent amount as calculated under the Federal banking agencies' general risk-based capital rules and the current exposure method (CEM) under the BCBS Basel II framework.

results in a way that significantly reduces deposit insurance assessments for the banks using the IMM. This significant reduction in assessments does not appear to be driven primarily by a change in risk exposure, but rather by a change in measurement methodology. Moreover, since the second quarter of 2014, the nine banks currently subject to the highly complex institution scorecard have been measuring counterparty risk in different ways.

*B. The Final Rule: Calculation of Counterparty Exposure*

Under the final rule, starting in the first quarter of 2015, exposure to a counterparty is equal to the sum of: Gross loans (including all unfunded commitments); the amount of derivatives exposures reduced by the amount of qualifying cash collateral; and the amount of SFT exposure. Derivatives exposures and SFT exposures are described in more detail below.

Specifically, the counterparty exposure amount associated with derivatives, including OTC derivatives, a cleared transaction that is a derivative contract, or a netting set of derivative contracts,[48] is to be calculated as the credit equivalent amount under the standardized approach without deduction for collateral other than qualifying cash collateral. The credit equivalent amount under the standardized approach is the sum of current credit exposure and potential future exposure; that is, the exposure amount set forth in 12 CFR 324.34(a) (but with no reduction for collateral under 12 CFR 324.34(b)).[49]

The NPR proposed allowing no deduction for collateral from a highly complex institution's counterparty exposure amount associated with derivatives. Two trade groups recommended that the FDIC permit recognition of financial collateral to reduce the counterparty exposure amount associated with derivatives, as permitted under the Basel III standardized approach. The final rule addresses the concerns of these commenters to an extent by allowing qualifying cash collateral (but not other collateral) to reduce a highly complex institution's derivative exposures in the counterparty exposure measures. To qualify, the cash collateral must be all or part of variation margin and satisfy the conditions that would allow the cash collateral to be excluded from the institution's total leverage exposure for purposes of the supplementary leverage ratio.[50] These conditions are designed to ensure that the cash collateral is in effect a pre-settlement payment on the derivatives contracts.

The counterparty exposure amount associated with SFTs, including SFTs that are cleared transactions, is to be calculated using either the simple approach or the collateral haircut approach contained in 12 CFR 324.37(b) and (c), respectively.

For both derivative and SFT exposures, the amount of counterparty exposure to CCPs must also include the default fund contribution, which is the funds contributed or commitments made by a clearing member to a CCP's mutualized loss sharing arrangement.[51]

Counterparty exposure continues to exclude all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States.

*C. Comments Received*

The FDIC sought comments on the proposed calculation of counterparty exposure measures. The FDIC received a total of three written comments, two from trade groups and one from a bank. In general, the two trade groups contended that the change proposed in the NPR to the counterparty exposure measures is inconsistent with the FDIC's statutory mandate [52] because the proposal does not recognize the risk-mitigating benefits of financial collateral and the minimal risk posed by exposure to CCPs.

As discussed above, in establishing a risk-based assessment system the FDIC is statutorily required to consider a number of factors, including the probability that the DIF will incur a loss with respect to an institution. The FDIC also takes into consideration the likely amount of any such loss and the revenue needs of the DIF. In determining the probability that the DIF will incur a loss, the FDIC takes into consideration the risks attributable to different categories and concentrations of assets and liabilities, both insured and uninsured, contingent and noncontingent, and any other factors the FDIC determines are relevant to assessing such probability.[53] In the case of the counterparty exposure measures, such other factors include the need for a common measurement framework for counterparty exposure and the need to ensure that methodological differences do not determine a bank's exposure relative to its peers.

In this context, the FDIC has taken into account the relative risk-mitigating factors associated with certain financial collateral and the use of CCPs. The FDIC has concluded that it is appropriate to allow qualifying cash collateral to reduce a bank's measured derivatives exposure for purposes of the assessments scorecard, but as discussed in more detail below, does not agree with commenters that other forms of collateral warrant the same recognition.

[48] A ''netting set'' is a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement. 12 CFR 324.2.

[49] For multiple OTC derivative contracts subject to a qualifying master netting agreement, however, the exposure amount equals the sum of the net current credit exposure and the adjusted sum of potential future exposure amounts for all OTC derivative contracts subject to the qualifying master netting agreement; that is, the exposure amount set forth in 12 CFR 324.34(a)(2) (but with no reduction for collateral under 12 CFR 324.34(b)).

[50] In general, the conditions are that:

(1) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation or an agreement with the counterparty);

(2) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(3) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(4) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction;

(5) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(6) The variation margin is used to reduce the current credit exposure of the derivative contract and not the PFE; and

(7) For the purpose of the calculation of the net-to-gross ratio (NGR), variation margin may not reduce the net current credit exposure or the gross current credit exposure.

The requirements are specified at 12 CFR 324.10(c)(4)(ii)(C)(1)–(7) (FDIC); 12 CFR 3.10(c)(4)(ii)(C)(1)–(7) (OCC); and 12 CFR 217.10(c)(4)(ii)(C)(1)–(7) (Federal Reserve).

[51] 12 CFR 324.2 (FDIC); 12 CFR 3.2 (OCC); 12 CFR 217.2 (Federal Reserve).

[52] The two trade groups argued that the FDIC's statutory mandate is ''that assessments be based on actual risk to the DIF,'' and that ''assessments [be] based on risk.''

[53] 12 U.S.C. 1817(b)(1)(C).

Financial Collateral

As stated above, two trade groups recommended that financial collateral reduce OTC derivative exposures as permitted when calculating risk-weighted assets under the Basel III standardized approach.[54] The final rule adopts another, more limited, approach, allowing—under certain circumstances—cash variation margin to reduce OTC derivative exposures. The regular and timely exchange of cash variation margin helps to protect both counterparties from the effects of a counterparty default. The conditions under which cash collateral may be used to offset the amount of a derivative contract in the supplementary leverage ratio are intended to ensure that such cash collateral ''is, in substance, a form of pre-settlement payment on a derivative contract,'' [55] such that that portion of the exposure has essentially been paid. The conditions also ensure that the counterparties calculate their exposures arising from derivative contracts on a daily basis and transfer the net amounts owed, as appropriate, in a timely manner. The approach in the final rule is consistent with the design of the supplementary leverage ratio and with U.S. generally accepted accounting principles (GAAP).[56]

In the FDIC's view, however, it would be inappropriate to reduce OTC derivatives exposures in the counterparty exposure measures for all types of financial collateral and the final rule allows no reduction for collateral other than qualifying cash collateral. As the Basel Committee noted in adopting the Basel III leverage framework, ''Collateral received in connection with derivative contracts does not necessarily reduce the leverage inherent in a bank's derivatives position, which is generally the case if the settlement exposure arising from the underlying derivative contract is not reduced.'' [57]

Qualifying Central Counterparties (QCCPs)

Two trade groups argued that exposures to QCCPs should be excluded from the counterparty exposure measures. They argued that the capital and prudential requirements applicable to QCCPs ensure that they pose no risk to banks and that, because Congress has encouraged the use of QCCPs, exposures to QCCPs will likely increase and come to dominate the 20 largest total exposure amounts to counterparties while actually reducing risk. One trade group argued that exposures to QCCPs should be excluded from the measures until the full effect of the central clearing requirements are known and the strength of QCCPs is more fully understood.

Counterparty exposures to QCCPs, however, are not risk-free. For example, the Basel Committee notes that despite the benefits that CCPs can bring to OTC derivatives markets, they can concentrate counterparty and operational risks, with a potential for systemic risk.[58] As mentioned above, the counterparty exposure measures are concentration measures intended to assess a highly complex institution's ability to withstand asset-related stress.[59] Also, as one of the comments implies, QCCPs' performance in times of stress has not been tested. For these reasons, the final rule continues to include exposures to QCCPs in the counterparty exposure measures. To the extent that derivatives exposures to QCCPs are secured by qualifying cash collateral, however, the amount of exposure for purposes of the counterparty exposure measures will be reduced.

Affiliates

Two trade groups also argued that exposures to affiliates should be excluded from the counterparty exposure measures on the grounds that Section 23A of the Federal Reserve Act and the Federal Reserve's Regulation W effectively limit a bank's exposure to an affiliate and impose collateral requirements.[60]

The FDIC disagrees. Limiting exposure to an affiliate, as required by Section 23A and Regulation W, does not eliminate risk, particularly during periods of stress. For this reason, the final rule continues to include exposures to affiliates in the counterparty exposure measures. To the extent that derivatives exposures to affiliates are secured by qualifying cash collateral, however, the amount of exposure for purposes of the counterparty exposure measures will be reduced.

Non-U.S. Sovereigns

Two trade groups also argued that exposures to non-U.S. sovereigns with high credit quality should be excluded from the counterparty exposure measures. They suggested excluding foreign sovereign exposures where the Basel III capital rules assign a zero risk weight based on either the Organization for Economic Cooperation and Development's (OECD's) Country Risk Classification (CRC) or the sovereign's OECD membership status if no CRC exists, or where the foreign sovereign meets the criteria for obligations that qualify as Level 1 high quality liquid assets under the Liquidity Coverage Ratio rule.

The FDIC again disagrees. Exposures to non-U.S. sovereigns pose risk, particularly during periods of stress. Consequently, the final rule treats these exposures as it does other derivatives exposures. Again, to the extent that derivatives exposures to non-U.S. sovereigns are secured by qualifying cash collateral, the amount of exposure for purposes of the counterparty exposure measures will be reduced.

IMM

In the NPR, the FDIC requested comment on whether highly complex institutions should be allowed to measure counterparty exposure for assessment purposes using the IMM. Two trade groups made arguments in favor of allowing the use of the IMM. The trade groups argued that the IMM is a better measure of counterparty exposure than is the standardized approach and that the shortcomings of the standardized approach ''are well known and have been widely recognized,'' citing a Basel Committee paper. Because, in their view, the IMM

[54] The NPR discussed allowing the deduction of collateral in this manner as a possible alternative to the proposal in the NPR.

[55] 79 FR 57725, 57730 (Sept. 26, 2014). The supplementary leverage ratio rule ''generally does not permit banking organizations to use collateral to reduce exposures for purposes of calculating total leverage exposure,'' but does allow reduction under the circumstances permitted under this final rule.

In the NPR, the FDIC also requested comment on an alternative approach that would require highly complex institutions to use total leverage exposure, as defined in the supplementary leverage ratio, when calculating counterparty exposure measures. The FDIC received two brief comments, one in favor of the alternative approach and one opposed to it. While the FDIC may consider using total leverage exposure, as defined in the supplementary leverage ratio, as a general measure of counterparty exposure in the future, the FDIC is not persuaded that this alternative approach should be adopted wholesale now in lieu of the standardized approach.

[56] As the federal banking regulators noted recently in amending the rules governing the supplementary leverage ratio, ''For the purpose of determining the carrying value of derivative contracts, U.S. generally accepted accounting principles (GAAP) provide a banking organization the option to reduce any positive mark-to-fair value of a derivative contract by the amount of any cash collateral received from the counterparty, provided the relevant GAAP criteria for offsetting are met (the GAAP offset option).'' 79 FR at 57729.

[57] Basel Committee on Banking Supervision. (January 2014). ''Basel III leverage ratio framework and disclosure requirements'', available online at *http://www.bis.org/publ/bcbs270.pdf.*

[58] Basel Committee on Banking Supervision. (November 2011). ''Capitalisation of bank exposures to central counterparties'', available online at *http://www.bis.org/publ/bcbs206.pdf.*

[59] 76 FR at 10696.

[60] 12 U.S.C. 371c; 12 CFR 223.11; 223.12; and 223.14.

is a better risk measure than the standardized approach, the commenters argued that the NPR fails to meet the statutory requirement that the FDIC adopt a risk-based assessment system and that, in conflict with the requirements of the Administrative Procedure Act, the FDIC has failed to justify elimination of the IMM.

The FDIC has considered the issues the commenters raised and does not agree with the commenters. Specifically, the FDIC does not agree that, for assessment purposes, the IMM measures counterparty exposure better than the standardized approach does. In arguing that the IMM is a better measure of counterparty exposure than is the standardized approach, commenters ignore the Basel Committee's observation (noted in the NPR) that the use of internal models has resulted in a material amount of variability between banks, a significant amount of which may be driven by banks' individual modeling choices rather than by distinctions in portfolio risk or risk management practices.[61] Under the IMM, banks may use different assumptions and measurement approaches, resulting in inconsistency. This variability was one of the chief reasons that the NPR rejected the use of the IMM in measuring counterparty exposure for assessment purposes. Partly for this reason, it would impractical for the FDIC to calibrate and adjust counterparty measures in a way that produces accurate and equitable assessments outcomes.[62]

The commenters also ignore the FDIC's statutory authority to take consistency of risk measurement into account in the risk-based assessment system. As stated above, the FDIC Board of Directors must consider certain enumerated factors when setting a risk-based assessment system, including the probability that the DIF will incur a loss with respect to an institution. In determining the probability that the DIF will incur a loss with respect to an institution, the FDIC may take into account ''any other factors the Corporation determines are relevant to assessing such probability.'' [63] In proposing to use the standardized approach to measure counterparty exposure, the FDIC has taken into account ''other factors;'' namely, the need for a common measurement framework for counterparty exposure and the need to ensure that methodological differences do not determine a bank's exposure relative to its peers. Consistency in the manner in which highly complex IDIs calculate counterparty exposure is an appropriate and necessary factor in establishing a risk-based assessment system.

More broadly, existing law and regulation do not generally allow the unconstrained use of banks' internal models for regulatory capital purposes, instead providing for the use of a standardized capital floor. Current law recognizes the standardized approach as a valid measure of risk for risk-based capital purposes. Thus, the approach taken in the final rule is consistent in spirit with this aspect of the capital rules.

Two trade groups also argued that adopting the standardized approach for measuring counterparty exposure is premature and that the FDIC should not eliminate the IMM until Federal banking agencies determine whether to adopt the Basel Committee's standardized approach for measuring exposure at default for counterparty credit risk (SA–CCR) for risk-based capital purposes. As the commenters acknowledged, no decision has been made regarding when or how (or whether) the SA–CCR will be adopted in the U.S. for capital purposes. If the Federal banking agencies adopt the SA–CCR for risk-based capital purposes, the FDIC will consider whether changes to the counterparty exposure measures are appropriate. The trade groups' argument, however, amounts to indefinitely allowing the use of vastly different measurement methodologies for calculating counterparty exposure for assessment purposes, with the concomitant inequities in assessment rates, which the FDIC finds unreasonable.

### Converting Counterparty Exposure Measures to Scores

In the Assessments final rule, the FDIC reserved the right to update the minimum and maximum cutoff values used in each scorecard annually without further rulemaking as long as the method of selecting cut-off values remained unchanged. Under this reservation, the FDIC can add new data for later years to its analysis and can, from time to time, exclude some earlier years from its analysis.[64]

In the NPR, the FDIC proposed to continue to reserve the right to revise the conversion of the counterparty exposures measures to scores (that is, recalibrate the conversion by updating the minimum and maximum cutoff values) after reviewing data reported for some or all of 2015 without further notice-and-comment rulemaking. Two trade groups objected to this proposal, arguing that the specific recalibration of the counterparty exposure measures proposed in the NPR should be accomplished through notice-and-comment rulemaking. After further consideration, the FDIC has decided that, for the conversion of the counterparty exposure measures to scores only, any revisions will be done through notice-and-comment rulemaking.[65]

### Cost-Benefit Analysis

One trade group argued that the NPR should not be finalized until the FDIC has conducted a cost-benefit analysis subject to public comment, and that the FDIC would not be able to conduct such a cost-benefit analysis without additional data that will only become available after the first quarter of 2015. For this reason, the commenter suggested foregoing any immediate changes to the counterparty exposure measures until additional data becomes available and can be evaluated.

In developing and reviewing regulations, the FDIC is committed to continually improving the quality of its regulations and policies, minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently. The FDIC evaluates benefits and costs of regulations based on available information and the consideration of reasonable and possible alternatives. As part of the notice-and-comment process, the FDIC actively seeks comment on

[61] 79 FR 42698, 42705 (July 23, 2014). See Basel Committee on Banking Supervision. (January 2013). ''Regulatory consistency assessment programme (RCAP)—Analysis of risk-weighted assets for market risk'', available online at *http://www.bis.org/publ/bcbs240.htm;* Basel Committee on Banking Supervision. (July 2013). ''Regulatory consistency assessment programme (RCAP)—Analysis of risk-weighted assets for credit risk in the banking book,'' available online at *http://www.bis.org/publ/bcbs256.htm;* and Basel Committee on Banking Supervision. (July 2013). ''The regulatory framework: balancing risk sensitivity, simplicity and comparability—discussion paper,'' available online at *http://www.bis.org/publ/bcbs258.htm.*

[62] In the NPR, the FDIC also discussed but argued against an alternative in which it would recalibrate the conversion of counterparty exposure measures into scores using exposures calculated using the IMM approach.

[63] 12 U.S.C. 1817(b)(1)(C)(i)(III).

[64] 76 FR at 10700; see also 77 FR at 66016. 12 CFR part 327, subpart A, App. A.

[65] As currently provided in the FDIC's assessments rules and regulations, the FDIC continues to reserve the general right to update the minimum and maximum cutoff values for all measures in the scorecards without additional notice-and-comment rulemaking. See 12 CFR part 327, subpart A, App. A.

cost, benefits, and burdens, and carefully considers these comments.[66]

The FDIC has, in fact, evaluated the costs and benefits of requiring that highly complex institutions measure counterparty exposure using the standardized approach in the Basel III capital rules rather than the IMM. For those few banks that are already (or would be) using the IMM to measure counterparty exposure, the final rule is likely to increase these banks' assessment rates compared to rates calculated using the IMM, all else equal. As one trade group noted in its comment letter, albeit in another context, ''The credit equivalent amount in the U.S. Basel I-based capital rules, the credit equivalent amount under the Standardized Approach, and the Basel Committee's Basel II current exposure method are all broadly similar.'' Consequently, in the NPR, the FDIC was able to rely on its data on assessment rates before adoption of the IMM.

Moreover, the FDIC is required by statute to ensure that the DIF reserve ratio reaches at least 1.35 percent of estimated insured deposits by September 30, 2020.[67] The FDIC has already adopted a schedule of lower overall assessment rates that will go into effect automatically when the DIF reserve ratio reaches 1.15 percent.[68] While a few banks will have increased assessment rates under the final rule, these higher rates will reduce the risk that an assessment rate increase for all banks will be needed for the DIF reserve ratio to reach 1.35 percent by the statutory deadline; it will also increase the possibility that the reserve ratio will reach 1.15 percent sooner than otherwise, at which time overall assessment rates will fall.

The FDIC has also tailored its approach to minimize additional reporting burden. Under the final rule, highly complex institutions will calculate their counterparty exposure for deposit insurance assessment purposes using the standardized approach under the Basel III capital rules (modified for cash collateral for derivatives exposures). These banks must determine counterparty exposure using the generally applicable risk-based capital requirements, that is, the standardized approach under the Basel III capital rules, as required by the Collins Amendment. They must also calculate qualifying cash collateral for derivatives exposures for purposes of the supplementary leverage ratio. Thus, the final rule imposes little, if any, additional reporting burden.

Rather than indefinitely allowing the use of methodologies that would result in inequitable assessments, the final rule takes into account potential burdens, benefits, alternative approaches, and cumulative costs of regulations to make assessments appropriately reflect relative risk.

## V. Effective Date

### *A. Ratios and Thresholds Relating to Capital Evaluations*

Two effective dates apply to the ratios and ratio thresholds relating to the capital evaluations used in its deposit insurance system: January 1, 2015, for all ratios and ratio thresholds except the supplementary leverage ratio, and January 1, 2018, for the supplementary leverage ratio and ratio threshold. These are the effective dates of the changes to the PCA capital rules.

### *B. Assessment Base Calculation for Custodial Banks*

The effective date for the assessment base calculation for custodial banks is January 1, 2015.

### *C. Calculation of Counterparty Exposures in the Highly Complex Institution Scorecard*

The effective date for the calculation of counterparty exposures in the highly complex institution scorecard is January 1, 2015.

## VI. Regulatory Analysis and Procedure

### *A. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand. No comments addressing this issue were received.

### *B. Regulatory Flexibility Act*

The FDIC has carefully considered the potential impacts on all banking organizations, including community banking organizations, and has sought to minimize the potential burden of these changes where consistent with applicable law and the agencies' goals.

The Regulatory Flexibility Act (RFA) requires that each Federal agency either certify that the final rule will not have a significant economic impact on a substantial number of small entities.[69] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[70] Nonetheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis.

As of December 31, 2013, of the 6,812 IDIs, there were 5,655 small IDIs as that term is defined for the purposes of the RFA (*i.e.,* institutions with $550 million or less in total assets). Under the revisions to the ratios and ratio thresholds for capital evaluations in the final rule, five small IDIs (0.09 percent of small IDIs) would have had higher deposit insurance assessments as of the end of December 2013 (assuming that they had not increased their capital in response to the new PCA capital rules). None would have had lower assessments. In the aggregate, these five small IDIs would have been assessed approximately $1 million more in annual assessments under the final rule. In aggregate, the final rule would have increased small IDIs' assessments by 0.01 percent of all small IDIs' income before taxes.

Four additional IDIs that meet the RFA definition of a small IDI were identified as subsidiaries of custodial banks subject to assessments adjustments. The FDIC estimates that under the final rule, the assessments for these additional small IDIs would not be affected.

The final rule regarding the calculation of counterparty exposures in the highly complex institution scorecard does not affect any small IDIs.

Thus, the final rule does not have a significant economic impact on a substantial number of small entities.

### *C. Paperwork Reduction Act*

No collections of information pursuant to the Paperwork Reductions Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

### *D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the final rule does not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus

[66] See FDIC Statement of Policy on the Development and Review of Regulations and Policies, 78 FR 22771, 22772 (Apr. 17, 2013).

[67] See Pub. L. 111–203, sec. 334(d), 124 Stat. 1539 (codified as amended at 12 U.S.C. 1817(nt)). The FDIC is also required to charge banks with $10 billion or more in assets for the cost of increasing the reserve ratio from 1.15 percent to 1.35 percent. Id. at sec. 334(e).

[68] See 12 CFR 327.10.

[69] See 5 U.S.C. 603 and 605.

[70] See 5 U.S.C. 601(2).

Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 327**

Bank deposit insurance, Banks, Savings associations.

For the reasons set forth above, the FDIC amends part 327 as follows:

## PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

## Subpart A—[Amended]

■ 2. In subpart A, remove the term ''Tier 1 leverage ratio'' and add in its place ''Leverage ratio'' wherever it appears.

■ 3. In § 327.5, revise paragraphs (c)(1) and (2) to read as follows:

**§ 327.5 Assessment base.**

* * * * *

(c) * * *

(1) *Custodial bank defined.* A custodial bank for purposes of calculating deposit insurance assessments shall be an insured depository institution with previous calendar-year trust assets (fiduciary and custody and safekeeping assets, as described in the instructions to Schedule RC–T of the Consolidated Report of Condition and Income) of at least $50 billion or an insured depository institution that derived more than 50 percent of its total revenue (interest income plus non-interest income) from trust activity over the previous calendar year.

(2) *Assessment base calculation for custodial banks.* A custodial bank shall pay deposit insurance assessments on its assessment base as calculated in paragraph (a) of this section, but the FDIC will exclude from that assessment base the daily or weekly average (depending on how the bank reports its average consolidated total assets) of all asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Consolidated Report of Condition and Income with a standardized approach risk weight of 0 percent, regardless of maturity, plus 50 percent of those asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Consolidated Report of Condition and Income, with a standardized approach risk-weight greater than 0 and up to and including 20 percent, regardless of maturity, subject to the limitation that the daily or weekly average (depending on how the bank reports its average consolidated total assets) value of all assets that serve as the basis for a deduction under this section cannot exceed the daily or weekly average value of those deposits that are classified as transaction accounts in the instructions to Schedule RC–E of the Consolidated Report of Condition and Income and that are identified by the institution as being directly linked to a fiduciary or custodial and safekeeping account asset.

* * * * *

■ 4. In § 327.9, revise paragraphs (a)(2)(i) and (ii) to read as follows:

**§ 327.9 Assessment pricing methods.**

(a) * * *

(2) * * *

(i) *Well Capitalized.* A Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based capital ratio, 10.0 percent or greater; tier 1 risk-based capital ratio, 8.0 percent or greater; leverage ratio, 5.0 percent or greater; and common equity tier 1 capital ratio, 6.5 percent or greater.

(ii) *Adequately Capitalized.* An Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized in paragraph (a)(2)(i) of this section but satisfies each of the following capital ratio standards: Total risk-based capital ratio, 8.0 percent or greater; tier 1 risk-based capital ratio, 6.0 percent or greater; leverage ratio, 4.0 percent or greater; and common equity tier 1 capital ratio, 4.5 percent or greater.

* * * * *

■ 5. In § 327.9, effective January 1, 2018, revise paragraphs (a)(2)(i) and (ii) to read as follows:

**§ 327.9 Assessment pricing methods.**

(a) * * *

(2) * * *

(i) *Well Capitalized.* A Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based capital ratio, 10.0 percent or greater; tier 1 risk-based capital ratio, 8.0 percent or greater; leverage ratio, 5.0 percent or greater; common equity tier 1 capital ratio, 6.5 percent or greater; and, if the institution is an insured depository institution subject to the enhanced supplementary leverage ratio standards under 12 CFR 6.4(c)(1)(iv)(B), 12 CFR 208.43(c)(2)(iv)(B), or 12 CFR 324.403(b)(1)(v), as each may be amended from time to time, a supplementary leverage ratio of 6.0 percent or greater.

(ii) *Adequately Capitalized.* An Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized in paragraph (a)(2)(i) of this section but satisfies each of the following capital ratio standards: Total risk-based capital ratio, 8.0 percent or greater; tier 1 risk-based capital ratio, 6.0 percent or greater; leverage ratio, 4.0 percent or greater; common equity tier 1 capital ratio, 4.5 percent or greater; and, if the institution is subject to the advanced approaches risk-based capital rules under 12 CFR 6.4(c)(2)(iv)(B), 12 CFR 208.43(c)(2)(iv)(B), or 12 CFR 324.403(b)(2)(vi), as each may be amended from time to time, a supplementary leverage ratio of 3.0 percent or greater.

* * * * *

■ 6. In Appendix A to Subpart A, in the table under the section heading, ''VI. Description of Scorecard Measures,'' revise the descriptions of ''(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves'' and ''(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves'' under the subheading ''Concentration Measure for Highly Complex Institutions'' to read as follows:

**Appendix A to Subpart A of Part 327—Method To Derive Pricing Multipliers and Uniform Amount**

* * * * *

VI—DESCRIPTION OF SCORECARD MEASURES

| Scorecard measures [1] | Description |
|---|---|
| * * * * * * * | |
| (2) Top 20 Counterparty Exposure/ Tier 1 Capital and Reserves. | Sum of the 20 largest total exposure amounts to counterparties divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, securities financing transactions (SFTs), and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(a), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)–(7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.[2] |
| (3) Largest Counterparty Exposure/ Tier 1 Capital and Reserves. | The largest total exposure amount to one counterparty divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, SFTs, and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(a), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)–(7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.[2] |
| * * * * * * * | |

[1] The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard (except for the Top 20 counterparty exposure to Tier 1 capital and reserves ratio and the largest counterparty exposure to Tier 1 capital and reserves ratio). The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

[2] SFTs include repurchase agreements, reverse repurchase agreements, security lending and borrowing, and margin lending transactions, where the value of the transactions depends on market valuations and the transactions are often subject to margin agreements. The default fund contribution is the funds contributed or commitments made by a clearing member to a central counterparty's mutualized loss sharing arrangement. The other terms used in this description are as defined in 12 CFR part 324, subparts A and D, unless defined otherwise in 12 CFR part 327.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of November, 2014.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2014–27941 Filed 11–25–14; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0191; Directorate Identifier 2013–NM–256–AD; Amendment 39–18030; AD 2014–23–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of swing arm assemblies of engine fuel feed ejector pumps detaching from the outlet port of the engine fuel feed ejector pump and partially blocking the engine fuel feed line. This AD requires installing a restrictor into the engine fuel feed line. We are issuing this AD to prevent blocked engine fuel flow and possible engine flameout.

**DATES:** This AD becomes effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of December 31, 2014.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0191* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**FOR FURTHER INFORMATION CONTACT:** Morton Lee, Propulsion Engineer, Propulsion & Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7355; fax 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on April 9, 2014 (79 FR 19546).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–35, dated November 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> There have been incidents of the ''ENG FUEL PRESS'' caution light illuminating in-flight. An investigation revealed the engine fuel feed ejector pump swing arm assembly became detached from the outlet port of the engine fuel feed ejector pump and partially blocked the engine fuel feed line. If the failed swing arm assembly migrates along the fuel line downstream of the Fuel Tank AUX Pump junction, it could block the engine fuel flow and the affected engine may experience a flameout condition.
>
> Bombardier issued Service Bulletin (SB) 84–28–16 to introduce a restrictor into the engine fuel feed line that is designed to contain a detached ejector pump swing arm assembly.
>
> This [Canadian] AD mandates the installation of a restrictor into the engine fuel feed line to prevent possible engine flameout.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0191-0002.*

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 19546, April 9, 2014) and the FAA's response to each comment.

**Request To Require Compliance With Relevant Instructions in Service Information**

Horizon Air asked that we revise the NPRM (79 FR 19546, April 9, 2014) to specify only those instructions required to correct the unsafe condition. Horizon Air explained that paragraph (g) of the NPRM is more restrictive than necessary to ensure safety of flight, and that the Accomplishment Instructions of Bombardier Service Bulletin 84–28–16, Revision B, dated June 17, 2013, should not be mandated in its entirety. Horizon Air stated that the job set-up and close-out sections of the Accomplishment Instructions do not directly correct the unsafe condition; incorporating those sections as a requirement of the AD restricts an operator's ability to perform other maintenance, in conjunction with incorporation of the instructions in the service information.

We agree to refer only to the procedures that address the identified unsafe condition. We have revised paragraph (g) of this AD to refer paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–16, Revision B, dated June 17, 2013.

**Request To Remove Repair Approval Language**

Horizon Air asked that we remove the ''Airworthy Product'' language in paragraph (i)(2) of the NPRM (79 FR 19546, April 9, 2014), which states, in part, ''For a repair method to be approved, the repair approval must specifically refer to this AD.'' Horizon Air stated that this sentence should not be included in the final rule, or at the very least it should be modified, because it will place an unnecessary regulatory burden on operators with airplanes built in Canada. Horizon Air added that Transport Canada Civil Aviation is the State holding design authority for Bombardier Model DHC–8–400 series airplanes; the NPRM simply restates the requirements of the TCCA AD. Horizon Air noted that any repairs created by Bombardier would have to be in compliance with the TCAA AD, and the repair would specifically refer to the TCCA AD. Horizon Air also stated that the bilateral agreement between Canada and the United States accepts documents approved by TCAA as meeting the requirements for FAA approval. Horizon Air does not see the need for referencing the U.S. AD number when the repair is approved by TCCA and refers to the Canadian AD; therefore, the repair meets the approval requirements from the State holding the Design Authority. Horizon Air concluded that if this requirement is retained, it would force operators to go back to the manufacturer and request a revision to the repair method to add the U.S. AD number, even if the repair method is referenced in the TCCA AD.

We concur with the commenter's request to remove the requirement to refer to this AD in repair approvals. Since late 2006, we have included the paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD. The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 19546, April 9, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

In addition to Horizon Air's comments to the NPRM (79 FR 19546, April 9, 2014) about these proposed

changes, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that does not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

## Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 19546, April 9, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 19546, April 9, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

## Costs of Compliance

We estimate that this AD affects 81 airplanes of U.S. registry. We estimate the following costs to comply with this AD.

We also estimate that it takes about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $82,620, or $1,020 per product.

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0191;* 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2014–23–14 Bombardier, Inc.:** Amendment 39–18030. Docket No. FAA–2014–0191; Directorate Identifier 2013–NM–256–AD.

**(a) Effective Date**

This AD becomes effective December 31, 2014.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001, and 4003 through 4417 inclusive, with installed engine fuel feed ejector pump having part number (P/N) 2960008–102.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by reports of swing arm assemblies of engine fuel feed ejector pumps detaching from the outlet port of the engine fuel feed ejector pump and partially blocking the engine fuel feed line. We are issuing this AD to prevent blocked engine fuel flow and possible engine flameout.

**(f) Compliance**

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

**(g) Installation**

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, install a restrictor into the engine fuel feed line, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–16, Revision B, dated June 17, 2013.

**(h) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–16, dated July 16, 2012; or Bombardier Service Bulletin 84–28–16, Revision A, dated May 23, 2013; which are not incorporated by reference in this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–35, dated November 15, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0191-0002*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

**(k) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 84–28–16, Revision B, dated June 17, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 6, 2014.

**Jeffrey E. Duven**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27357 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0170; Directorate Identifier 2013–NM–169–AD; Amendment 39–18027; AD 2014–23–11]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2005–13–05, which applied to certain Boeing Model 747–400F series airplanes. AD 2005–13–05 required inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, and repair of any cracking. AD 2005–13–05 also required a preventive modification of the upper deck floor beams, and repetitive inspections for cracking after accomplishing the modification. This new AD retains these actions and requires a second modification, repetitive inspections for cracking, and

repair if necessary. This AD was prompted by a determination that the upper chords of the upper deck floor beams at certain stations are structures that are susceptible to widespread fatigue damage, and that certain airplanes with an initial modification require a second modification for the airplane to meet its limit of validity (LOV). We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could result in reduced structural integrity of the airplane and rapid decompression or reduced controllability of the airplane.

**DATES:** This AD is effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 27, 2005 (70 FR 35989, June 22, 2005).

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**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–2014–0170; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005). AD 2005–13–05 applied to certain Boeing Model 747–400F series airplanes. The NPRM published in the **Federal Register** on March 25, 2014 (79 FR 16241). The NPRM was prompted by a determination that the upper chords of the upper deck floor beams at certain stations are structures that are susceptible to widespread fatigue damage, and that certain airplanes with an initial modification require a second modification for the airplane to meet its LOV. The NPRM proposed to continue to require inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, and repair of any cracking; a preventive modification of the upper deck floor beams; and repetitive inspections for cracking after accomplishing the modification. The NPRM proposed to also require a second modification, repetitive inspections for cracking, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could result in reduced structural integrity of the airplane and rapid decompression or reduced controllability of the airplane.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 16241, March 25, 2014) and the FAA's response to each comment.

**Request To Clarify Post-Modification Inspection Options**

Boeing requested that we revise paragraphs (j) and (l) of the NPRM (79 FR 16241, March 25, 2014) to clarify that the inspection options of paragraphs (j)(2) and (l)(2) are applicable only when the primary preventative modification option has been accomplished. Boeing stated that Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, added an alternative preventative modification option for which the inspection options of paragraphs (j)(2) and (l)(2) of this AD are not viable.

We agree with the commenter's request because these words add clarity as to which inspection option should be used. We have revised paragraphs (j) and (l) of this AD by stating that, as of the effective date of this AD, for airplanes on which the alternative preventive modification has been accomplished, only the inspection methods specified by paragraphs (j)(1) and (l)(1), respectively, of this AD may be used.

**Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 16241, March 25, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 16241, March 25, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

**Costs of Compliance**

We estimate that this AD affects 13 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Pre-modification inspections (retained actions from AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005)). | 11 work-hours × $85 per hour = $935. | $0 | $935 | $12,155. |
| Modification/inspections done during modification (retained actions from AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005)). | Up to 524 work-hours × $85 per hour = $44,540. | Up to $14,874 | 59,414 | $772,382. |

ESTIMATED COSTS—Continued

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Post-modification inspections (retained actions from AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005)). | 66 work-hours × $85 per hour = $5,610. | $0 | 5,610 | $72,930. |
| Zero-Timing Procedure Option 1 (including inspections) (new action). | 71 work-hours × $85 per hour = $6,035. | $0 | 6,035 | Up to $78,455. |
| Zero-Timing Procedure Option 2 (including inspections) (new action). | 103 work-hours × $85 per hour = $8,755. | $0 | 8,755 | Up to $113,815. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), and adding the following new AD:

**2014–23–11 The Boeing Company:** Amendment 39–18027 ; Docket No. FAA–2014–0170; Directorate Identifier 2013–NM–169–AD.

**(a) Effective Date**

This AD is effective December 31, 2014.

**(b) Affected ADs**

This AD replaces AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005).

**(c) Applicability**

This AD applies to The Boeing Company Model 747–400F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report indicating that the upper chords of the upper deck floor beams at stations (STA) 340 through 520 have been determined to be structures that are susceptible to widespread fatigue damage, and airplanes that had an initial modification done before 15,000 total flight cycles require a second fastener hole zero-timing modification for the airplane to meet its limit of validity (LOV). We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could result in reduced structural integrity of the airplane and rapid decompression or reduced controllability of the airplane.

**(f) Compliance**

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

**(g) Retained Inspections With Revised Service Information**

This paragraph restates the requirements of paragraph (g) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after July 27, 2005 (the effective date of AD 2005–13–05), whichever is later: Accomplish detailed and open-hole high frequency eddy current (HFEC) inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.1. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

**(h) Retained Repair With Revised Service Information and Revised Repair Approval Language**

This paragraph restates the requirements of paragraph (h) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information and revised repair approval language. If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, accomplish the actions required by paragraph (h)(1) and (h)(2) of this AD.

(1) Repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013; except where these service bulletins specify to contact Boeing for appropriate action, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (o) of this AD. As of the effective date of this AD, only

Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Accomplish the inspections and preventive modification of the floor beams by doing all the actions in accordance with Part 3.B.2. or Part 3.B.3., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 2 or Part 3, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

**(i) Retained Modification With Revised Service Information**

This paragraph restates the requirements of paragraph (i) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. If no crack is found during any inspection required by paragraph (g) of this AD: Accomplish the actions required by either paragraph (i)(1) or (i)(2) of this AD, at the time specified.

(1) Before further flight: Accomplish the inspections and preventive modification of the floor beam by doing all the actions in accordance with Part 3.B.2 or Part 3.B.3., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 2 or Part 3, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If the preventive modification is performed concurrently with the inspections required by paragraph (g) of this AD, the upper chord straps must be removed when performing the open-hole HFEC inspection. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after July 27, 2005 (the effective date of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), whichever is later: Accomplish the inspections and preventive modification of the upper deck floor beams, by doing all the actions in accordance with Part 3.B.2. or 3.B.3. as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 2 or Part 3, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

**(j) Retained Post-Modification Inspections With Revised Service Information**

This paragraph restates the requirements of paragraph (j) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. Within 15,000 flight cycles after accomplishing the applicable preventive modification required by paragraph (h)(2), (i)(1), or (i)(2) of this AD: Accomplish the applicable inspections required by either paragraph (j)(1) or (j)(2) of this AD; if any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. As of the effective date of this AD, for airplanes on which the alternative preventive modification, as identified in the NOTE after step 3. of ''PART 2—INSPECTION AND PREVENTIVE MODIFICATION,'' or as identified in the NOTE after step 4. of ''PART 3—INSPECTION AND PREVENTIVE MODIFICATION,'' of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, has been done, only the inspection specified by paragraph (j)(1) of this AD may be used.

(1) Accomplish detailed and surface HFEC inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.4. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no crack is found, repeat the inspections at intervals not to exceed 1,000 flight cycles. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Accomplish detailed and open-hole HFEC inspections for cracking of the web, upper chord, and strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no crack is found, repeat the inspections at intervals not to exceed 5,000 flight cycles. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

**(k) New Floor Beam Hole Zero-Timing**

Within 20,000 flight cycles after accomplishing the preventive modification of the Station 340 to Station 520 upper deck floor beams specified in paragraph (h)(2), (i)(1), or (i)(2) of this AD, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the floor beam hole zero-timing, in accordance with Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013.

**(l) New Post-Modification Floor Beam Hole Zero-Timing Inspections**

Within 15,000 flight cycles after accomplishing the floor beam hole zero-timing required by paragraph (k) of this AD: Accomplish the applicable inspections required by paragraph (l)(1) or (l)(2) of this AD; if any cracking is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. As of the effective date of this AD, for airplanes on which the alternative preventive modification, as identified in the NOTE after step 3. of ''PART 2—INSPECTION AND PREVENTIVE MODIFICATION,'' or as identified in the NOTE after step 4. of ''PART 3—INSPECTION AND PREVENTIVE MODIFICATION,'' of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, has been done, only the inspection method specified by paragraph (l)(1) of this AD may be used.

(1) Accomplish detailed and surface HFEC inspections for cracking of the web, upper chord, and straps of the Station 340 to Station 520 upper deck floor beams, by doing all the applicable actions, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no cracking is found, repeat the inspections at intervals not to exceed 1,000 flight cycles.

(2) Accomplish detailed and open-hole HFEC inspections for cracking of the web, upper chord, and straps of the Station 340 to Station 520 upper deck floor beams, by doing all the applicable actions, in accordance with Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no cracking is found, repeat the inspections at intervals not to exceed 5,000 flight cycles.

**(m) Exception to Service Information**

Where Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, specifies a compliance time ''after the revision date on this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(n) Credit for Previous Actions**

This paragraph provides credit for the inspections, repairs, and modification required by paragraphs (g) through (j) of this AD, if the corresponding actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2443, Revision 1, dated June 25, 2009.

**(o) Alternative Methods of Compliance (AMOCs)**

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by

Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), are approved as AMOCs for the corresponding requirements of paragraphs (g) through (j) (the retained actions) of this AD.

**(p) Related Information**

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (q)(5) and (q)(6) of this AD.

**(q) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on December 31, 2014.

(i) Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013.

(ii) Reserved.

(4) The following service information was approved for IBR on July 27, 2005 (70 FR 35989, June 22, 2005).

(i) Boeing Service Bulletin 747–53A2443, dated May 9, 2002.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 6, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27358 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0174; Directorate Identifier 2013–NM–212–AD; Amendment 39–18028; AD 2014–23–12]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by a report indicating that, on a different Boeing airplane model, there was an oxygen-fed fire, which caused extensive damage to the flight deck. This AD requires replacing the low-pressure oxygen hoses with non-conductive hoses in the crew oxygen system. We are issuing this AD to prevent inadvertent electrical current from passing through an internal, anti-collapse spring of the low pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn, leading to an oxygen-fed fire and/or smoke beneath the flight deck in the forward electronics equipment bay.

**DATES:** This AD is effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2014.

**ADDRESSES:** For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* For B/E Aerospace service information identified in this AD, contact B/E Aerospace, Inc., Commercial Aircraft Products Group, 10800 Pfluum Road, Lenexa, KS 66215; phone: 913–338–9800; fax: 913–469–8419. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**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–2014–0174; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 airplanes. The NPRM published in the **Federal Register** on March 28, 2014 (79 FR 17457). The NPRM was prompted by a report indicating that, on a different Boeing airplane model, there was an oxygen-fed fire, which caused extensive damage to the flight deck. The NPRM proposed to require replacing the low-pressure oxygen hoses with non-conductive hoses in the crew oxygen system. We are issuing this AD to prevent inadvertent electrical current from passing through an internal, anti-collapse spring of the low pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn, leading to an oxygen-fed fire and/or smoke beneath the flight deck in the forward electronics equipment bay.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 17457, March 28, 2014) and the FAA's response to each comment.

Boeing, United Airlines, and John Johnson stated that they support the NPRM (79 FR 17457, March 28, 2014).

**Request To Shorten Compliance Time**

The Air Line Pilots Association (ALPA) stated that it supports the intent of the NPRM (79 FR 17457, March 28, 2014) but that the 60-month compliance

time is excessive. ALPA recommended that the compliance time be shortened. ALPA did not provide justification for its request, or propose what the shorter compliance time should be.

We do not agree that the compliance time for this final rule should be shortened. In developing the compliance time we considered the implications, parts availability, and normal maintenance schedules for timely accomplishment of the replacement of the oxygen hoses. Further, the compliance time is in keeping with the manufacturers' recommended compliance time. Operators are always permitted to accomplish the requirements of an AD earlier than the specified compliance time. If additional data are presented that would justify reducing the compliance time we may consider further rulemaking on this issue. We have not changed this final rule in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 17457, March 28, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 17457, March 28, 2014).

**Costs of Compliance**

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Rework and replacement | Up to 2 work-hours × $85 per hour = $170 | $1,798 | Up to $1,968 .... | Up to $11,808. |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2014–23–12 The Boeing Company:** Amendment 39–18028; Docket No. FAA–2014–0174; Directorate Identifier 2013–NM–212–AD.

**(a) Effective Date**

This AD is effective December 31, 2014.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013.

**(d) Subject**

Air Transport Association (ATA) of America Code 35, Oxygen.

**(e) Unsafe Condition**

This AD was prompted by a report indicating that, on a different Boeing airplane model, there was an oxygen-fed fire, which caused extensive damage to the flight deck. We are issuing this AD to prevent inadvertent electrical current from passing through an internal, anti-collapse spring of the low pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn, leading to an oxygen-fed fire and/or smoke beneath the flight deck in the forward electronics equipment bay.

**(f) Compliance**

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

**(g) Rework of Crew Oxygen Distribution Manifold Assembly**

For airplanes identified in Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013: Within 60 months after the effective date of this AD, rework the crew oxygen distribution manifold assembly from part number (P/N) 4421086–101 to P/N 4421086–102, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013; and B/E Aerospace Service Bulletin 4421086–35–001, Rev. 002, dated July 9, 2013; except as specified in paragraph (i) of this AD.

**(h) Replacement of Forward Crew Oxygen Supply Hose**

For airplanes identified as Group 2 in Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013: Within 60 months after the effective date of this AD, replace the forward crew oxygen supply hose with a new non-conductive forward oxygen supply hose, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013.

**(i) Exception to Service Information**

Paragraph III.A., ''Verification,'' of B/E Aerospace Service Bulletin 4421086–35–001, Rev. 002, dated July 9, 2013, has a typographical error. The last sentence in that paragraph states, ''If the decal shows PN 4421086–101, continue with the retrofit steps in paragraph II.B.'' The sentence should refer to paragraph III.B. of B/E Aerospace Service Bulletin 4421086–35–001, Rev. 002, dated July 9, 2013.

**(j) Parts Installation Prohibition**

As of the effective date of this AD, no person may install a distribution manifold having B/E Aerospace P/N 4421086–101; a flexible supply hose having B/E Aerospace P/N 4421189–016; or a supply hose having Boeing P/N 4421189–023; on any airplane.

**(k) Alternative Methods of Compliance (AMOCs)**

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

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

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

**(l) Related Information**

For more information about this AD, contact Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

**(m) Material Incorporated by Reference**

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

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

(i) Boeing Alert Service Bulletin B787–81205–SB350001–00, Issue 001, dated August 22, 2013.

(ii) B/E Aerospace Service Bulletin 4421086–35–001, Rev. 002, dated July 9, 2013.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) For B/E service information identified in this AD, contact B/E Aerospace, Inc., Commercial Aircraft Products Group, 10800 Pfluum Road, Lenexa, KS 66215; phone: 913–338–9800; fax: 913–469–8419.

(5) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 5, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27359 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0132; Directorate Identifier 2012–NM–007–AD; Amendment 39–18023; AD 2014–23–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2004–16–01 for certain Airbus Model A330–200 and –300 series airplanes and Model A340–200 and –300 series airplanes. AD 2004–16–01 required repetitive inspections for cracking of the chromed area of the left and right piston rods for the main landing gear (MLG) retraction actuators, and related investigative and corrective actions if necessary. This new AD requires repetitive draining of any fluid from the retraction actuator piston rod internal volume and sealing of the vent hole; repetitive ultrasonic inspections of the upper end of the piston rods, and corrective actions if necessary; a one-time ultrasonic inspection (longitudinal and circumferential) of the full length of the piston rod, and corrective actions if necessary; and a terminating modification of the left-hand and right-hand MLG retraction actuators. This AD was prompted by reports of the piston rods for the MLG retraction actuators rupturing during flight. We are issuing this AD to prevent cracking of the piston rods for the MLG retraction actuators, which could result in rupture of a piston rod, non-damped extension of the MLG, high loads on the fully extended MLG, and consequent reduced structural integrity of the MLG.

**DATES:** This AD becomes effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 19, 2004 (69 FR 46979, August 4, 2004).

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0132;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA,

1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2004–16–01, Amendment 39–13757 (69 FR 46979, August 4, 2004). AD 2004–16–01 applied to certain Airbus Model A330–200 and –300 series airplanes and Model A340–200 and –300 series airplanes. The NPRM published in the **Federal Register** on February 6, 2014 (79 FR 7098; corrected March 20, 2014 (79 FR 15555)). The NPRM was prompted by reports of the piston rods for the MLG retraction actuators rupturing during flight.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2011–0178R1, dated March 6, 2012, corrected March 7, 2012 (for Model A340–200 and –300 series airplanes); and EASA AD 2011–0179R1, dated March 6, 2012 (for Model A330–200 and –300 series airplanes) (both referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for the specified products. EASA AD 2011–0178R1, dated March 6, 2012, corrected March 7, 2012, states:

> During an approach phase, the flight crew of an A330 aeroplane had to perform a free-fall extension of the left-hand (LH) MLG.
>
> Rupture of the LH MLG retraction actuator piston rod was found near the rod attachment point. The inspection revealed at the location of the rupture the presence of corrosion resulting from incorrect application of the anticorrosion protection, and circumferential cracks resulting from normal operational loading effects.
>
> Since the above rupture, new cases of crack propagation along the length of the piston rod occurred. These ruptures led to a non-damped extension of the landing gear. Fully extended, the landing gear assembly was submitted to high loads jeopardising its structural integrity.
>
> This condition, if not detected and corrected, could lead to MLG failure during landing or roll-out and consequent damage to the aeroplane and injury to occupants.
>
> DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2005–098 [*http://ad.easa.europa.eu/blob/easa_ad_2005_5887_F20050980tb_superseded.pdf/AD_F-2005-098_1*] (EASA approval 2005–5887) [and AD F–2005–099 [*http://ad.easa.europa.eu/blob/easa_ad_2005_5888_F20050990tb_superseded.pdf/AD_F-2005-099_2*] (EASA approval 2005–5888)] to address this unsafe condition [the FAA issued AD 2004–16–01, Amendment 39–13757 (69 FR 46979, August 4, 2004)]. Since that [DGAC France] AD was issued, the results of extensive investigation determined that the presence of water in the internal volume of the piston rod can lead to the formation of ice which represents a potential source of high magnitude tensile hoop stresses in the material of the rod, leading to propagation of longitudinal crack in the body of the piston rod.
>
> Prompted by these findings, EASA issued AD 2006–0301 [*http://ad.easa.europa.eu/blob/easa_ad_2006_0301_R2_superseded.pdf/AD_2006-0301R2_1*], partially retaining the requirements of DGAC France AD F–2005–099, which was superseded, and to revise the inspection requirements as follows:
>
> a. Extend the repetitive inspections interval for the removal of fluid from the internal volume of the piston rod using flight cycles in lieu of flight hours as this better represents the mechanism for the accumulation of water within the piston rod.
>
> b. Remove the preliminary visual inspection from the ultrasonic longitudinal inspection of the upper end of the piston rod.
>
> c. Add a new one-time ultrasonic longitudinal and circumferential inspection of the full piston rod length to eliminate any parts that exhibit severe corrosion along the internal length of the piston rod.
>
> d. Require installation of new design hollow piston rod Part Number (P/N) 114256328 (Airbus mod. 52980—SB A340–32–4222 Revision 01) without a vent hole, thus eliminating moisture ingress as the terminating action.
>
> EASA AD 2006–0301 was later revised:
>
> —at revision 01, to correct a number of typographical errors and to add reference to Airbus SB A340–32–4212 Revision 04, and
>
> —at revision 02 to extend the inspections threshold from 3 to 6 years in service usage for retraction actuator piston rod P/N 114256321 issue 06 which was re-identified to P/N 114256326 issue 01 in accordance with the instructions of Airbus SB A340–32–4260.
>
> More recently, the sampling of piston rod P/N 114256326 issue 1 and P/N 114256321 issue 06 have confirmed the need to replace all retraction actuator piston rods with a piston rod P/N114256328.
>
> For the reasons described above, this [EASA] AD at original issue retained the requirements of EASA AD 2006–0301R2 (*http://ad.easa.europa.eu/blob/easa_ad_2006_0301_R2_superseded.pdf/AD_2006-0301R2_1*), which is superseded, and required the replacement of all retraction actuator piston rods with a piston rod P/N 114256328, which constitutes terminating action to the repetitive requirements of this AD.
>
> This [EASA] AD is revised to clarify that aeroplanes on which Airbus mod. 52980 has been embodied in production are not required to accomplish the reidentification of MLG retraction actuator P/N 114256002–055 which is mentioned in the accomplishment instructions of Airbus SB A340–32–4222 Revision 03.
>
> This [EASA] AD has been republished to correct a typographical mistake of the applicable Airbus SB number in the Applicability (in the Note) and in the Reason sections of this [EASA] AD.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0132-0003.*

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)), and the FAA's response to each comment.

### Request To Reference Latest Service Information

Delta Airlines requested that we reference the latest Airbus service information, which is Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014. Delta Airlines further requested that we provide credit for actions previously accomplished using Airbus Service Bulletin A330–32–3180, Revision 03, dated January 28, 2011; and Airbus Service Bulletin A330–32–3180, Revision 04, dated July 30, 2013.

We agree with Delta Airlines' comment to reference the latest service information. Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014, provides the latest information on the modification required by this AD. This service bulletin specifies two additional work-hours for re-identification of the part number of the MLG retraction actuator for Model A330–200 and –300 series airplanes at configuration 3, which were modified as described in Airbus Service Bulletin A330–32–3180, Revision 03, dated January 28, 2011. Re-identification of the MLG retraction actuator may be considered as a logical outgrowth of the proposed AD (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)) requirements.

Airbus has also released Service Bulletin A340–32–4222, Revision 04, dated July 30, 2013. This service bulletin also specifies two additional work-hours for re-identification of the part number of the MLG retraction actuator for Model A340 series airplanes. There are currently no U.S.-registered Model A340 series airplanes. We have revised paragraphs (s) and (t) of this AD to specify Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014; and Airbus Service Bulletin A340–32–4222, Revision 04, dated July 30, 2013; as the appropriate sources of service information for the required actions in those paragraphs. We have also revised paragraphs (w)(2) and (w)(3) of this AD to provide credit for previous actions

accomplished using Airbus Service Bulletin A330–32–3180, Revision 03, dated January 28, 2011; Airbus Service Bulletin A330–32–3180, Revision 04, dated July 30, 2013; and Airbus Service Bulletin A340–32–4222, Revision 03, dated January 28, 2011; as applicable.

**''Contacting the Manufacturer'' Paragraph in This AD**

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

**Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 7098, February 6, 2014; corrected March 20, 2014 (79 FR 15555)).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

**Costs of Compliance**

We estimate that this AD affects 24 Model A330–200 and –300 series airplanes of U.S. registry. There are no

Model A340–200 or –300 series airplanes of U.S. registry.

We estimate that it will take about 67 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $56,000 per product (2 actuators). Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,480,680, or $61,695 per product.

In addition, we estimate that any necessary follow-on actions will take about 38 work-hours and require parts costing $56,000 (2 actuators), for a cost of $59,230 per product. We have no way of determining the number of aircraft that might need these actions.

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

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0132;* 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2004–16–01, Amendment 39–13757 (69 FR 46979, August 4, 2004), and adding the following new AD:

**2014–23–07 Airbus:** Amendment 39–18023. Docket No. FAA–2014–0132; Directorate Identifier 2012–NM–007–AD.

**(a) Effective Date**

This AD becomes effective December 31, 2014.

**(b) Affected ADs**

This AD replaces AD 2004–16–01, Amendment 39–13757 (69 FR 46979, August 4, 2004).

**(c) Applicability**

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, except for those airplanes that have had Airbus Modification 52980 incorporated in production on both main landing gear (MLG) units, or airplanes that have had Airbus Modification 54500 incorporated in production.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing Gear.

**(e) Reason**

This AD was prompted by reports of the piston rods for the MLG retraction actuators rupturing during flight. We are issuing this AD to prevent cracking of the piston rods for the MLG retraction actuators, which could result in rupture of a piston rod, non-damped extension of the MLG, high loads on the fully extended MLG, and consequent reduced structural integrity of the MLG.

**(f) Compliance**

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

**(g) Repetitive Detailed Inspections**

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a detailed inspection for cracking of the visible chromed area of the MLG retraction actuator piston rods in the fully extended position, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes). Repeat the inspection thereafter at intervals not to exceed 8 days until the actions required by paragraphs (j) and (o) of this AD are accomplished.

(1) For MLG retraction actuator piston rods that have not had a detailed inspection accomplished as of the effective date of this AD, as described in any applicable service information specified in paragraph (h)(1) or (h)(2) of this AD: At the applicable time

specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) For MLG retraction actuator piston rods having part number (P/N) 114256309 or P/N 114256321 issue 03: Do the inspection within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 36 months, whichever occurs later.

(ii) For MLG retraction actuator piston rods having P/N 114256326 issue 01 or P/N 114256321 issue 06: Do the inspection within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 72 months, whichever occurs later.

(2) For MLG retraction actuator piston rods having P/N 114256309, P/N 114256321 issue 03, P/N 114256326 issue 01, or P/N 114256321 issue 06, that have had a detailed inspection accomplished as of the effective date of this AD, as described in the applicable service information specified in paragraph (h)(1) or (h)(2) of this AD: Inspect within 8 days after the effective date of this AD.

**(h) Service Information for Determining Airplane Configuration for the Actions Required by Paragraph (g) of This AD**

(1) For Model A330–200 and –300 series airplanes:

(i) Airbus Service Bulletin A330–32–3173, Revision 01, dated June 16, 2004;

(ii) Airbus Service Bulletin A330–32–3173, Revision 02, dated May 11, 2005;

(iii) Airbus Service Bulletin A330–32–3173, Revision 03, dated March 13, 2006;

(iv) Airbus Service Bulletin A330–32–3173, Revision 04, dated June 12, 2006; or

(v) Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008.

(2) For Model A340–200 and –300 series airplanes:

(i) Airbus Service Bulletin A340–32–4212, Revision 01, dated June 16, 2004;

(ii) Airbus Service Bulletin A340–32–4212, Revision 02, dated May 11, 2005;

(iii) Airbus Service Bulletin A340–32–4212, Revision 03, dated March 13, 2006;

(iv) Airbus Service Bulletin A340–32–4212, Revision 04, dated June 12, 2006; or

(v) Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008.

**(i) Corrective Action for Cracking**

If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the MLG retraction actuator with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

**(j) Repetitive Fluid Draining and Vent Hole Sealing**

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Drain any fluid from the retraction actuator piston rod internal volume and seal the vent hole, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes). Repeat the draining and sealing thereafter at intervals not to exceed 1,000 flight cycles or 24 months, whichever occurs first.

(1) For MLG retraction actuator piston rods that have not been inspected and have not had the fluid drained as of the effective date of this AD, as described in the applicable service information specified in paragraph (k)(1) or (k)(2) of this AD: At the applicable time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD.

(i) For MLG retraction actuator piston rods having P/N 114256309 or P/N 114256321 issue 03: Do the draining and sealing within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 36 months, whichever occurs later.

(ii) For MLG retraction actuator piston rods having P/N 114256326 issue 01 or P/N 114256321 issue 06: Do the draining and sealing within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 72 months, whichever occurs later.

(2) For MLG retraction actuator piston rods having P/N 114256309, P/N 114256321 issue 03, P/N 114256326 issue 01, or P/N 114256321 issue 06, that have been inspected and the fluid drained as of the effective date of this AD, as described in the applicable service information specified in paragraph (k)(1) or (k)(2) of this AD: Do the draining and sealing at the later of the times specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) Within 1,000 flight cycles or 24 months, whichever occurs first, from the last inspection and fluid drainage accomplished in accordance with the requirements of paragraph (j) of this AD.

(ii) Within 60 days after the effective date of this AD.

**(k) Service Information for Determining Airplane Configuration for the Actions Required by Paragraph (j) of This AD**

(1) For Model A330–200 and –300 series airplanes:

(i) Airbus Service Bulletin A330–32–3173, Revision 02, dated May 11, 2005;

(ii) Airbus Service Bulletin A330–32–3173, Revision 03, dated March 13, 2006;

(iii) Airbus Service Bulletin A330–32–3173, Revision 04, dated June 12, 2006; or

(iv) Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008.

(2) For Model A340–200 and –300 series airplanes:

(i) Airbus Service Bulletin A340–32–4212, Revision 02, dated May 11, 2005;

(ii) Airbus Service Bulletin A340–32–4212, Revision 03, dated March 13, 2006;

(iii) Airbus Service Bulletin A340–32–4212, Revision 04, dated June 12, 2006; or

(iv) Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008.

**(l) Ultrasonic Inspection**

At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD: Do an ultrasonic longitudinal inspection for cracking of the retraction actuator piston rod end, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

(1) For MLG retraction actuator piston rods that have not had a non-destructive test (NDT) inspection as of the effective date of this AD, as described in the applicable service information specified in paragraph (m)(1) or (m)(2) of this AD: At the applicable time specified in paragraph (l)(1)(i) or (l)(1)(ii) of this AD.

(i) For MLG retraction actuator piston rods having P/N 114256309 or P/N 114256321 issue 03: Do the inspection within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 36 months, whichever occurs later.

(ii) For MLG retraction actuator piston rods having P/N 114256326 issue 01 or P/N 114256321 issue 06: Do the inspection within 60 days after the effective date of this AD, or before the MLG retraction actuator has been in service 72 months, whichever occurs later.

(2) For MLG retraction actuator piston rods having P/N 114256309, P/N 114256321 issue 03, P/N 114256326 issue 01, or P/N 114256321 issue 06, that have had an NDT inspection as of the effective date of this AD, as described in the applicable service information specified in paragraph (m)(1) or (m)(2) of this AD: Do the inspection at the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) Within 1,400 flight hours, 250 flight cycles, or 4 months, whichever occurs first after the date of the last ultrasonic longitudinal inspection performed as described in the applicable service information specified in paragraph (m)(1) or (m)(2) of this AD.

(ii) Within 60 days after the effective date of this AD.

**(m) Service Information for Determining Airplane Configuration for the Actions Required by Paragraph (l) of This AD**

(1) For Model A330–200 and –300 series airplanes:

(i) Airbus Service Bulletin A330–32–3173, dated December 17, 2003;

(ii) Airbus Service Bulletin A330–32–3173, Revision 01, dated June 16, 2004;

(iii) Airbus Service Bulletin A330–32–3173, Revision 02, dated May 11, 2005;

(iv) Airbus Service Bulletin A330–32–3173, Revision 03, dated March 13, 2006;

(v) Airbus Service Bulletin A330–32–3173, Revision 04, dated June 12, 2006; or

(vi) Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008.

(2) For Model A340–200 and –300 series airplanes:

(i) Airbus Service Bulletin A340–32–4212, dated December 17, 2003;

(ii) Airbus Service Bulletin A340–32–4212, Revision 01, dated June 16, 2004;

(iii) Airbus Service Bulletin A340–32–4212, Revision 02, dated May 11, 2005;

(iv) Airbus Service Bulletin A340–32–4212, Revision 03, dated March 13, 2006;

(v) Airbus Service Bulletin A340–32–4212, Revision 04, dated June 12, 2006; or

(vi) Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008.

**(n) Corrective Action for Ultrasonic Inspection; Repetitive Interval**

(1) If the finding of the inspection required by paragraph (l) of this AD gives an indication of 75 percent or higher of full screen height (FSH) and between 5 and 7 in time base: Before further flight, replace the MLG retraction actuator with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

(2) If the finding of the inspection required by paragraph (l) of this AD gives an indication of less than 75 percent FSH and between 5 and 7 in time base: Repeat the inspection required by paragraph (l) of this AD thereafter at intervals not to exceed 1,400 flight hours, 250 flight cycles, or 4 months, whichever occurs first.

**(o) One-Time Ultrasonic Inspections of the Full-Length of the Piston Rod**

At the applicable time specified in paragraph (o)(1) or (o)(2) of this AD: Do a full-length ultrasonic longitudinal and a full-length circumferential inspection of the chromium-plated area of the piston rod for cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

(1) For MLG retraction actuator piston rods having P/N 114256309 or P/N 114256321 issue 03: Inspect at the later of the times specified in paragraphs (o)(1)(i) and (o)(1)(ii) of this AD.

(i) Within 1,750 flight hours, 315 flight cycles, or 5 months after the effective date of this AD, whichever occurs first.

(ii) Before the MLG retraction actuator has been in service 36 months.

(2) For MLG retraction actuator piston rods having P/N 114256326 issue 01 or P/N 114256321 issue 06: Inspect at the later of the times specified in paragraphs (o)(2)(i) and (o)(2)(ii) of this AD.

(i) Within 1,750 flight hours, 315 flight cycles, or 5 months after the effective date of this AD, whichever occurs first.

(ii) Before the MLG retraction actuator has been in service 72 months.

**(p) Corrective Action for One-Time Ultrasonic Inspections of the Full-Length of the Piston Rod**

(1) If the finding of the full-length ultrasonic longitudinal inspection required by paragraph (o) of this AD gives an indication of 75 percent or higher FSH and between 5 and 7 in time base: Before further flight, replace the MLG retraction actuator with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

(2) If the finding of the full-length ultrasonic circumferential inspection required by paragraph (o) of this AD gives an indication of 75 percent or higher FSH and between 7 and 9.5 in time base: Before further flight, replace the MLG retraction actuator with a new or serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes).

**(q) Reporting Requirement**

Report the results (regardless of findings) of the detailed inspection, the fluid drain/seal of the retraction actuator piston rod, the one-time ultrasonic longitudinal inspection of the piston rod end, and the one-time full-length ultrasonic longitudinal and circumferential inspection required by this AD, and the findings of the actions required by this AD that cause an actuator to be replaced, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008 (for Model A340–200 and –300 series airplanes). Submit the report to Airbus Customer Services Directorate, Attention: SEDCC1 Technical Data and Documentation Services fax: (+33) 5 61 93 28 06; email: *sb.reporting@airbus.com;* or via your Airbus resident customer support office. Submit the report at the applicable time specified in paragraph (q)(1) or (q)(2) of this AD.

(1) If the actions requiring reporting, as specified in paragraph (q) of this AD, are done on or after the effective date of this AD: Submit the report within 90 days after those actions have been done.

(2) If the actions requiring reporting, as specified in paragraph (q) of this AD, were done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

**(r) Terminating Actions for Repetitive Detailed Inspections**

Accomplishment of the initial drainage of the fluid from the piston, as required by paragraph (j) of this AD; and the full-length ultrasonic longitudinal inspection, and the full-length circumferential inspection, as required by paragraph (o) of this AD; constitutes terminating action for the repetitive detailed inspections required by paragraph (g) of this AD, provided no crack is found during the inspections.

**(s) Terminating Modification**

Within 48 months after the effective date of this AD: Modify the left-hand and right-hand MLG retraction actuators, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4222, Revision 04, dated July 30, 2013 (for Model A340–200 and –300 series airplanes). Accomplishment of the modification required by this paragraph terminates the repetitive requirements of this AD for the MLG retraction actuator that is modified.

**(t) Exception to Re-Identification of the MLG Retraction Actuator**

The re-identification of the MLG retraction actuator having P/N 114256002–055, which is described in Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014 (for Model A330–200 and –300 series airplanes); and Airbus Service Bulletin A340–32–4222, Revision 04, dated July 30, 2013 (for Model A340–200 and –300 series airplanes); is not required on airplanes that have Airbus modification 52980 embodied in production.

**(u) Optional Parts Installation**

Installation of a retraction actuator piston rod having P/N 114256323, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3174, Revision 02, dated September 16, 2005 (for Model A330–200 and –300 series airplanes); or Airbus Service Bulletin A340–32–4213, Revision 01, dated September 16, 2005 (for Model A340–200 and –300 series airplanes); is an acceptable method of compliance with the requirements of paragraphs (g), (j), (l), and (o) of this AD for that installed MLG retraction actuator.

**(v) Parts Installation Limitation**

As of the effective date of this AD, no person may install a piston rod having P/N 114256309, P/N 114256321, or P/N 114256326 issue 01 for the MLG retraction actuator on any airplane, unless the part meets the applicable requirements of this AD at the specified times and intervals.

**(w) Credit for Previous Actions**

(1) This paragraph provides credit for the actions required by paragraphs (g), (j), (l), and (o) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (w)(1)(i) through (w)(1)(ix) of this AD.

(i) Airbus Service Bulletin A330–32–3173, dated December 17, 2003; (for Model A330–200 and –300 series airplanes).

(ii) Airbus Service Bulletin A330–32–3173, Revision 01, dated June 16, 2004 (for Model A330–200 and –300 series airplanes).

(iii) Airbus Service Bulletin A330–32–3173, Revision 02, dated May 11, 2005 (for Model A330–200 and –300 series airplanes).

(iv) Airbus Service Bulletin A330–32–3173, Revision 03, dated March 13, 2006 (for Model A330–200 and –300 series airplanes).

(v) Airbus Service Bulletin A330–32–3173, Revision 04, dated June 12, 2006 (for Model A330–200 and –300 series airplanes).

(vi) Airbus Service Bulletin A340–32–4212, dated December 17, 2003 (for Model A340–200 and –300 series airplanes).

(vii) Airbus Service Bulletin A340–32–4212, Revision 01, dated June 16, 2004 (for Model A340–200 and –300 series airplanes).

(viii) Airbus Service Bulletin A340–32–4212, Revision 02, dated May 11, 2005; Revision 03, dated March 13, 2006 (for Model A340–200 and –300 series airplanes).

(ix) Airbus Service Bulletin A340–32–4212, Revision 04, dated June 12, 2006 (for Model A340–200 and –300 series airplanes).

(2) This paragraph provides credit for the actions required by paragraph (s) of this AD, if the modification was done before the effective date of this AD using the service information specified in paragraphs (u)(2)(i) through (u)(2)(iv) of this AD. These service bulletins are not incorporated by reference in this AD.

(i) Airbus Service Bulletin A330–32–3180, Revision 01, dated August 15, 2005 for Model A330–200 and –300 series airplanes).

(ii) Airbus Service Bulletin A330–32–3180, Revision 02, dated April 4, 2007 (for Model A330–200 and –300 series airplanes).

(iii) Airbus Service Bulletin A330–32–3180, Revision 03, dated January 28, 2011.

(iv) Airbus Service Bulletin A330–32–3180, Revision 04, dated July 30, 2013.

(v) Airbus Service Bulletin A340–32–4222, Revision 01, dated August 15, 2005 (for Model A340–200 and –300 series airplanes).

(vi) Airbus Service Bulletin A340–32–4222, Revision 02, dated April 4, 2007 (for Model A340–200 and –300 series airplanes).

(vii) Airbus Service Bulletin A340–32–4222, Revision 03, dated January 28, 2011 (for Model A340–200 and –300 series airplanes).

(3) This paragraph provides credit for the actions required by paragraph (s) of this AD, if the modification was done before the effective date of this AD using Airbus Service Bulletin A340–32–4222, dated September 20, 2004; and the re-identification was done before the effective date of this AD using Airbus Service Bulletin A340–32–4222, Revision 01, dated August 15, 2005, or Airbus Service Bulletin A340–32–4222, Revision 02, dated April 4, 2007. These service bulletins are not incorporated by reference in this AD.

**(x) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(y) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2011–0178R1, dated March 6, 2012 (corrected March 7, 2012); and Airworthiness Directive 2011–0179R1, dated March 6, 2012; for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0132-0003.*

(2) Service information identified in this AD that is not incorporated by reference in this AD is available at the addresses specified in paragraphs (z)(5) and (z)(6) of this AD.

**(z) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on December 31, 2014.

(i) Airbus Service Bulletin A330–32–3173, dated December 17, 2003.

(ii) Airbus Service Bulletin A330–32–3173, Revision 02, dated May 11, 2005.

(iii) Airbus Service Bulletin A330–32–3173, Revision 03, dated March 13, 2006.

(iv) Airbus Service Bulletin A330–32–3173, Revision 04, dated June 12, 2006.

(v) Airbus Service Bulletin A330–32–3173, Revision 05, dated September 26, 2008.

(vi) Airbus Service Bulletin A330–32–3174, Revision 02, dated September 16, 2005.

(vii) Airbus Service Bulletin A330–32–3180, Revision 05, dated January 27, 2014.

(viii) Airbus Service Bulletin A340–32–4212, dated December 17, 2003.

(ix) Airbus Service Bulletin A340–32–4212, Revision 02, dated May 11, 2005.

(x) Airbus Service Bulletin A340–32–4212, Revision 03, dated March 13, 2006.

(xi) Airbus Service Bulletin A340–32–4212, Revision 04, dated June 12, 2006.

(xii) Airbus Service Bulletin A340–32–4212, Revision 05, dated September 26, 2008.

(xiii) Airbus Service Bulletin A340–32–4213, Revision 01, dated September 16, 2005.

(xiv) Airbus Service Bulletin A340–32–4222, Revision 04, dated July 30, 2013.

(4) The following service information was approved for IBR on August 19, 2004 (69 FR 46979, August 4, 2004).

(i) Airbus Service Bulletin A330–32–3173, Revision 01, dated June 16, 2004.

(ii) Airbus Service Bulletin A340–32–4212, Revision 01, dated June 16, 2004.

(5) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 5, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–26986 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0062; Directorate Identifier 2012–NM–031–AD; Amendment 39–18025; AD 2014–23–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2000–17–03 for all Fokker Services B.V. Model F.28 Mark 0100 airplanes. AD 2000–17–

03 required inspections of the nose landing gear (NLG) main fitting to detect cracking of the NLG main fitting subassembly, and corrective actions if necessary. This new AD retains the requirements of AD 2000–17–03, requires installing a new part number NLG unit that terminates the repetitive inspections, and adds airplanes to the applicability. This AD was prompted by a report of an NLG main fitting failure. We are issuing this AD to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flight crew and passengers.

**DATES:** This AD becomes effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 3, 2000 (65 FR 52298, August 29, 2000).

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0062;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000). AD 2000–17–03 applied to all Fokker Services B.V. Model F.28 Mark 0100 airplanes. The NPRM published in the **Federal Register** on February 28, 2014 (79 FR 11351). The NPRM proposed to continue to require a one-time visual inspection, and repetitive eddy current and dye penetrant inspections of the NLG main fitting to detect cracking of the NLG main fitting subassembly, and corrective actions if necessary. The NPRM also proposed to require installing a new part number NLG unit that would terminate the repetitive inspections, and adding airplanes to the applicability.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0002R1, dated March 30, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on all Fokker Services B.V. Model F.28 Mark 0100 airplanes. The MCAI states:

> In 1997, a report was received concerning a Fokker 100 (F28 Mark 0100) aeroplane, where during landing following nose wheel touch-down, the nose landing gear (NLG) broke off just below the pintle pins. Subsequent inspection by the affected operator of other aeroplanes in the fleet identified three more suspect NLG main fittings. Eddy current (EC) and/or dye penetrant inspections of these units later confirmed that cracks were present on the inner side of the downlock plunger support web. The total number of flight cycles (FC) accumulated by the cracked NLG main fittings at the time of detection were between 9,300 FC and 17,600 FC.
>
> This condition, if not detected and corrected, could result in further incidents of NLG collapse, possibly resulting in damage to the aeroplane and/or injury to the occupants. To address this potential unsafe condition [Civil Aviation Authority —Netherlands] CAA–NL issued [an] AD * * * to require repetitive inspections of the NLG main fitting and, depending on findings, rework or replacement of the NLG main fitting.
>
> Since [that Netherlands] AD * * * was issued, it was determined that replacement of a Messier-Dowty (M–D, formerly Dowty Rotol) Part Number (P/N) 201071001 or P/N 201071002 NLG with, respectively, a P/N 201071003 or P/N 201071004 (which have a so-called 'heavy weight' main fitting installed) or, respectively, with a P/N 201456001 or P/N 201461001 (which are so-called 'heavy weight' NLG units) cancels the need for repetitive inspection and/or rework. The 'heavy weight' main fitting was originally developed for an increased weight version (101,000 lbs. maximum take-off weight) of the Fokker 100, as well as for the Fokker 70 (F28 Mark 0070), and introduced on the production line.
>
> M–D issued Service Bulletin (SB) F100–32–94 and Fokker Services issued SBF100–32–119, which provide instructions to install the P/N 201071003 or P/N 201071004 NLG on aeroplanes in service. In addition, Fokker Services issued optional SBF100–32–149 to introduce the P/N 201456001 or P/N 201461001 NLG units on aeroplanes in service.
>
> In January 2010, a second NLG main fitting failure occurred. The results of the investigation showed that the fracture started from small fatigue cracks in the affected area. Prompted by this new occurrence, combined with the NLG certification methodology (safe life principle), EASA has decided that the existing terminating action, installation of a P/N 201071003 or P/N 201071004 NLG should be made mandatory. Alternatively, a P/N 201456001 or P/N 201461001 NLG can be installed, which meets the same requirement.
>
> For the reasons described above, EASA issued AD 2012–0002, retaining the requirements of [the Netherlands] AD * * *, which was superseded, and to require the replacement of all P/N 201071001 and P/N 201071002 NLG units with, respectively, P/N 201071003 and P/N 201071004 NLG units, or alternatively with, respectively, P/N 201456001 or P/N 201461001 NLG units.
>
> Replacement of a NLG main fitting or of a NLG unit on an aeroplane constitutes terminating action for the repetitive inspections for that aeroplane.
>
> EASA AD 2012–0002 also prohibits, after modification of an aeroplane, installation of a P/N 201071001 or P/N 201071002 NLG unit on that aeroplane.
>
> * * * * *
>
> You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0062-0002.*

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 11351, February 28, 2014) or on the determination of the cost to the public.

## ''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 11351, February 28, 2014), we proposed to prevent the use of repairs that were not specifically

developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 11351, February 28, 2014) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Fokker Services B.V.'s EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

**Clarification of Language in Paragraph (m)(2) of This AD**

In paragraph (m)(2) of the NPRM (79 FR 11351, February 28, 2014), we specified to contact certain aviation authorities ''for instructions and follow those instructions.'' As part of the change described previously regarding ''Contacting the Manufacturer'' language, this text has been revised in paragraph (m)(2) of this AD to specify doing a repair using a method approved by the FAA, EASA, or Fokker Services B.V.'s EASA DOA.

**Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 11351, February 28, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 11351, February 28, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

**Costs of Compliance**

We estimate that this AD affects 4 airplanes of U.S. registry.

The actions required by AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2000–17–03 is $170 per product.

We also estimate that it will take about 8 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $525,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,102,720, or $526,680 per product.

We have received no definitive data that would enable us to provide a cost

estimate for the on-condition actions specified in this AD.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0062;* 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), and adding the following new AD:

**2014–23–09 Fokker Services B.V.:** Amendment 39–18025. Docket No. FAA–2014–0062; Directorate Identifier 2012–NM–031–AD.

**(a) Effective Date**

This AD becomes effective December 31, 2014.

**(b) Affected ADs**

This AD replaces AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000).

**(c) Applicability**

This AD applies to Fokker Services B.V. Model F.28 Mark 0100 airplanes; certificated in any category; all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing Gear.

**(e) Reason**

This AD was prompted by a report of a nose landing gear (NLG) main fitting failure. We are issuing this AD to prevent cracking of the NLG main fitting, which could lead to collapse of the NLG during takeoff and landing, and possible injury to the flight crew and passengers.

**(f) Compliance**

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

**(g) Retained One-Time Detailed Visual Inspection**

This paragraph restates the actions required by paragraph (a) of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000). For airplanes equipped with a Messier-Dowty NLG having part number (P/N) 201071001 or 201071002, on which a main fitting subassembly (MFSA) having P/N 201071200, 201071228, 201071248, or 201071249 is installed: Prior to the accumulation of 7,500 total flight cycles or within 50 flight cycles after October 3, 2000 (the effective date of AD 2000–17–03), whichever occurs later, perform a one-time detailed visual inspection of the NLG main fitting subassembly to detect cracking, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999.

(1) If no cracking is detected, no further action is required by this paragraph.

(2) If any cracking is detected, prior to further flight, accomplish the actions required by paragraph (i) of this AD.

**(h) Definition of a Detailed Visual Inspection**

For the purposes of this AD, a detailed visual inspection is defined as: An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.

**(i) Retained Repetitive Eddy Current and/or Dye Penetrant Inspections**

This paragraph restates the actions required by paragraph (b) of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), with a new exception. For airplanes equipped with a Messier-Dowty NLG having P/N 201071001 or 201071002, on which a MFSA having P/N 201071200, 201071228, 201071248, or 201071249 is installed: Except as required by paragraph (g)(2) of this AD, prior to the accumulation of 7,875 total flight cycles, or within 375 flight cycles after October 3, 2000 (the effective date of AD 2000–17–03), whichever occurs later, perform an eddy current or dye penetrant inspection of the NLG main fitting

subassembly to detect cracking, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. Such inspection within the compliance time required by the introductory text of paragraph (g) of this AD terminates the requirements of paragraph (g) of this AD. Repeat the inspection thereafter, using an eddy current or dye penetrant technique, at intervals not to exceed 750 flight cycles, except as required by paragraph (m)(1) of this AD. Repeat the inspection until the replacement specified in paragraph (l) of this AD is done, or the installation specified in paragraph (n) of this AD is done.

**(j) Retained Rework of Main Fitting**

This paragraph restates the actions required by paragraph (c) of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), with revised repair methods. If any cracking is detected during any inspection required by paragraph (g) or (i) of this AD: Prior to further flight, rework the main fitting of the NLG, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999. If, after rework, any cracking remains that exceeds the limits specified in Fokker Service Bulletin SBF100–32–118, dated October 8, 1999, prior to further flight, accomplish the actions specified by either paragraph (j)(1) or (j)(2) of this AD.

(1) Replace the NLG in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–118, dated October 8, 1999; and within 7,875 flight cycles after such replacement, perform the inspection as specified in paragraph (i) of this AD, and repeat the inspection thereafter at intervals not to exceed 750 flight cycles.

(2) Repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Rijksluchtvaartdienst (RLD) (or its delegated agent); or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA).

**Note 1 to paragraph (j) of this AD:** Fokker Service Bulletin SBF100–32–118, dated October 8, 1999, references Messier-Dowty Service Bulletin F100–32–92, Revision 1, dated October 8, 1999, as an additional source of service information for accomplishing the inspections and rework of the NLG main fitting subassembly.

**(k) Retained Reporting Requirements**

This paragraph restates the actions required by paragraph (d) of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), with revised contact information and minor editorial changes. Submit a report of the detailed visual inspection findings (positive and negative) required by paragraph (g) of this AD, and a report of the initial eddy current or dye penetrant inspection findings (positive and negative) required by paragraph (i) of this AD, to Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; or to Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com;* at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. As of the effective date of this AD, submit reports to Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(1) For airplanes on which the detailed visual inspection specified by paragraph (g) of this AD, and the initial repetitive eddy current or dye penetrant inspection specified by paragraph (i) of this AD, are accomplished after October 3, 2000 (the effective date of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000)): Submit each report within 7 days after performing the applicable inspection.

(2) For airplanes on which the detailed visual inspection specified by paragraph (g) of this AD, and the initial repetitive eddy current or dye penetrant inspection specified in paragraph (i) of this AD, have been accomplished prior to October 3, 2000 (the effective date of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000)): Submit the reports within 7 days after October 3, 2000 (the effective date of AD 2000–17–03).

**(l) New Requirement of This AD: Replacement**

Except as provided by paragraph (m) of this AD, before the next scheduled main fitting overhaul of the NLG after the effective date of this AD, or within 36 months after the effective date of this AD, whichever occurs first: Replace all NLG units having P/N 201071001 with a new P/N 201071003 NLG unit, and replace all NLG units having P/N 201071002 with a new P/N 201071004 NLG unit, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–119, Revision 1, dated November 15, 2011, including Fokker Manual Change Notification MCNM–F100–043, dated January 31, 2000.

**(m) New Compliance Time Extension and On-Condition Actions**

For airplanes on which the next scheduled main fitting overhaul of the NLG is to occur later than 36 months after the effective date of this AD: Operators may accomplish the replacement required by paragraph (l) of this AD before the next scheduled main fitting overhaul of the NLG after the effective date of this AD, or within 72 months after the effective date of this AD, whichever occurs first, provided the actions specified in paragraphs (m)(1) and (m)(2) of this AD are done.

(1) Within 36 months after the effective date of this AD, accomplish the inspection specified in paragraph (i) of this AD within 750 flight cycles since the most recent inspection, and repeat thereafter at intervals not to exceed 375 flight cycles until the replacement specified in paragraph (l) of this AD is done or the installation specified in paragraph (n) of this AD is done.

(2) In addition to the inspection specified in paragraph (m)(1) of this AD, do all other on-condition actions specified in paragraph 1.E(1)(b) of Fokker Service Bulletin SBF100–32–119, Revision 1, dated November 15, 2011, including Fokker Manual Change Notification MCNM–F100–043, dated January 31, 2000; except where Fokker Service Bulletin SBF100–32–119, Revision 1, dated November 15, 2011, including Fokker Manual Change Notification MCNM–F100–043, dated January 31, 2000, specifies to contact Fokker Services B.V., before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Fokker Services B.V.'s EASA Design Organization Approval (DOA).

**Note 2 to paragraph (m) of this AD:** Fokker Service Bulletin SBF100–32–119, Revision 1, dated November 15, 2011, including Fokker Manual Change Notification MCNM–F100–043, dated January 31, 2000, references Messier-Dowty Service Bulletin F100–32–94, dated January 5, 2000, as an additional source of service information for replacing the NLG unit.

**(n) New Optional Action**

Installing a new P/N 201456001 or P/N 201461001 NLG unit, in accordance with Fokker Proforma Service Bulletin SBF100–32–149, Revision 1, dated October 25, 2007, including Appendix 1, dated December 12, 2006, is acceptable for compliance with the replacement required by paragraph (l) of this AD, provided the installation is accomplished within the compliance time specified in paragraph (l) of this AD; and, except for airplanes that comply with paragraph (m) of this AD, provided the installation is accomplished within the compliance time specified in paragraph (m) of this AD.

**(o) New Requirement: Concurrent Modification**

Prior to, or concurrently with, the installation of the NLG unit required by paragraph (l) of this AD or the optional installation specified in paragraph (n) of this AD, modify the NLG bracket, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–074, dated November 1, 1999.

**(p) New Terminating Actions**

Accomplishing the replacement specified in paragraph (l) of this AD or the installation specified in paragraph (n) of this AD terminates the repetitive eddy current or dye penetrant inspections required by paragraphs (i) and (m)(1) of this AD.

**(q) New Parts Installation Prohibition**

(1) For airplanes equipped with a Messier-Dowty NLG having P/N) 201071001 or 201071002, on which a main fitting subassembly (MFSA) having P/N 201071200, 201071228, 201071248, or 201071249 is installed: As of October 3, 2000 (the effective date of AD 2000–17–03, Amendment 39–11876 (65 FR 52298, August 29, 2000), and until the effective date of this AD, no person may install an NLG having P/N 201071001 or 201071002 unless the installed MFSA has been inspected by means of an eddy current or dye penetrant inspection, and corrected in accordance with paragraph (i) of this AD.

(2) For all airplanes: As of the effective date of this AD, no person may install an NLG having P/N 201071001 or 201071002 on any airplane.

**(r) Credit for Previous Actions**

This paragraph provides credit for the replacement required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Fokker Service Bulletin SBF 100–32–119, dated January 31, 2000, provided P/N 201071003 or 201071004 nose gear has been installed.

**(s) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

**(t) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0002R1, dated March 30, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0062-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (u)(5) and (u)(6) of this AD.

**(u) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on December 31, 2014.

(i) Fokker Service Bulletin SBF 100–32–119, Revision 1, dated November 15, 2011, including Fokker Manual Change Notification MCNM–F100–043, dated January 31, 2000.

(ii) Fokker Proforma Service Bulletin SBF 100–32–149, Revision 1, dated October 25, 2007, including Appendix 1, dated December 12, 2006.

(iii) Fokker Service Bulletin SBF 100–53–074, dated November 1, 1999.

(4) The following service information was approved for IBR on October 3, 2000 (65 FR 52298, August 17, 2000).

(i) Fokker Service Bulletin SBF100–32–118, dated October 8, 1999.

(ii) Reserved.

(5) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 5, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27361 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0425; Directorate Identifier 2013–NM–180–AD; Amendment 39–18024; AD 2014–23–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2012–06–19 for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. AD 2012–06–19 required repetitive inspections of the main fitting and sliding tube of the nose landing gear (NLG) for defects, damage, and cracks; and corrective actions if necessary. This new AD requires an inspection of the part number and serial number of the NLG main fitting and NLG sliding tube; for affected parts, this new AD requires a magnetic particle inspection (MPI) for cracks, and flap peening and replacement if necessary. This new AD also requires, for certain parts, additional inspections for damage and cracking. This new AD also adds airplanes to the applicability. This AD was prompted by reports of a cracked main fitting and sliding tube during NLG overhaul. We are issuing this AD to detect and correct cracks, defects, or damage of the main fitting or sliding tube, which could result in consequent NLG collapse.

**DATES:** This AD becomes effective December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 31, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 30, 2012 (77 FR 22188, April 13, 2012).

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0425;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012). AD 2012–06–19 applied to certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. The NPRM published in the **Federal Register** on June 30, 2014 (79 FR 36666).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0179, dated August 7, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During the overhaul of two different Nose Landing Gear (NLG) units, cracks were found on the main fitting of one and the sliding tube of the other. Investigations concluded that the cracks initiated as a result of residual stress in the parts, following damage due to impact during towing incidents.
>
> A subsequent review of the reported incidents identified a specific group of NLG main fittings and sliding tubes that may have sustained impact damage as a result of towing incidents.
>
> This condition, if not detected and corrected could lead to NLG collapse.
>
> To address this potential unsafe condition, EASA issued AD 2010–0034 [(*http://ad.easa.europa.eu/blob/easa_ad_2010_0034_Corrected_superseded.pdf/AD_2010-0034_1*) [which corresponds to FAA AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012)] to require accomplishment of a one-time Magnetic Particles Inspection (MPI), followed by repetitive Detailed Visual Inspections (DVI) of the main fittings and sliding tubes of the affected NLG units identified by Part Number (P/N) and Serial Number (S/N) in the Applicability section of that AD and, depending on findings, accomplishment of applicable corrective actions.
>
> Since that [EASA] AD was issued, it has been found necessary to address the issue at the level of NLG detail parts and no longer at NLG assembly level, as some detail parts have been transferred from an aeroplane to another. Airbus revised the applicable Service Bulletins (SB), which now list the affected NLG main fittings and sliding tubes.
>
> For the reasons described above, this [EASA] AD retains [certain] requirements of EASA AD 2010–0034 which is superseded and requires [an inspection of the part number and serial number of the NLG main fitting and NLG sliding tube, and for affected parts,] a one-time MPI [for cracks], followed by repetitive DVI [for cracking, damage to paint, sealant, cadmium, and base metal] of the affected NLG main fittings and sliding tubes and, depending on inspection results, accomplishment of corrective actions [*e.g.,* flap peening and replacing cracked parts]. This AD also extends the applicability to A330 freighters.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0425-0002.*

## Clarification of Service Information References

We have clarified the service information references in this AD to identify the appendices.

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 36666, June 30, 2014) and the FAA's response to each comment.

## Request to Reference Service Information Instead of Table

Air France requested that we revise paragraph (g) of the NPRM (79 FR 36666, June 30, 2014), to replace table 1 to paragraph (g) of the NPRM with references to Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; and Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013. Air France asserted that the main reason for superseding AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012), is to address the issue at the level of NLG detail parts and no longer at the NLG assembly level, as some detail parts have been transferred from one airplane to another.

We agree with the commenter that Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; and Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013, contain the NLG detail parts (NLG main fitting and NLG sliding tube). However, paragraph (g) of this AD is a requirement that is retained from AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012) and only restates the affected parts identified in that AD. Paragraphs (i) and (j) of this AD require inspecting for affected NLG main fittings and NLG sliding tubes identified in the service information and inspecting affected parts for cracks. Accomplishing the new requirements specified in paragraph (j) of this AD terminates the actions specified in paragraph (g) of this AD. Therefore, no changes were made to this AD in this regard.

## ''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's

EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

**Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 36666, June 30, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 36666, June 30, 2014).

**Costs of Compliance**

We estimate that this AD affects 92 airplanes of U.S. registry.

The actions that were required by AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012), that are retained in this AD take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2012–06–19 is $31,280 per product.

We also estimate that it will take about 10 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $78,200, or $850 per product.

In addition, we estimate that any necessary follow-on actions will take about 114 work-hours and require parts costing $435,000, for a cost of $444,690 per product. We have no way of determining the number of aircraft that might 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0425;* 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012), and adding the following new AD:

**2014–23–08 Airbus:** Amendment 39–18024. Docket No. FAA–2014–0425; Directorate Identifier 2013–NM–180–AD.

**(a) Effective Date**

This AD becomes effective December 31, 2014.

**(b) Affected ADs**

This AD replaces AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012).

**(c) Applicability**

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing Gear.

**(e) Reason**

This AD was prompted by reports of a cracked nose landing gear (NLG) main fitting and sliding tube during NLG overhaul. We are issuing this AD to detect and correct cracks, defects, or damage of the main fitting or sliding tube, which could result in consequent NLG collapse.

**(f) Compliance**

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

**(g) Retained Detailed Inspection and Corrective Actions**

This paragraph restates the requirements of paragraph (g) of AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012), with revised service information. For Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; if fitted with the NLG identified in table 1 to paragraph (g) of this AD: Within 900 flight hours after April 30, 2012 (the effective date of AD 2012–06–19), do a detailed inspection of the NLG main fitting and sliding tube for any cracks, defects, and damage of the paint or surface protection, including paint removal and cracking of the surface treatment. Before further flight after doing the detailed inspection of the NLG, remove the labels, paint, surface protection coatings, and cadmium from the NLG main fitting; do a detailed inspection for any damage to the surface that will impair the magnetic particle inspection (MPI); and, if any defects are found, before further flight, remove any defects by polishing. Do all actions specified in this paragraph in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For Model A330 airplanes: Airbus Mandatory Service Bulletin A330–32–3233, dated October 22, 2009; or Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014.

(2) For Model A340 airplanes: Airbus Mandatory Service Bulletin A340–32–4275, dated October 22, 2009; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—APPLICABLE NLG AND SERIAL NUMBERS

| Part No. | Serial No. |
|---|---|
| D23285200 | B2 |
| D23285101–7 | B58 |
| D23285101–10 | B75 |
| D23581100–1 | B124 |
| D23581100–1 | B159 |
| D23581100–7 | B386 |
| D23581100–7 | B398 |
| D23581100–7 | B400 |
| D23581100–7 | B403 |

**(h) Retained Magnetic Particle Inspection**

This paragraph restates the requirements of paragraph (h) of AD 2012–06–19, Amendment 39–17000 (77 FR 22188, April 13, 2012), with revised service information. Before further flight after doing the actions required in paragraph (g) of this AD: Do an MPI for cracking of the NLG main fitting and sliding tube, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (g)(2) of this AD.

(1) If no crack is detected during the MPI required by the introductory text of paragraph (h) of this AD: Before further flight, flap peen the inspected area where the paint and cadmium has been removed, and replace the protective coatings, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (g)(2) of this AD.

(2) If any crack is detected during the MPI required by the introductory text of paragraph (h) of this AD: Before further flight, replace the damaged part with a new or serviceable part, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1) or (g)(2) of this AD.

**(i) New Identification of Part and Serial Numbers**

Within 1,000 flight hours after the effective date of this AD, identify the part number and serial number of the NLG main fitting and NLG sliding tube, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable. A review of airplane maintenance records is acceptable in lieu of this identification if the part number and the serial number of the NLG main fitting and NLG sliding tube can be conclusively determined from that review.

**(j) New Magnetic Particle Inspection**

If, during the identification required by paragraph (i) of this AD, it is determined any NLG main fitting or NLG sliding tube is installed and the fitting or tube has a part number and serial number listed in Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable: Within 1,000 flight hours after the effective date of this AD, do an MPI for cracks of the affected parts, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable. Accomplishing the MPI required by this paragraph terminates the inspections required by paragraphs (g) and (h) of this AD.

(1) If any crack is detected during the MPI required by the introductory text of paragraph (j) of this AD: Before further flight, replace any cracked part (NLG main fitting and NLG sliding tube) with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

(2) If no crack is detected during the MPI required by the introductory text of paragraph (j) of this AD: Before further flight, do a flap peening to introduce compressive residual stress and corrosion protection, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

**(k) New Detailed Inspection**

Within 900 flight hours after doing the flap peening required by paragraph (j)(2) of this AD, do a detailed inspection for damage to paint, damage to the sealant around the labels, damage to the cadmium or base metal, and for cracking of the affected parts, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable. Repeat the inspection thereafter at intervals not to exceed 900 flight hours.

(1) If any damage to the paint, damage to the sealant around the labels, or damage to the cadmium or base metal, is detected during any detailed inspection required by the introductory text of paragraph (k) of this AD; Before further flight, do an MPI for cracking of the affected parts, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

(2) If any cracking is detected during any inspection required by the introductory text of paragraph (k) or paragraph (k)(1) of this AD: Before further flight, replace any cracked part with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

**(l) Terminating Action**

Replacement of a part as required by paragraph (j)(1) or (k)(2) of this AD is terminating action for the repetitive detailed

inspections required by paragraph (k) of this AD for that part, provided that the part number and serial number of the replacement part is not listed in Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

**(m) Parts Installation Limitation**

As of the effective date of this AD, installation of an NLG main fitting or NLG sliding tube having a part number and serial number listed in Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable; is allowed, provided that the NLG main fitting and NLG sliding tube have not accumulated more than 900 flight hours since the most recent inspection accomplished in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014; or Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013; as applicable.

**(n) Credit for Previous Actions**

This paragraph provides credit for inspections required by paragraphs (j) and (k) of this AD and the flap peening required by paragraph (j)(2) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (n)(1), (n)(2), or (n)(3) of this AD.

(1) Airbus Service Bulletin A330–32–3233, dated October 22, 2009.

(2) Airbus Service Bulletin A330–32–3233, Revision 01, dated July 5, 2013. This document is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A340–32–4275, dated October 22, 2009.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) A*lternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0179, dated August 7, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0425-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (q)(5) and (q)(6) of this AD.

**(q) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on December 31, 2014.

(i) Airbus Service Bulletin A330–32–3233, Revision 02, including Appendix 01, dated January 27, 2014.

(ii) Airbus Service Bulletin A340–32–4275, Revision 01, including Appendix 01, dated July 5, 2013.

(4) The following service information was approved for IBR on April 30, 2012, (77 FR 22188, April 13, 2012).

(i) Airbus Service Bulletin A330–32–3233, dated October 22, 2009.

(ii) Airbus Service Bulletin A340–32–4275, dated October 22, 2009.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 5, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27360 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## 19 CFR Part 4

**[CBP Dec. 14–11]**

## Technical Amendment: Boarding of Vessels at CBP Ports

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations to conform to U.S. Coast Guard implementing regulations regarding certain boardings of vessels under the Maritime Transportation Act of 2002, as amended (MTSA). Under MTSA, any person boarding a vessel arriving at a CBP port after that vessel is taken in charge by a CBP officer must comply with Transportation Worker Identification Credential requirements. This document also updates terminology and removes obsolete language in the relevant regulatory section.

**DATES:** Effective November 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Craig Clark, Office of Field Operations, U.S. Customs and Border Protection, (202) 344–3052, *OFO-ManifestBranch@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

It is the policy of U.S. Customs and Border Protection (CBP) to periodically review title 19 of the Code of Federal Regulations (19 CFR) to ensure that it is accurate and up-to-date so that the general public is aware of CBP requirements and procedures. As part of this review policy, CBP has determined that certain corrections affecting part 4 of the CBP regulations (19 CFR part 4) are necessary.

*A. Maritime Transportation Act of 2002*

The Maritime Transportation Act of 2002 (MTSA), Pub. L. 107–295, 116 Stat. 2064, as amended by the Security and Accountability for Every Port Act of

2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, requires DHS to promulgate regulations addressing maritime security. Specifically, section 102 of the MTSA (46 U.S.C. 70105) requires DHS to issue regulations to prevent individuals from entering secure areas of vessels or MTSA-regulated port facilities unless such individuals are authorized to be in the secure areas and either hold biometric transportation security cards issued under section 102 or are accompanied by another individual who holds such a transportation security card.

*B. MTSA Implementing Regulations*

In 2003, DHS, through the U.S. Coast Guard (Coast Guard), issued two rules amending various regulations to implement the maritime security provisions of the MTSA.[1] The MTSA regulations set out specific requirements for owners and operators of vessels, facilities, and Outer Continental Shelf facilities that are identified by the Secretary of Homeland Security as posing a high risk of being involved in a transportation security incident. The regulations require such owners and operators to implement security measures to ensure that a system is established for checking the identification of vessel and facility personnel or other persons seeking access to the vessel or facility. Also in 2003, the Coast Guard and Transportation Security Administration (TSA) were in the process of developing the Transportation Worker Identification Credential (TWIC), a biometrically enabled common credential to be used by U.S. transportation workers requiring unescorted access to secure areas throughout the maritime sector.[2]

On January 25, 2007, DHS, through the Coast Guard and theTSA, published a final rule and request for comments in the **Federal Register** (72 FR 3492) establishing the regulatory requirements implementing TWIC as mandated by the MTSA and the SAFE Port Act. On May 7, 2008, DHS, through the Coast Guard and TSA, published another final rule in the **Federal Register** (73 FR 25562) realigning the compliance date established in the aforementioned rule and requiring mariners to obtain a TWIC no later than April 15, 2009. This rule also established April 15, 2009, as the final date by which owners and operators of vessels, facilities, and outer continental shelf facilities must implement access control procedures utilizing TWIC. These rules amended the Coast Guard regulations regarding vessel and facility security to incorporate the TWIC requirements as an access control measure. *See* 33 CFR 101.105 and 101.514. These sections include a definition of TWIC and other relevant terms, the requirements for unescorted access to a vessel or facility, and the requirements for persons requiring escorted access to a vessel or facility.

Coast Guard regulations also provide that an individual not in possession of a TWIC must present personal identification in order to gain entry to a Coast Guard-regulated vessel or facility.[3] The personal identification must, at a minimum, meet the following requirements: (1) Be laminated or otherwise secure against tampering; (2) contain the individual's full name; (3) contain a photo that accurately depicts the individual's current facial appearance; and (4) bear the name of the issuing authority.[4] Additionally, the individual must be under escort while inside a secure area.

*C. Explanation of Amendments*

CBP has determined that the MTSA and the implementing regulations, as discussed above, require conforming technical corrections to 19 CFR 4.1. Current § 4.1 prescribes the procedures regarding the boarding of vessels arriving at a CBP port and permits the CBP port director to grant unescorted access to these vessels to certain unscreened parties. Section 4.1(c) allows a port director to use his or her discretion to issue passes (referred to as cutter passes) on ''Customs Form 3093'' to allow certain persons to board incoming vessels. Section 4.1(f) allows a port director to use his or her discretion to issue term cutter and dock passes to persons on official business and certain news reporters and newspaper photographers for a period not to exceed one year. These provisions, which allow unescorted access to these vessels contradict the maritime security measures for access control required by the MTSA, the SAFE Port Act, and the implementing Coast Guard regulations mentioned above. In fact, CBP has not used Customs Form 3093 or issued cutter and dock passes for many years. Rather, CBP determines vessel access according to the applicable Coast Guard regulations. This technical correction updates the CBP regulations to conform to the current requirements and updates outdated terminology.

Specifically, CBP is amending 19 CFR 4.1 by:

(1) Removing the obsolete reference to cutter and dock passes from the section heading;

(2) Revising the entire section to reflect that ''Customs'' is now known as ''CBP'';

(3) Amending paragraph (c) by removing the obsolete language regarding cutter passes and Customs Form 3093 and by revising the paragraph to cross-reference the relevant Coast Guard regulations;

(4) Deleting the previously reserved paragraph (e); and

(5) Deleting the obsolete paragraph (f).

CBP is also abolishing the Customs Form 3093.

## II. Statutory and Regulatory Requirements

*A. Inapplicability of Notice and Delayed Effective Date Requirements*

Because the technical corrections set forth in this document merely conform the regulatory text to existing law and update terminology, this document neither imposes additional burdens on nor takes away any existing rights or privileges from the public. Therefore, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

*B. Regulatory Flexibility Act*

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*C. Executive Orders 12866 and 13563*

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. The change is intended to remove obsolete discretionary provisions from the regulations to conform to existing law and update terminology. There are no new costs to the public associated with this rule. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

*D. Signing Authority*

The signing authority for this document falls under 19 CFR 0.2(a) because the Secretary of Homeland

[1] *See* ''Implementation of National Maritime Security Initiatives'' temporary interim rule, 68 FR 39240, July 1, 2003 and ''Implementation of National Maritime Security Initiatives'' final rule, 68 FR 60448, October 22, 2003, amending 33 CFR parts 101 and 102.

[2] *See Id.*

[3] *See* 33 CFR 101.515.

[4] *See* 33 CFR 101.515.

Security has authority to regulate the boarding of vessels. The Secretary of Homeland Security has designated the Commissioner of U.S. Customs and Border Protection as the signatory on this technical amendment.

**List of Subjects in 19 CFR Part 4**

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

**Amendments to Regulations**

For the reasons stated in the preamble, part 4 of title 19 of the Code of Federal Regulations is amended as set forth below:

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 continues and the specific authority citation for § 4.1 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 70105.

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. 60101; 46 U.S.C. 70105.

* * * * *

■ 2. Section 4.1 is amended as follows:

■ a. Revise the section heading;

■ b. Amend paragraphs (a) and (b) by removing the word ''Customs'' and adding in its place ''CBP'', except where the word ''Customs'' is followed by the word ''territory'' or ''formality'', and where the word ''Customs'' is followed by the word ''territory'' or ''formality'', removing the word ''Customs'' and adding in its place ''customs'';

■ c. Revise paragraph (c); and

■ d. Remove paragraphs (e) and (f).

The revision reads as follows:

**§ 4.1 Boarding of vessels.**

* * * * *

(c) Persons seeking to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by a CBP officer must comply with any applicable Coast Guard regulations regarding the Transportation Worker Identification Credential (TWIC)/personal identification requirements as prescribed in 33 CFR 101.105 and 101.514–515.

* * * * *

Dated: November 20, 2014.

**R. Gil Kerlikowske,**

*Commissioner.*

[FR Doc. 2014–28010 Filed 11–25–14; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9705]**

**RIN 1545–BL91**

## Minimum Essential Coverage and Other Rules Regarding the Shared Responsibility Payment for Individuals

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111–173 (collectively, the Affordable Care Act). These final regulations provide individual taxpayers with guidance under section 5000A of the Internal Revenue Code on the requirement to maintain minimum essential coverage and rules governing certain types of exemptions from that requirement.

**DATES:** *Effective Date:* These regulations are effective on November 26, 2014.

*Applicability Date:* For date of applicability, see § 1.5000A–5(c).

**FOR FURTHER INFORMATION CONTACT:** Sue-Jean Kim or John B. Lovelace at (202) 317–7006 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under section 5000A relating to the individual shared responsibility provision. Section 5000A was enacted by the Affordable Care Act. Section 5000A generally requires individuals to have qualifying health care coverage (called minimum essential coverage), qualify for a health coverage exemption, or make a shared responsibility payment when filing a Federal income tax return. On January 27, 2014, a notice of proposed rulemaking (REG–141036–13) was published in the **Federal Register** (79 FR 4302).

Written comments responding to the notice of proposed rulemaking of January 27, 2014, were received. The comments are available for public inspection at *www.regulations.gov* or on request. No public hearing was requested or held. After considering all the comments, the proposed regulations are adopted as revised by this Treasury decision. The comments and revisions are discussed in the preamble.

As described in the Summary of Comments and Explanation of Revisions, in related guidance, Notice 2014–76, 2014–50 IRB (available at *www.irs.gov*) (see § 601.601(d)), the Treasury Department and the IRS provide a comprehensive list of the hardship exemptions that may be claimed for 2014 on a Federal income tax return without obtaining a hardship exemption certification from a Health Insurance Marketplace (Marketplace).

### Summary of Comments and Explanation of Revisions

#### I. Minimum Essential Coverage

*A. Coverage for the Medically Needy*

The proposed regulations provide that certain categories of Medicaid coverage authorized under Title XIX of the Social Security Act (42 U.S.C. 1396 and following sections) that are not required to be comprehensive are not generally government-sponsored minimum essential coverage under section 5000A(f)(1). Specifically, under the proposed regulations, coverage offered to individuals with high medical expenses who would be eligible for Medicaid but for their income level (medically needy individuals) (see section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. 1936a(a)(10)(C))) generally is not minimum essential coverage. Commenters agreed that Medicaid coverage for medically needy individuals that is not comprehensive should not be minimum essential coverage. The final regulations retain the rule in proposed regulations that Medicaid coverage for medically needy individuals is not government-sponsored minimum essential coverage under section 5000A(f)(1)(A).

The preamble to the proposed regulations explains that although Medicaid coverage offered to medically needy individuals generally is not minimum essential coverage, the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, may in appropriate circumstances designate certain coverage for medically needy individuals as minimum essential coverage pursuant to section 5000A(f)(1)(E). Some commenters suggested that the determination of whether a particular state's program for medically needy individuals is comprehensive, and therefore should be recognized as minimum essential coverage, should be based on whether the program offers the essential health benefits required by the Affordable Care Act for coverage in the individual and

group health insurance markets. The determination of whether coverage is designated as minimum essential coverage under section 5000A(f)(1)(E) is under the jurisdiction of the Department of Health and Human Services (HHS). On November 7, 2014, the HHS provided guidance on the considerations that it intends to apply in recognizing Medicaid coverage for medically needy individuals as minimum essential coverage. HHS Centers for Medicare & Medicaid Services, Minimum Essential Coverage (SHO #14–002) (Nov. 7, 2014) (available at *www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf*).

*B. Section 1115 Demonstration Projects*

The proposed regulations provide that coverage authorized under section 1115(a)(2) of the Social Security Act (42 U.S.C. 1315(a)(2)) is generally not minimum essential coverage. One commenter recommended that the citation be changed to refer to section 1115(a) of the Social Security Act (42 U.S.C. 1315(a)(1)), because demonstration projects authorized under section 1115(a)(1) may limit the benefits available to individuals whose coverage is authorized under the approved state plan and limited-benefit coverage should not be treated as minimum essential coverage.

A section 1115 demonstration project authorized under section 1115(a)(1) of the Social Security Act may provide only limited benefits. Accordingly, the final regulations adopt the commenter's recommendation and provide that coverage authorized under section 1115(a) of the Social Security Act is not government-sponsored minimum essential coverage under section 5000A(f)(1)(A).

The preamble to the proposed regulations explains that certain coverage under a section 1115 demonstration project may be recognized as minimum essential coverage by the Secretary of HHS, in coordination with the Secretary of the Treasury, under section 5000A(f)(1)(E). On November 7, 2014, HHS released guidance on the considerations it will apply in recognizing a section 1115 demonstration project as minimum essential coverage under section 5000A(f)(1)(E). HHS Centers for Medicare & Medicaid Services, Minimum Essential Coverage (SHO #14–002) (Nov. 7, 2014) (available at *www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf*).

**II. Exemption for Individuals Who Cannot Afford Coverage**

*A. Employer Contributions to a Cafeteria Plan (Flex Contributions)*

The preamble to the proposed regulations requests comments on the treatment for purposes of section 5000A of employer contributions under a section 125 cafeteria plan to the extent employees may not opt to receive the employer contribution as a taxable benefit. Specifically, the preamble to the proposed regulations requests comments about how these contributions should be taken into account for purposes of determining the affordability of coverage.

As described in this preamble after consideration of the comments received, the final regulations provide that, for purposes of determining the affordability of coverage, the required contribution is reduced by any contributions made by an employer under a section 125 cafeteria plan that (1) may not be taken as a taxable benefit, (2) may be used to pay for minimum essential coverage, and (3) may be used only to pay for medical care within the meaning of section 213 (such contributions are referred to in this preamble as health flex contributions).

One commenter suggested that the value of any benefit provided under a cafeteria plan should be included in the taxpayer's household income for purposes of determining eligibility for the exemption for unaffordable coverage, regardless of whether the benefit is taxable. The commenter noted that taxable benefits are included in an employee's household income, thereby increasing the likelihood that coverage offered by an employer will be affordable. Reasoning that a nontaxable benefit similarly provides an employee with a financial benefit, the commentator argued that nontaxable contributions should be considered available to purchase minimum essential coverage to eliminate any possible employee incentive under section 5000A for choosing a taxable or nontaxable benefit.

The suggestion to include employer contributions to a cafeteria plan in an employee's household income is inconsistent with the definition of household income in section 5000A(c)(4)(B) and the increase to household income for the purposes of determining affordability provided in section 5000A(e)(1)(A). Household income as defined in section 5000A(c)(4)(B), while specifically including certain amounts otherwise excluded from gross income such as tax-exempt interest, does not include amounts excluded from gross income under section 125. Section 5000A(e)(1)(A) provides that, for purposes of determining the affordability of coverage, household income is increased by any portion of the required contribution paid through a salary reduction arrangement. Health flex contributions that can be received under a cafeteria plan, however, are not made pursuant to a salary reduction arrangement. Section 5000A does not direct that household income include all amounts excluded from gross income pursuant to a cafeteria plan. Accordingly, the final regulations do not incorporate the suggestion to include all benefits provided under a cafeteria plan in the taxpayer's household income.

Another commenter recommended that contributions under a cafeteria plan should be taken into account in determining the employee's required contribution if the contributions could be used to purchase minimum essential coverage, regardless of whether the contributions could be used to purchase other benefits. The commenter suggested that a contrary rule could potentially cause employers to limit employee choice by structuring cafeteria plans so that contributions can be used only to pay for minimum essential coverage.

Section 5000A(e)(1)(B) defines an employee's required contribution by reference to the portion of the annual premium that would be paid by the employee if the employee purchased coverage. The statute does not require an employee to treat amounts provided pursuant to a cafeteria plan as reductions to the employee's required contribution. If an employee may use nontaxable employer contributions to a cafeteria plan to pay for minimum essential coverage and only to pay for medical expenses, then that represents a real reduction in the cost to the employee of purchasing minimum essential coverage. In such a case, it is appropriate to treat the amounts as a reduction in the employee's required contribution. However, if an employee's use of nontaxable employer contributions to a cafeteria plan is not limited to medical expenses, then it cannot be assumed that the employee will use the contribution for purchasing minimum essential coverage.

Accordingly, the final regulations provide that health flex contributions made available for the current plan year are taken into account for purposes of determining an individual's required contribution. As a result, health flex contributions reduce an employee's, or related individual's, required

contribution for employer-sponsored coverage.

*B. Health Reimbursement Arrangements*

The proposed regulations provide that amounts newly made available in the current plan year under a health reimbursement arrangement (HRA) that is integrated with an eligible employer-sponsored plan are taken into account in determining the employee's or related individual's required contribution if an employee may use them to pay the employee's share of premiums for coverage under the plan. No comments were received on this proposed rule. However, this preamble addresses comments received in response to an identical rule provided in proposed regulations under section 36B (REG–125398–12, 78 FR 25909) (section 36B proposed regulations) published on May 3, 2013.

Commenters requested guidance on the requirements for an HRA to be integrated with eligible employer-sponsored coverage. Notice 2013–54 (2013–40 IRB 287) (see § 601.601(d)), and for this purpose identical guidance issued by the Department of Labor and with which HHS concurred provides, however, that an HRA is integrated with another group health plan only if, among other things, an employee enrolls in the other group health plan. Because an employee who enrolls in eligible employer-sponsored coverage is not eligible for the premium tax credit subsidy, whether or not the eligible employer-sponsored coverage is affordable, requiring an HRA to be integrated with a primary group health plan for purposes of determining affordability would be meaningless. Therefore, the final regulations cross-reference Notice 2013–54 and clarify that amounts newly made available under an HRA count toward an employee's required contribution if the HRA would have been integrated with an eligible employer-sponsored plan if the employee had enrolled in the primary plan.

Notice 2013–54 also provides that under certain circumstances an HRA offered by an employer may be integrated with a group health plan offered by a different employer, for example a plan offered by the employer of an employee's spouse. Notice 2013–54 indicated, however, that an HRA could not be integrated with a plan offered by another employer for purposes of determining affordability and minimum value under section 36B. Accordingly, the final regulations provide that, for purposes of determining an individual's required contribution, an HRA is taken into account only if the HRA and the primary eligible employer-sponsored coverage are offered by the same employer.

Commenters suggested that HRAs should be considered integrated with any plan that provides minimum essential coverage, whether that plan is an employer plan or a plan purchased through a Marketplace. As explained in Notice 2013–54, the combination of an HRA and a plan purchased through a Marketplace may raise significant issues under the market reforms applicable to the group insurance market. For this reason, as well as to reduce complexity through consistent rules, the Treasury Department and the IRS have concluded that the rules for determining when an HRA is considered integrated with another group health plan for purposes of section 5000A should be consistent with the rules applicable for purposes of application of the market reforms, and the final regulations, therefore, cross-reference Notice 2013–54. The rules addressed in Notice 2013–54 are under the jurisdiction of the Departments of Labor and HHS as well as the Treasury Department and the IRS and are, therefore, outside the scope of these regulations.

Under the section 36B proposed regulations, HRA amounts that may be used to pay premiums or to pay both premiums and cost-sharing are counted toward affordability. A commenter suggested that HRA amounts should not count toward affordability unless the amounts may be used only for premiums. The commenter observed that counting HRA amounts that may be used either for premiums or cost-sharing in determining affordability could lead to double counting for affordability and minimum value purposes under section 36B.

The final regulations clarify that, in general, HRA contributions count toward affordability, and not minimum value, if an employee may use the HRA contributions to pay premiums for the primary plan only, or to pay cost-sharing or benefits not covered by the primary plan in addition to premiums. Under the section 36B proposed regulations, HRA amounts that may be used only for cost-sharing are counted for purposes of minimum value and not for affordability. Accordingly, HRA contributions that can be used only to pay for cost-sharing do not count toward affordability. The Treasury Department and the IRS anticipate that the section 36B proposed regulations addressing HRA contributions and minimum value will be adopted in section 36B final regulations and, thus, HRA contributions that can be used for premiums and cost-sharing will only count for affordability and there will be no double counting of these contributions.

Commenters suggested that employers should be permitted to treat HRA contributions as made in particular months during a year, which could affect their potential liability under the employer shared responsibility requirement of section 4980H. Employees who enroll in eligible employer-sponsored coverage may not claim the premium tax credit for their coverage in a qualified health plan and must be able to determine the amount of their annual required contribution before deciding whether to enroll in eligible employer-sponsored coverage. Accordingly, the final regulations clarify that employer contributions to an HRA count towards an employee's required contribution only to the extent the amount of the annual contribution is required under the terms of the plan or is otherwise determinable within a reasonable time before the employee must decide whether to enroll. The Treasury Department and the IRS anticipate adopting the same rule when the section 36B proposed regulations are finalized.

A commenter argued that health insurance issuers should not be required to determine if employers are making contributions to an HRA or HSA or otherwise determine limitations employers place on the use of funds in an HRA or HSA. Neither the proposed regulations under sections 36B or 5000A nor the final regulations impose these requirements on health insurance issuers.

A commenter stated that stand-alone HRAs for pre-Medicare eligible retirees should not be considered minimum essential coverage under certain circumstances. The final regulations do not address this issue, which is outside the scope of the regulations.

*C. Wellness Program Incentives*

The proposed regulations provide that, in determining whether coverage under an eligible employer-sponsored plan is affordable for purposes of the affordability exemption in section 5000A(e)(1), nondiscriminatory wellness program incentives are treated as earned only if the incentives relate to tobacco use. For this purpose, a nondiscriminatory wellness program is a wellness program that does not violate the wellness plan regulations whether the program is participatory or outcome based. See § 54.9802–1(f), 29 CFR 2590.702(f), and 45 CFR 146.121(f) for regulations governing wellness program incentives issued by the Departments of

Labor and HHS, and the Treasury Department and the IRS (tri-agency regulations). The section 36B proposed regulations include an identical rule for counting wellness program incentives in determining an individual's required contribution. Comments were received on both the rule in the proposed regulations and the identical rule in the section 36B proposed regulations. Both sets of comments were considered in the development of these final regulations.

The proposed regulations provide that the affordability of eligible employer-sponsored coverage is determined by assuming that each employee fails to satisfy the requirements of a wellness program, except the requirements of a nondiscriminatory wellness program related to tobacco use. Thus, the affordability of coverage that requires a higher initial premium for tobacco users is determined based on the premium that is charged to non-tobacco users or to tobacco users who complete the related wellness program, such as attending smoking cessation classes.

Some commenters requested that all wellness incentives, including those related to tobacco use, be treated as unearned when determining the affordability and minimum value of an offer of eligible employer-sponsored coverage. These commenters asserted that wellness incentives could be used to discriminate based on health status or that certain individuals would be unable to complete the wellness program and earn the wellness incentives.

Other commenters requested that all wellness incentives, including those related to tobacco use, be treated as earned when determining the affordability and minimum value of an offer of eligible employer-sponsored coverage. These commenters asserted that wellness incentives are an effective way of encouraging healthy lifestyle adjustments and reducing health costs and that the consumer protections in the tri-agency regulations that were finalized on June 3, 2013 (TD 9620, 78 FR 33158), ensure that wellness incentives will not be used to discriminate based on health status or burdens to employees. Some of these commenters advised, however, that if the final regulations do not treat all wellness incentives as unearned, they favor the proposed rule as a reasonable alternative.

After consideration of these comments, the final regulations retain the rules in the proposed regulations that wellness incentives unrelated to tobacco use are treated as unearned and wellness incentives related to tobacco use are treated as earned in determining affordability. These rules are consistent with policies related to tobacco use reflected in the Affordable Care Act, such as allowing issuers to charge higher premiums based on tobacco use. The Treasury Department and the IRS anticipate adopting the same rules when the section 36B proposed regulations are finalized.

Commenters requested guidance on whether a wellness incentive is treated as earned or unearned when an employee must complete a wellness program related to tobacco use and a program unrelated to tobacco use to receive an incentive. The final regulations clarify that a wellness incentive that includes any component unrelated to tobacco use is treated as unearned. If, however, there is an incentive for completing a program unrelated to tobacco use and a separate incentive for completing a program related to tobacco use, then the incentive related to tobacco use may be treated as earned.

A commenter requested clarification that programs that provide a discount or rebate and programs that impose a surcharge both provide wellness program incentives under the final regulations. Another commenter asked that the final regulations clarify that nondiscriminatory wellness programs include both participatory and health-contingent wellness programs. The final regulations clarify that the term *wellness program incentives* has the same meaning as the term *reward* in the tri-agency regulations. Thus, programs that provide a discount or rebate, programs that impose a surcharge, and participatory and health-contingent wellness programs are wellness program incentives under the final regulations.

## III. Hardship Exemptions

Under section 5000A(e)(5), an individual is exempt from section 5000A if the individual has an exemption certification issued by the Marketplace stating that HHS has determined that the individual suffered a hardship with respect to the ability to obtain minimum essential coverage. The proposed regulations provide that, under certain circumstances, a taxpayer may claim a hardship exemption on a Federal income tax return without first obtaining a hardship exemption certification from a Marketplace. Specifically, the proposed regulations provide that an individual may claim a hardship exemption on the Federal income tax return if they are specifically described in 45 CFR 155.605(g)(3) (relating to individuals with gross income below the filing threshold) or 45 CFR 155.605(g)(5) (relating to employed and related individuals whose combined cost of employer-sponsored coverage exceeds the required contribution percentage), or if the individual is described HHS guidance released on October 28, 2013 (relating to individuals who enrolled in a plan through a Marketplace before the close of the open enrollment period in 2014 but had a gap in coverage before the coverage was effective).

Finally, the proposed regulations provide that a taxpayer may claim a hardship exemption on a Federal income tax return in any situation that is (1) described in published guidance issued by HHS permitting an individual to claim the exemption on a Federal income tax return, and (2) described in published guidance issued by the IRS that allows an individual to claim the exemption on a Federal income tax return without obtaining a hardship exemption certification.

Commenters requested that taxpayers be allowed to claim other hardship exemptions without obtaining hardship exemption certifications. Specifically, commenters requested that taxpayers eligible for the hardship exemption described in 45 CFR 155.605(g)(6), for an Indian eligible for services through Indian Health Service (IHS) or through an Indian health care provider, be allowed to claim the exemption without obtaining a hardship exemption certification from a Marketplace. HHS issued guidance on September 18, 2014, that addresses this comment. In particular, the HHS guidance identified the hardship situation described in 45 CFR 155.605(g)(6) and indicated that an exemption for that hardship may be claimed on a Federal income tax return pursuant to guidance issued by the Treasury Department and the IRS. See HHS Centers for Medicare & Medicaid Services, Shared Responsibility Guidance—Exemption for Individuals Eligible for Services through an Indian Health Care Provider (Sept. 18, 2014) (available at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/guidance-exemption-certain-AIAN.pdf*).

Commenters also requested that a taxpayer be allowed to claim a hardship exemption without obtaining a hardship exemption certification if he or she is eligible for the hardship exemption described in 45 CFR 155.605(g)(4), which applies to an individual who is determined ineligible for Medicaid for one or more months during a benefit year solely because the individual resides in a state that has not expanded Medicaid under section 2001(a) of the Affordable Care Act. HHS issued guidance on November 21, 2014,

addressing this comment. In particular, the HHS guidance provides that an individual is eligible for a hardship exemption for the taxable year if at any time during 2014 the individual resided in a state that did not expand Medicaid coverage and the individual's household income, within the meaning of section 36B, is below 138 percent of the applicable federal poverty level for the individual's family size. See HHS Centers for Medicare & Medicaid Services, Guidance on Hardship Exemptions for Persons Meeting Certain Criteria (Nov. 21, 2014) (available at *www.cms.gov*).

To consolidate the list of circumstances described in the proposed regulations with any additional circumstances that have been or will be identified, § 1.5000A–3(h)(3)(i) of the final regulations removes the references to specific hardship circumstances and instead provides that a taxpayer may claim a hardship exemption on a Federal income tax return without obtaining an exemption certification for any month that includes a day on which the taxpayer satisfies the requirements of a hardship for which HHS, and the Treasury Department and the IRS, issue published guidance. Notice 2014–76, 2014–50 IRB (available at *www.irs.gov*) (see § 601.601(d)), released concurrently with these regulations, provides a comprehensive list of all hardship exemptions that may be claimed on a Federal income tax return without obtaining a hardship exemption certification. The list of hardship exemptions that may be claimed on a Federal income tax return without obtaining a hardship exemption certification includes the following: (a) The hardship exemptions described in 45 CFR 155.605(g)(3) and (g)(5); (b) the hardship exemption described in HHS guidance issued October 28, 2013, relating to individuals enrolled in Marketplace coverage on or before March 31, 2014; (c) the hardship exemption described in HHS guidance released on March 26, 2014, relating to individuals ''in line'' to enroll in coverage through the Marketplace on March 31, 2013; (d) the hardship exemption described in HHS guidance released on March 31, 2014, relating to individuals who applied for CHIP during the 2014 open enrollment period and were found eligible; (e) the hardship exemption described in HHS guidance released on May 2, 2014, relating to individuals who enrolled outside the Marketplace in minimum essential coverage that is effective on or before May 1, 2014; (f) the hardship exemption described in HHS guidance issued September 18, 2014, relating to individuals eligible for services through an Indian health care provider; and (g) the hardship exemption described in HHS guidance issued November 21, 2014, relating to individuals with specified household incomes who reside in a state that did not expand Medicaid.

Commenters requested that the IRS, in conjunction with HHS, adopt additional hardship exemptions to address specific situations. Other commenters requested that the transition relief provided in Notice 2014–10, 2014–9 IRB 605, for individuals enrolled in limited benefit Medicaid programs that are not minimum essential coverage be extended to 2015. Some commenters specifically requested that no additional transition relief be provided.

Authority to define circumstances giving rise to a hardship exemption, as well as authority to grant hardship exemptions in individual cases, resides with HHS. In guidance released on November 7, 2014, HHS described additional circumstances that Marketplaces may use when determining what constitutes a hardship effective January 1, 2015. HHS Centers for Medicare & Medicaid Services, Minimum Essential Coverage (SHO #14–002) (Nov. 7, 2014) (available at *www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf*). The additional circumstances include enrollment in Medicaid coverage for pregnant women and for medically needy individuals that is not minimum essential coverage. HHS provides additional guidance on the hardship exemption in regulations. See Patient Protection and Affordable Care Act: Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions, 78 FR 39494 (codified at 45 CFR part 155).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

### Drafting Information

The principal authors of these final regulations are Sue-Jean Kim and John B. Lovelace of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par 2.** An undesignated center heading is added immediately following § 1.1563–4 to read as follows:

Individual Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

■ **Par. 3.** Section 1.5000A–0 is amended by:
■ 1. Revising the entry for § 1.5000A–2(b)(2).
■ 2. Removing the entries for § 1.5000A–2(b)(2)(i), (b)(2)(ii), and (b)(2)(iii).
■ 3. Revising the entries for § 1.5000A–3(e)(4)(ii)(C) and (e)(4)(ii)(D).
■ 4. Adding a new entry for § 1.5000A–3(e)(4)(ii)(E).
■ 5. Revising the entry for § 1.5000A–3(h)(3).

The revisions and addition read as follows.

**§ 1.5000A–0 Table of contents.**

* * * * *

**§ 1.5000A–2 Minimum essential coverage.**

* * * * *

(b) * * *

(2) Certain health care coverage not minimum essential coverage under a government-sponsored program.

* * * * *

**§ 1.5000A–3 Exempt individuals.**

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(C) Wellness program incentives.

(D) Credit allowable under section 36B.

(E) Required contribution for part-year period.

* * * * *

(h) * * *

(3) Hardship exemption without hardship exemption certification.

* * * * *

■ **Par. 4.** Section 1.5000A–2 is amended by:

■ 1. Revising paragraphs (b)(1)(ii) and (b)(2).

■ 2. Removing the language ''health insurance'' in paragraph (g).

The revisions read as follows:

**§ 1.5000A–2 Minimum essential coverage.**

* * * * *

(b) * * *

(1) * * *

(ii) *Medicaid.* The Medicaid program under Title XIX of the Social Security Act (42 U.S.C. 1396 and following sections);

* * * * *

(2) *Certain health care coverage not minimum essential coverage under a government-sponsored program. Government-sponsored program* does not mean any of the following:

(i) Optional coverage of family planning services under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XXI));

(ii) Optional coverage of tuberculosis-related services under section 1902(a)(10)(A)(ii)(XII) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XII));

(iii) Coverage of pregnancy-related services under section 1902(a)(10)(A)(i)(IV) and (a)(10)(A)(ii)(IX) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX));

(iv) Coverage limited to treatment of emergency medical conditions in accordance with 8 U.S.C. 1611(b)(1)(A), as authorized by section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v));

(v) Coverage for medically needy individuals under section 1902(a)(10)(C) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)) and 42 CFR 435.300 and following sections;

(vi) Coverage authorized under section 1115(a) of the Social Security Act (42 U.S.C. 1315(a));

(vii) Coverage under section 1079(a), 1086(c)(1), or 1086(d)(1) of title 10, U.S.C., that is solely limited to space available care in a facility of the uniformed services for individuals excluded from TRICARE coverage for care from private sector providers; and

(viii) Coverage under sections 1074a and 1074b of title 10, U.S.C., for an injury, illness, or disease incurred or aggravated in the line of duty for individuals who are not on active duty.

* * * * *

■ **Par. 5.** Section 1.5000A–3 is amended by:

■ 1. Revising paragraph (e)(3)(ii)(D).

■ 2. Redesignating paragraph (e)(3)(ii)(E) as (e)(3)(ii)(F), revising newly redesignated paragraph (e)(3)(ii)(F), and adding a new paragraph (e)(3)(ii)(E).

■ 3. Redesignating paragraphs (e)(4)(ii)(C) and (e)(4)(ii)(D) as (e)(4)(ii)(D) and (e)(4)(ii)(E), respectively, and adding and reserving a new paragraph (e)(4)(ii)(C).

■ 4. Revising paragraphs (h)(1) and (h)(3).

The revisions and additions read as follows:

**§ 1.5000A–3 Exempt individuals.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(D) *Employer contributions to health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that an employee may use to pay premiums, or may use to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, are counted toward the employee's required contribution if the health reimbursement arrangement would be integrated, as that term is used in Notice 2013–54 (2013–40 IRB 287) or in any successor published guidance (see § 601.601(d) of this chapter), with an eligible employer-sponsored plan for an employee enrolled in the plan. The eligible employer-sponsored plan and the health reimbursement arrangement must be offered by the same employer. Employer contributions to a health reimbursement arrangement count toward an employee's required contribution only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide whether to enroll in the eligible employer-sponsored plan.

(E) *Employer contributions to cafeteria plans.* Amounts made available for the current plan year under a cafeteria plan, within the meaning of section 125, are taken into account in determining an employee's or a related individual's required contribution if:

(*1*) The employee may not opt to receive the amount as a taxable benefit;

(*2*) The employee may use the amount to pay for minimum essential coverage; and

(*3*) The employee may use the amount exclusively to pay for medical care, within the meaning of section 213.

(F) *Wellness program incentives.* Nondiscriminatory wellness program incentives, within the meaning of § 54.9802–1(f) of this chapter, offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining an employee's required contribution for purposes of affordability of an eligible employer-sponsored plan to the extent the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose. For purposes of this section, the term *wellness program incentive* has the same meaning as the term *reward* in *§* 54.9802–1(f)(1)(i) of this chapter.

* * * * *

(4) * * *

(ii) * * *

(C) *Wellness programs incentives.* [Reserved]

* * * * *

(h) *Individuals with hardship exemption certification*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, an individual is an exempt individual for a month that includes a day on which the individual has in effect a hardship exemption certification described in paragraph (h)(2) of this section.

* * * * *

(3) *Hardship exemption without hardship exemption certification.* An individual may claim an exemption without obtaining a hardship exemption certification described in paragraph (h)(2) of this section for any month that includes a day on which the individual meets the requirements of any hardship for which:

(i) The Secretary of HHS issues guidance of general applicability describing the hardship and indicating that an exemption for such hardship can be claimed on a Federal income tax return pursuant to guidance published by the Secretary; and

(ii) The Secretary issues published guidance of general applicability, see § 601.601(d)(2) of this chapter, allowing an individual to claim the hardship exemption on a return without obtaining a hardship exemption from an Exchange.

* * * * *

■ **Par. 6.** Section 1.5000A–4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

**§ 1.5000A–4 Computation of shared responsibility payment.**

(a) *In general.* For each taxable year, the shared responsibility payment imposed on a taxpayer in accordance with § 1.5000A–1(c) is the lesser of—

(1) The sum of the monthly penalty amounts; or

* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 20, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2014–27998 Filed 11–21–14; 4:15 pm]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2014–0475; FRL–9919–66–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Four Industry Categories for Control of Volatile Organic Compound Emissions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department (ACHD). This SIP revision includes amendments to the ACHD Rules and Regulations, Article XXI, Air Pollution Control, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials. Upon review of the submittal, EPA found that the average monomer volatile organic compound (VOC) content limits were referenced but not included in the regulation for fiberglass boat manufacturing materials. ACHD has committed to revising the regulation and submitting the table of VOC content limits for fiberglass boat manufacturing materials to EPA in order to address specific RACT requirements for Allegheny County. EPA is, therefore, conditionally approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on December 26, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0475. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIP to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment. In 2008, EPA developed new CTGs for miscellaneous metal and plastic parts coatings, automobile and light-duty assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials.

### II. Summary of SIP Revision

On November 15, 2013, the Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA on behalf of ACHD a SIP revision concerning the adoption of the EPA CTGs for miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials in Allegheny County. These regulations are contained in the ACHD Rules and Regulations, Article XXI, Air Pollution Control sections 2105.83, 2105.84, 2105.85, and 2105.86 to: (1) Establish applicability for miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials; (2) establish exemptions; (3) establish record-keeping and work practice requirements; and (4) establish emission limitations. Upon review of the November 15, 2013 submittal, EPA found that a table of average monomer VOC content limits for fiberglass boat manufacturing materials was referenced, however, the table was erroneously not included in the regulation. Pursuant to section 110(k)(4) of the CAA, PADEP submitted on behalf of ACHD a letter dated July 16, 2014 committing to submit a SIP revision to EPA addressing this error. Other specific requirements and the rationale for EPA's proposed rulemaking action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### III. Final Action

In this rulemaking action, EPA is conditionally approving the Commonwealth of Pennsylvania SIP revision submitted on November 15, 2013, which consists of amendments to the ACHD Rules and Regulations, Article XXI, Air Pollution Control for adopting RACT for sources covered by EPA's CTG standards for the following categories: Miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon a letter from PADEP on behalf of ACHD dated July 16, 2014 committing to submit to EPA, no later than twelve months from EPA's final conditional approval of ACHD's adoption of CTGs for miscellaneous metal and/or plastic parts surface coating processes,

automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials, an additional SIP revision to address the erroneous deficiency in the current regulation for fiberglass boat manufacturing materials. The SIP revision, to be submitted by PADEP on behalf of ACHD, will include a table of monomer VOC content limits for fiberglass boat manufacturing materials. Once EPA has determined that ACHD has satisfied this condition, EPA shall remove the conditional nature of its approval and Allegheny County's adoption of CTGs for miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials will, at that time, receive a full approval status. Should ACHD fail to meet the condition specified in this rulemaking action, the final conditional approval will convert to a disapproval.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to ACHD's adoption of CTG standards for miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 5, 2014.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by:
■ a. Under Part A, adding an entry at the end for ''2101.20, Definitions'';
■ b. Under Part E, Subpart 1, revising the entry for ''2105.10, Surface Coating Processes''; and
■ c. Under Part E, Subpart 7, adding entries for ''2105.83'', ''2105.84'', ''2105.85'', and ''2105.86'' in numerical order.

The additions and revision read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(2) * * *

| Article XX or XXI citation | Title/subject | State effective date | EPA approval date | Additional explanation/§ 52.2063 citation |
|---|---|---|---|---|
| | **Part A—General** | | | |
| * | * * * | * | * | * * |
| 2101.20 ..... | Definitions ..... | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Addition of three new definitions: General multi-component coating, general one component coating, and solids turnover ratio. |
| * | * * * | * | * | * * |
| | **Part E—Source Emission and Operating Standards** | | | |
| * | * * * | * | * | * * |
| | **Subpart 1—VOC Sources** | | | |
| 2105.10 ..... | Surface Coating Processes ..... | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Revision to *Applicability,* section 2105.10(a). |
| * | * * * | * | * | * * |
| | **Subpart 7—Miscellaneous VOC Sources** | | | |
| * | * * * | * | * | * * |
| 2105.83 ..... | Control of VOC Emissions from Miscellaneous Metal and/or Plastic Parts Surface Coating Processes. | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Conditional approval of new regulation. See section 52.2023(m). |
| 2105.84 ..... | Control of VOC Emissions from Automobile and Light-Duty Truck Assembly Coatings. | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Conditional approval of new regulation. See section 52.2023(m). |
| 2105.85 ..... | Control of VOC Emissions from Miscellaneous Industrial Adhesives. | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Conditional approval of new regulation. See section 52.2023(m). |
| 2105.86 ..... | Control of VOC Emissions from Fiberglass Boat Manufacturing Materials. | 6/8/13 | 11/26/14 [Insert **Federal Register** Citation]. | Conditional approval of new regulation. See section 52.2023(m). |
| * | * * * | * | * | * * |

* * * * *

■ 3. Section 52.2023 is amended by adding paragraph (m) to read as follows:

**§ 52.2023 Approval status.**

* * * * *

(m) EPA conditionally approves the Commonwealth of Pennsylvania SIP revision submitted on November 15, 2013, which consists of amendments to the ACHD Rules and Regulations, Article XXI, Air Pollution Control for adopting RACT for sources covered by EPA's CTG standards for the following categories: Miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon a letter from PADEP on behalf of ACHD dated July 16, 2014 committing to submit to EPA, no later than twelve months from EPA's final conditional approval of ACHD's adoption of CTGs for miscellaneous metal and/or plastic parts surface coating processes, automobile and light-duty truck assembly coatings, miscellaneous industrial adhesives, and fiberglass boat manufacturing materials, an additional SIP revision to address the erroneous deficiency in the current regulation for fiberglass boat manufacturing materials. The SIP revision, to be submitted by PADEP on behalf of ACHD, will include a table of monomer VOC content limits for fiberglass boat manufacturing materials.

[FR Doc. 2014–27750 Filed 11–25–14; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 140214138–4482–02]**

**RIN 0648–XD609**

## Fisheries of the Northeastern United States; Bluefish Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of New Jersey is transferring a portion of its 2014 commercial bluefish quota to the State of Rhode Island. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective November 21, 2014, through December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Reid Lichwell, Fishery Management Specialist, 978–281–9112.

**SUPPLEMENTARY INFORMATION:** Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

New Jersey has agreed to transfer 50,000 lb (22,679.6 kg) of its 2014 commercial quota to Rhode Island. This transfer was prompted by the diligent efforts of state officials in Rhode Island not to exceed the commercial bluefish quota. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1) have been met. The revised bluefish quotas for calendar year 2014 are: New Jersey, 1,055,075 lb (478,574 kg); and Rhode Island, 557,786 lb (253,007 kg).

## Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 21, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–28037 Filed 11–21–14; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 79, No. 228
Wednesday, November 26, 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 THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Chapter I

**[Docket ID FFIEC–2014–0001]**

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

### 12 CFR Chapter II

**[Docket No. OP–1491]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Chapter III

## Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

**AGENCY:** Office of the Comptroller of the Currency (''OCC''), Treasury; Board of Governors of the Federal Reserve System (''Board''); and Federal Deposit Insurance Corporation (''FDIC'').

**ACTION:** Notice of outreach meeting.

**SUMMARY:** The OCC, Board, and FDIC (''we'' or ''Agencies'') announce a series of outreach meetings on the Agencies' interagency effort to review their regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA'').

**DATES:** An outreach meeting will be held on Tuesday, December 2, 2014, beginning at 9:00 a.m. Pacific Standard Time (PST). Registrations will be accepted until all seats are filled, through November 26, 2014. Additional outreach meetings are scheduled for February 4, 2015 in Dallas; May 4, 2015 in Boston; October 2015 in Chicago (date to be determined); and December 2, 2015 in Washington, DC.

**ADDRESSES:** The Agencies will hold the December 2, 2014, outreach meeting at the Federal Reserve Bank of San Francisco-Los Angeles Branch, 950 South Grand Avenue, Los Angeles, California, 90015. All participants must pre-register at *http://egrpra.ffiec.gov/outreach/outreach-index.html.* Any interested individual may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html.*

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Alison MacDonald, Senior Attorney, (202) 649–7314; for persons who are deaf or hard of hearing, TTY (202) 649–5597.

*Board:* Claudia Von Pervieux, Counsel, (202) 452–2552; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

*FDIC:* Ruth R. Amberg, Assistant General Counsel, (202) 898–3736; for persons who are deaf or hard of hearing, TTY 1–800–925–4618.

**SUPPLEMENTARY INFORMATION:** EGRPRA [1] directs the Agencies, along with the Federal Financial Institutions Examination Council (Council), not less frequently than once every ten years, to conduct a review of their regulations to identify outdated or otherwise unnecessary regulations. The Agencies are scheduling a series of at least five outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to senior management and staff of the Agencies on any of 12 specific categories of regulations, as further described below.

The Agencies will hold the first of these outreach meetings on December 2, 2014, in Los Angeles, California, at the Federal Reserve Bank of San Francisco-Los Angeles Branch, 950 South Grand Avenue, Los Angeles, California, 90015. This meeting will be streamed live at *http://egrpra.ffiec.gov/.* The meeting will consist of panels of bankers and consumer and community groups who will present particular issues. There will be limited time after each panel for comments from meeting attendees. In addition, there will be a session at the end of the meeting during which audience members may present views on any of the regulations under review. The Agencies reserve the right to limit the time of individual commenters, if needed, in order to accommodate the number of persons desiring to speak.

[1] Public Law 104–208 (1996), 110 Stat. 3009–414, codified at 12 U.S.C. 3311.

Comments made by audience members at this meeting will be reflected in the public comment file. Audience members who do not wish to comment orally may submit written comments at the meeting. In addition, any interested individual may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html.* Further outreach meetings are scheduled for February 4, 2015 in Dallas; May 4, 2015 in Boston; October 2015 in Chicago (date to be determined); and December 2, 2015 in Washington, DC.

*All participants must pre-register for the Los Angeles outreach meeting at http://egrpra.ffiec.gov/outreach/outreach-index.html.* Because of space constraints, on-site attendance will be limited. Registrations will be accepted until November 26, 2014, or until all seats are filled, whichever is earlier.

Further details about the first outreach meeting, including the agenda, are published on the EGRPRA Web site at *http://egrpra.ffiec.gov/outreach/outreach-index.html.*

### Additional Background on EGRPRA

Section 2222 of EGRPRA directs the Agencies, along with the Council, to conduct a review of their regulations not less frequently than once every ten years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the Agencies are required to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome. The statute requires the Agencies to publish in the **Federal Register** a summary of the comments received, identifying significant issues raised and commenting on these issues. The statute also directs the Agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, section 2222 requires the Council, of which the Agencies are members, to submit a report to Congress that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report also must include an analysis of whether the Agencies are able to

address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

For purposes of this review, the Agencies have grouped our combined regulations into 12 categories: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. On June 4, 2014, we published a **Federal Register** notice asking for public comment on three of these categories—Applications and Reporting, Powers and Activities, and International Operations regulations.[2] We also published a chart listing all of the regulations included in the EGRPRA review. Over the next eighteen months, we will publish additional notices, seeking comment on the remaining categories.

Dated: November 20, 2014.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, November 20, 2014.

**Robert deV. Frierson,**

*Secretary of the Board.*

Dated: November 19, 2014.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2014–27969 Filed 11–25–14; 8:45 am]

**BILLING CODE 4810–22–P; 6210–01–P; 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0328; Directorate Identifier 2014–NE–07–AD**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. The NPRM proposed to require modification of the engine by removing any electronic engine control (EEC) that incorporates EEC software standard prior to version B7.2 and installing an EEC eligible for installation. The NPRM was prompted by failure of the intermediate pressure (IP) turbine disk drive arm and subsequent overspeed and burst of the IP turbine disk on an RR RB211 Trent turbofan engine. This action revises the NPRM by clarifying the costs of compliance, by clarifying that correction of the unsafe condition can be achieved either by installing upgraded software in the EEC or by installing an EEC with upgraded software incorporated, and by clarifying the installation prohibition statement. We are proposing this supplemental NPRM (SNPRM) to prevent overspeed of the IP turbine disk, resulting in failure of the turbine blades or the IP turbine disk and subsequent uncontained release of the disk and/or turbine blades, which could lead to damage to the engine and damage to the airplane.

**DATES:** We must receive comments by December 10, 2014.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this SNPRM, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### 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–2014–0328; 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@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–2014–0328; Directorate Identifier 2014–NE–07–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this SNPRM. We will consider all comments received by the closing date and may amend this SNPRM based on those comments.

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

### Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on July 11, 2014 (79 FR 40018). The NPRM proposed to correct an unsafe condition for the specified products.

### Actions Since Previous NPRM Was Issued

Since we issued the NPRM (79 FR 40018, July 11, 2014), we found that we included a cost for parts in the Costs of Compliance paragraph. As this proposed AD requires an upgrade to EEC software, there are no associated parts costs. We changed the Costs of Compliance paragraph in this proposed AD by removing the reference to parts costs.

We changed paragraph (e) of this proposed AD to more clearly state the requirement to modify affected engines either by installing upgraded software in the EEC, or by installing an EEC with upgraded software incorporated.

[2] 79 FR 32172.

We changed paragraph (f) of this proposed AD to more clearly prohibit installation of an EEC that incorporates a software standard earlier than Version B7.2 into any engine, and also prohibit installation of any software standard earlier than Version B7.2 into any EEC.

**Comments**

We received no comments on the NPRM (79 FR 40018, July 11, 2014).

**FAA's Determination**

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (79 FR 40018, July 11, 2014). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

**Proposed Requirements of This SNPRM**

This SNPRM would require accomplishing the actions specified in the NPRM, except as discussed under ''Actions Since Previous NPRM was Issued.''

**Costs of Compliance**

We estimate that this proposed AD affects about 140 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $23,800.

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Rolls-Royce plc:** Docket No. FAA–2014–0328; Directorate Identifier 2014–NE–07–AD.

**(a) Comments Due Date**

We must receive comments by December 10, 2014.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Rolls-Royce plc (RR) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines.

**(d) Reason**

This AD was prompted by failure of the intermediate pressure (IP) turbine disk drive arm and subsequent overspeed and burst of the IP turbine disk on an RR RB211 Trent turbofan engine. We are issuing this AD to prevent overspeed of the IP turbine disk, resulting in failure of the turbine blades or the IP turbine disk and subsequent uncontained release of the disk and/or turbine blades, which could lead to damage to the engine and damage to the airplane.

**(e) Actions and Compliance**

(1) Unless already done, within 12 months after the effective date of this AD, modify the engine by removing electronic engine control (EEC) software earlier than Version B7.2.

(2) Install EEC software eligible for installation.

**(f) Installation Prohibition**

After modification of an engine as required by paragraph (e) of this AD, do not install any EEC that incorporates a software standard earlier than Version B7.2 into any engine, or install any software standard earlier than Version B7.2 into any EEC.

**(g) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

**(h) Related Information**

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0051, dated March 6, 2014, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0328-0003.*

(3) RR Alert Service Bulletin No. RB.211–73–AH001, dated July 17, 2013, which is not incorporated by reference in this AD, can be obtained from Rolls-Royce plc, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* or Internet: *https://www.aeromanager.com.*

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**(i) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on November 18, 2014.

**Colleen M. D'Alessandro,**

*Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2014–27929 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2014–0805; Airspace Docket No. 14–ANE–9]**

## Proposed Establishment of Class E Airspace; North Adams, MA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E Airspace at North Adams, MA, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Harriman-and-West Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before January 12, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0805; Airspace Docket No. 14–ANE–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0805; Airspace Docket No. 14–ANE–9) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0805; Airspace Docket No. 14–ANE–9.'' The postcard will be date/time stamped and returned to the commenter.

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

### Availability of NPRMs

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

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

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at North Adams, MA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Harriman-and-West Airport. Controlled airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Harriman-and-West Airport, North Adams, MA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and

Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ANE MA E5 North Adams, MA [New]**

Harriman-and-West Airport, MA
(Lat. 42°41′46″ N., long. 73°10′13″ W.)

That airspace extending upward from 700 feet above the surface within a 9.5- mile radius of Harriman-and-West Airport.

Issued in College Park, Georgia, on November 17, 2014.

**Myron A. Jenkins,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2014–27956 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### CFR Part 71

**[Docket No. FAA–2014–0729; Airspace Docket No. 14–ASO–10]**

## Proposed Establishment of Class E Airspace; Key Largo, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Key Largo, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Ocean Reef Club Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** 0901 UTC. Comments must be received on or before January 12, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0729; Airspace Docket No. 14–ASO–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, 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 Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA docket number. FAA–2014–0729; Airspace Docket No. 14–ASO–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.* Those 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. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page *at http://www.faa.gov/air_traffic/publications/airspace_amendments/* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Key Largo, FL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Ocean Reef Club Airport. Controlled airspace extending upward from 700 feet above the surface within a 7-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Ocean Reef Club Airport, Key Largo, FL.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71:**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 will continue to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO AL E5 Key Largo, FL [NEW]**

Ocean Reef Club Airport, FL
(Lat. 25°19′31″ N., long. 80°16′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of. Ocean Reef Club Airport.

Issued in College Park, Georgia, on November 17, 2014

**Myron A. Jenkins,**

*Manager, Operations Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2014–27954 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2014–0917; Airspace Docket No. 14–ASO–14]**

## Proposed Amendment of Class E Airspace; Zephyrhills, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E Airspace at Zephyrhills, FL, as the Zephyrhills Non-Directional Beacon (NDB) has been decommissioned, requiring airspace redesign at Zephyrhills Municipal Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of airport.

**DATES:** Comments must be received on or before January 12, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0917; Airspace Docket No. 14–ASO–14, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0917; Airspace Docket No. 14–ASO–14) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0917; Airspace Docket No. 14–ASO–14.'' The postcard will be date/time stamped and returned to the commenter.

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

concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

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

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

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Zephyrhills Municipal Airport, Zephyrhills, FL. Airspace reconfiguration to within a 6.3-mile radius of the airport is necessary due to the decommissioning of the Zephyrhills NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates of Zephyrhills Municipal Airport would be adjusted to coincide with the FAA's aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Zephyrhills Municipal Airport, Zephyrhills, FL.

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Zephyrhills, FL [Amended]**

Zephyrhills Municipal Airport, FL
(Lat. 28°13′41″ N., long. 82°09′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Zephyrhills Municipal Airport.

Issued in College Park, Georgia, on November 17, 2014.

**Myron A. Jenkins,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2014–27958 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2014–0662; Airspace Docket No. 14–AEA–6]**

## Proposed Establishment of Class E Airspace; West Creek, NJ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E Airspace at West Creek, NJ, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Eagles Nest Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before January 12, 2015.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2014–0662; Airspace Docket No. 14–AEA–6, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation

Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0662; Airspace Docket No. 14–AEA–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0662; Airspace Docket No. 14–AEA–6.'' The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

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

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

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at West Creek, NJ, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Eagles Nest Airport. Controlled airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Eagles Nest Airport, West Creek, NJ.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ANE NJ E5 West Creek, NJ [New]**

Eagles Nest Airport, NJ
(Lat. 39°39′54″ N., long. 74°18′27″ W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Eagles Nest Airport.

Issued in College Park, Georgia, on November 17, 2014.

**Myron A. Jenkins,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2014–27972 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2014–0247; Airspace Docket No. 14–ASW–1]**

## Proposed Establishment of Class E Airspace; Sonora, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Sonora, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at JL Bar Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** Comments must be received on or before January 12, 2015.

**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–2014–0247/Airspace Docket No. 14–ASW–1, 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:** Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

**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–2014–0247/Airspace Docket No. 14–ASW–1.'' 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 establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of JL Bar Ranch Airport, Sonora, TX, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9Y, dated August 6, 2014 and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 establish controlled airspace at JL Bar Ranch Airport, Sonora, TX.

### 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 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014 and effective September 15, 2014, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASW TX E5 Sonora, TX [New]**

JL Bar Ranch Airport, TX
(Lat. 30°34′06″ N., long. 100°26′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of JL Bar Ranch Airport.

Issued in Fort Worth, TX, on November 13, 2014.

**Robert W. Beck,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2014–27973 Filed 11–25–14; 8:45 am]

**BILLING CODE 4901–14–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM14–10–000]**

## Real Power Balancing Control Performance Reliability Standard

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission proposes to approve Reliability Standard BAL–001–2 (Real Power Balancing Control Performance) and proposed new definitions submitted by the North American Electric Reliability Corporation (NERC). The proposed Reliability Standard is designed to ensure that applicable entities maintain system frequency within narrow bounds around a scheduled value. In addition, the Commission proposes that NERC submit an informational filing that would address the impact of the proposed Reliability Standard on inadvertent interchange and unscheduled power flows.

**DATES:** Comments are due January 26, 2015.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

• Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**
Enakpodia Agbedia (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6750, *Enakpodia.Agbedia@ferc.gov.*
Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8524, *Mark.Bennett@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standard BAL–001–2 (Real Power Balancing Control Performance) that the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted for approval. The proposed Reliability Standard applies to balancing authorities and regulation reserve sharing groups, and is designed to maintain Interconnection frequency within predefined frequency limits. The Commission also proposes to approve the retirement of currently-effective Reliability Standard BAL–001–1 immediately prior to the effective date of BAL–001–2.

2. Further, the Commission proposes to approve NERC's four proposed definitions, associated violation risk factors and violation severity levels, implementation plan, and effective dates. The Commission also proposes that NERC submit an informational filing that would address the impact of the proposed Reliability Standard on inadvertent interchange[2] and unscheduled power flows.[3]

### I. Background

*A. Mandatory Reliability Standards and Order No. 693 Directive*

3. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[4] Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[5]

4. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[6] and subsequently certified NERC.[7] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including BAL–001–0 and a companion standard BAL–002–0.[8] When approving BAL–002–0, the Commission directed NERC ''to modify this Reliability Standard to define a significant deviation and a reportable event, taking into account all events that have an impact on frequency, *e.g.,* loss of supply, loss of load and significant scheduling problems, which can cause frequency disturbances and to address how balancing authorities should respond.'' [9]

*B. Proposed Reliability Standard BAL–001–2*

5. On April 2, 2014, NERC filed a petition (Petition) seeking approval of proposed Reliability Standard BAL–001–2, four new definitions to be added to the Glossary of Terms used in NERC Reliability Standards (NERC Glossary of

[1] 16 U.S.C. 824(o) (2012).

[2] NERC defines ''Inadvertent Interchange'' in the NERC Glossary of Terms Used in Reliability Standards (Glossary) as ''[t]he difference between the Balancing Authority's Net Actual Interchange and Net Scheduled Interchange. ($I_A - I_S$)''

[3] ''Unscheduled power flows'' generally refers to the power flows that result from the law of physics that causes power from a given source to flow over all possible paths to its destination.

[4] 16 U.S.C. 824o(d)(2).

[5] 16 U.S.C. 824o(e).

[6] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[8] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007). The Commission approved Reliability Standard BAL–001–1 in an unpublished letter order, October 16, 2013 in Docket No. RD13–11–000.

[9] *Id.* P 355.

Terms) and the associated violation risk factors and violation severity levels, effective dates, and implementation plan.[10] NERC states that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest because it satisfies the factors set forth in Order No. 672, which the Commission applies when reviewing a proposed Reliability Standard.[11] Also, NERC asserts that proposed Reliability Standard BAL–001–2 addresses the Commission's Order No. 693 directive pertaining to BAL–002–0.

6. NERC proposes to revise Reliability Standard BAL–001–2 by replacing the Control Performance Standard 2 (CPS2) in currently-effective Requirement R2 with a new term, ''Balancing Authority ACE Limit (BAAL).'' [12] The Balancing Authority ACE Limit, unique for each balancing authority, contains dynamic limits as a function of Interconnection frequency and provides the basis for a balancing authority's obligation to balance its resources and demand in real-time so that its clock-minute average ACE does not exceed its Balancing Authority ACE Limit for more than 30 consecutive clock-minutes.[13]

7. Proposed Reliability Standard BAL–001–2 has two requirements and two attachments containing the mathematical equations for calculating the Control Performance Standard 1 (CPS1) in Requirement R1,[14] the Balancing Authority ACE Limit in Requirement R2, and associated measures. NERC states that the only proposed change to Requirement R1 is to move the equation and explanation of the individual components of CPS1 to Attachment 1. NERC explains that the proposed revisions to Requirement R1 ''are administratively efficient and clarify the intent of the Requirement.'' [15] NERC states that the ''underlying performance aspect'' of Requirement R1 remains the same: ''to measure how well a Balancing Authority is able to control its generation and load management programs, as measured by its ACE, to support its Interconnection's frequency over a rolling one-year period.'' [16]

8. Proposed Requirement R2 is new and replaces the existing Control Performance Standard 2 requirement. The current Reliability Standard BAL–001–1 Requirement R2 requires each balancing authority to operate such that for at least 90 percent of the ten-minute periods in a calendar month (using six non-overlapping periods per hour), the average area control error (ACE) must be within a specific limit, referred to as $L_{10}$.[17]

9. Requirement R2 of the proposed Reliability Standard BAL–001–2 states:

> Balancing Authority shall operate such that its clock-minute average of Reporting ACE does not exceed its clock-minute Balancing Authority ACE Limit (BAAL) for more than 30 consecutive clock-minutes, calculated in accordance with Attachment 2, for the applicable Interconnection in which the Balancing Authority operates.

10. NERC explains that the Balancing Authority ACE Limits are unique for each balancing authority and provide dynamic limits for the balancing authority's ACE value as a function of its Interconnection frequency.[18] NERC states that the proposed Reliability Standard is intended to enhance the reliability of each Interconnection by maintaining frequency within predefined limits under all conditions. Furthermore, NERC states that proposed Reliability Standard BAL–001–2 and accompanying definitions include the benefits of the Automatic Time Error Correction (ATEC) equation in the WECC-specific regional variance in Reliability Standard BAL–001–1.[19]

11. NERC also proposes violation risk factors and violation severity levels for each requirement of the proposed Reliability Standard and an implementation plan and effective dates. NERC states that these proposals were developed and reviewed for consistency with NERC and Commission guidelines.

12. NERC proposes an effective date for the proposed Reliability Standard that is the first day of the first calendar quarter that is twelve months after the date of Commission approval. NERC states that its proposed implementation date will allow entities to make any software adjustment that may be required to perform the Balancing Authority ACE Limit calculations.[20]

13. On May 9, 2014, NERC submitted a supplemental filing (Supplemental Filing) to address the status of the Commission directive in Order No. 693 pertaining to Reliability Standard BAL–002–0 and update the Commission regarding the status of a field trial undertaken for proposed Reliability Standard BAL–001–2.[21] In its Supplemental Filing, NERC reiterates the importance of the proposed revision establishing dynamic limits for a balancing authority's ACE as a function of the Interconnection frequency, stating that ''[o]ne of the reliability benefits of the proposed Reliability Standard is that it allows Balancing Authorities to calculate their position within these boundaries on a real-time basis and take action to support reliability.'' [22] Further, NERC states that proposed Reliability Standard BAL–001–2 addresses the Commission's directive related to BAL–002–0 ''in an equally efficient and effective manner'' [23] NERC adds that revisions to Reliability Standard BAL–002–1 are currently being developed and will complement proposed Reliability Standard BAL–001–2 that is the subject of the immediate proceeding.[24] Regarding the ongoing field trial, NERC stated that ''the widespread participation of Balancing Authorities has provided insight into how the changes in proposed Reliability Standard BAL–001–2 will impact reliability.'' [25]

14. On July 31, 2014, NERC submitted an informational filing (Informational Filing) of its Preliminary Field Trial Report (Field Trial Report) evaluating the effects of proposed Reliability Standard BAL–001–2. NERC states that the Field Trial Report results to date demonstrate that the correlation between Requirements R1 and R2 of proposed Reliability Standard BAL–001–2 drive corrective actions to support Interconnection frequency and reliability.[26] NERC also states that the Balancing Authority ACE Limit, in conjunction with currently-effective

[10] Proposed Reliability Standard BAL–001–2 is available on the Commission's eLibrary document retrieval system in Docket No. RM14–10–000 and on the NERC Web site, *www.nerc.com.*

[11] NERC Petition at 6 and Exhibit C (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 323–335, 444).

[12] Area Control Error (ACE) is the instantaneous difference between a Balancing Authority's Net Actual and Scheduled Interchange, taking into accounts the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction, if operating in that mode.

[13] NERC Petition at 12.

[14] The ''Responsible Entity'' designated in proposed Reliability Standard BAL–001–2 Requirement R1 is the balancing authority and/or regulation reserve sharing groups.

[15] NERC Petition at 11.

[16] *Id.*

[17] Reliability Standard BAL–001–1 *available at: http://www.nerc.com/pa/Stand/Reliability%20Standards/BAL-001-1.pdf.*

[18] NERC Supplemental Filing at 1.

[19] NERC Petition at 2.

[20] NERC Petition at 3.

[21] NERC Supplemental Filing at 1.

[22] *Id.* at 2.

[23] *Id.* at 3.

[24] The Commission notes that the currently-effective Reliability Standard BAL–002–1 requires balancing authorities to return its ACE to zero within 15 minutes following a reportable disturbance. However, the Field Trial Report does not provide any information whether compliance with Reliability Standard BAL–002–1 had any impact on the proposed Balancing Authority ACE Limits in Reliability Standard BAL–001–2. Any future modifications to BAL–002 should take this into consideration.

[25] NERC Supplemental Filing at 6, noting that 47 balancing authorities participated in the Field Trial Report: 16 in the Eastern Interconnection, 29 in the Western Interconnection, ERCOT and Quebec.

[26] NERC Field Trial Report at 1.

Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), satisfies the directive.[27]

## II. Discussion

15. Pursuant to FPA section 215(d)(2), we propose to approve Reliability Standard BAL–001–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We propose to approve NERC's four proposed definitions, violation risk factor and violation severity level assignments, and the retirement of currently-effective BAL–001–1.[28] Likewise, we propose to approve NERC's implementation plan, in which NERC proposes an effective date of the first day of the first calendar quarter, twelve months after the date of Commission approval.[29]

16. The purpose of proposed Reliability Standard BAL–001–2 is to control Interconnection frequency within defined limits. Proposed Reliability Standard BAL–001–2 includes both long and short term performance measures for Interconnection frequency control by providing dynamic (*i.e.,* real-time) limits that are specific for each balancing authority and Interconnection. By basing Balancing Authority ACE Limits on pre-defined frequency trigger limits for each Interconnection, we believe the real-time measurements established in proposed Reliability Standard BAL–001–2 will help ensure the Interconnection frequency returns to a reliable state should a balancing authority's ACE, or the Interconnection's frequency, exceed acceptable bounds.

17. We agree with NERC's assertion that the Balancing Authority ACE Limit is a real-time measure of a balancing authority's required performance and encourages operation in support of the Interconnection frequency and drives corrective action back within predefined ACE limits when helpful for adjusting Interconnection frequency.[30]

18. Further, we believe that the NERC proposal satisfies the directive set forth in Order No. 693 that NERC modify Reliability Standard BAL–002 ''. . . to define a significant deviation and a reportable event, taking account all events that have an impact on frequency, *e.g.,* loss of supply, loss of load and significant scheduling problems. . . .'' [31] In particular, we believe that NERC's statement that the Balancing Authority ACE Limit, in conjunction with currently-effective Reliability Standard BAL–003–1, satisfies the directive.[32] We also believe that Reliability Standard BAL–003–1 addresses the Commission's Order No. 693 directive with regard to events that have an impact on frequency due to the loss of supply and proposed Reliability Standard BAL–001–2 addresses aspects of the same directive with regard to loss of load. Further, we accept NERC's explanation that proposed Reliability Standard BAL–001–2 addresses the Commission's Order No. 693 directive with regard to the need to more broadly define reportable events and that the proposed standard sets a variable joint megawatt limit (*i.e.,* real-time) that is dependent on concurrent Interconnection frequency. With regard to the aspect of the Order No. 693 directive requiring that reportable events account for loss of load, we agree with NERC's statement that loss of load can cause a mismatch in supply and demand that results in a positive change in frequency.[33] We accept NERC's explanation that the Balancing Authority ACE Limit has been shown to be effective in limiting the duration that the Interconnection frequency is impacted by loss of supply, loss of load or any other conditions causing a balancing authority to exceed its Balancing Authority ACE Limit.[34]

19. In sum, we believe the statements in NERC's Petition, Supplemental Filing, and Informational Filing provide sufficient technical support that NERC has addressed the Commission's Order No. 693 directive in an equally and effective manner.[35] While we propose to approve Reliability Standard BAL–001–2, we also propose that NERC submit an informational filing—discussed immediately below—regarding the potential of proposed Reliability Standard BAL–001–2 to contribute to unscheduled power flows and inadvertent interchange.

### *A. Potential for Proposed Reliability Standard BAL–001–2 To Contribute to Unscheduled Power Flows and Inadvertent Interchange*

20. NERC states that, as a proof of concept for the Balancing Authority ACE Limit requirement, a field trial was endorsed by the NERC Operating committee and subsequently approved by the NERC Standards Committee in June 2005.[36] During the development of the proposed Reliability Standard, some stakeholders that participated in the field trial commented to the NERC standard drafting team that the proposed Balancing Authority ACE Limit established in Requirement R2 of BAL–001–2 has caused increased system operating limit violations, particularly in the Western Interconnection. For example, one large transmission operator commented that the proposed Balancing Authority ACE Limit could increase the number of system operating limit violations, and could possibly cause large unscheduled power flows resulting in an increased ACE.[37] Another NERC stakeholder commented that the proposed Reliability Standard could provide opportunities for entities to create unscheduled power flows within the standard's boundaries, without regard to the impacts and which could lead to system operating limit violations due to large ACEs.[38] The same stakeholder commented that the Western Electricity Coordinating Council has decided to apply a limit of four times a balancing authority's $L_{10}$ to limit ACE deviations from balancing authority flows that negatively impact the transmission system.

21. In addition, in the Field Trial Report, NERC asserts that there is no relationship between the Balancing Authority ACE Limit field trial and accumulated inadvertent interchange in either the Eastern or Western Interconnections.[39] However, due to a large allowance in ACE deviations in real-time while still complying with the proposed Balancing Authority ACE Limit, an increase in the amount of inadvertent interchange on the bulk electric system of all Interconnections may result.[40] In other words, proposed

[27] *Id.* at 14.

[28] NERC proposes four definitions for inclusion in the Glossary of Terms Used in NERC Reliability Standards: Regulation Reserve Sharing Group, Reserve Sharing Group Reporting ACE, Reporting ACE, and Interconnection. As stated in Exhibit G, Consideration of Comments at 13, ''Regulation Reserve Sharing Group'' would be added to the NERC Compliance Registry prior to implementation of the proposed standard.

[29] NERC Petition Exhibit B at 4.

[30] NERC Field Trial Report at 23.

[31] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 355.

[32] NERC Field Trial Report at 4.

[33] *Id.* at 7.

[34] *Id.* at 27.

[35] NERC Supplemental Filing at 3.

[36] *Id.* at 3.

[37] NERC Petition, Exhibit G, Consideration of Comments April 2013, at 43.

[38] *Id.* at 77.

[39] NERC Field Trial Report at 20.

[40] A comparison between the existing Control Performance Standard 1 curves and the Balancing Authority ACE Limit curves shown in NERC's Field Trial Report indicates that there are large ACE deviations at the boundaries of 60 +/- 0.02 Hz. *Id.* Figure 5 at 24.

BAL–001–2 could allow balancing authorities to have a very large deviation from an ACE of zero and still be compliant with the dynamic values of the Balancing Authority ACE Limits in the proposed Reliability Standard.

22. The Commission is concerned that the Balancing Authority ACE Limit in proposed Reliability Standard BAL–001–2 may have an unintended consequence of (i) allowing significant amounts of unscheduled power flows, creating an undue burden for transmission operators and reliability coordinators to address power flows approaching or exceeding system operating limits or interconnection reliability operating limits, and (ii) the significant increase in inadvertent interchange could result in an adverse reliability impact between real-time operations and day and/or hour-ahead analysis performed by reliability coordinators and transmission operators.

23. Based on the concerns discussed above, the Commission proposes to direct that NERC submit an informational filing following implementation of the proposed Reliability Standard to monitor unscheduled power flows and inadvertent interchange in the Western and Eastern Interconnections. Specifically, for the two-year period following implementation (*i.e.,* the effective date) of the standard, the Commission proposes to direct NERC to provide the number of SOL/IROL violations, the date and time, location, the duration and magnitude, due to unscheduled power flows and inadvertent interchange within Western and the Eastern Interconnections. This information will provide NERC, the Commission, and other interested entities with the material to evaluate the effect of Reliability Standard BAL–001–2 on unscheduled power flows and inadvertent interchange and the resulting consequences on the Bulk-Power System. Accordingly, the Commission proposes to direct that NERC provide data on unscheduled power flows and inadvertent interchange for a two-year period following implementation of the proposed Reliability Standard.

24. The Commission proposes to direct NERC to submit the informational filing 90 days after the end of the two-year period following implementation. Should the data indicate reliability issues due to increases in unscheduled power flows and inadvertent interchange under the new Balancing Authority ACE Limit at any time during the two-year period of study, the Commission expects that NERC will immediately propose and implement adequate remedies. The Commission seeks comments from NERC, and other interested entities on the proposed informational filing. The Commission also seeks comment whether any additional data would support the analysis and, thus, should be provided with the informational filing. Furthermore, the Commission also seeks comment on whether a regional variance would be necessary for those regions that experienced adverse impacts during the field trial due to inadvertent interchange.[41]

## III. Information Collection Statement

25. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[42] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

26. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

27. This Notice of Proposed Rulemaking proposes to approve revisions to Reliability Standard BAL–001–2. NERC states in its petition that the proposed Reliability Standard defines a new concept: Balancing Authority ACE Limit, which is unique for each balancing authority and provides dynamic limits for a balancing authority's ACE value as a function of the Interconnection frequency.[43] NERC states that the proposed Reliability Standard improves reliability by adding a frequency component to the measurement of a balancing authority's ACE, and allows for the formation of ''Regulation Reserve Sharing Groups.'' NERC's proposed Reliability Standard requires a balancing authority to balance its resources and demand in real-time so that the clock-minute average of its ACE does not exceed its Balancing Authority ACE Limit for more than 30 consecutive clock-minutes. Furthermore, NERC states that proposed Reliability Standard BAL–001–2 and accompanying definitions include the benefits of the Automatic Time Error Correction equation in the WECC-specific regional variance in Reliability Standard BAL–001–1.[44] The proposed Reliability Standard and related reporting requirements are applicable to balancing authorities and regulation reserve sharing groups.

28. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC Compliance Registry as of October17, 2014. According to the NERC Compliance Registry, there are 71 balancing authorities in the Eastern Interconnection, 34 balancing authorities in the Western Interconnection and one balancing authority in the Electric Reliability Council of Texas (ERCOT). The Commission bases individual burden estimates on the time needed for balancing authorities to develop tools needed to facilitate reporting that are required in the Reliability Standard. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards. The following estimates relate to the requirements for this Notice of Proposed Rulemaking in Docket No. RM14–10–000.

[41] The Western Interconnection applies a limit of four times a balancing authority's $L_{10}$ to limit ACE deviations from balancing authority flows that negatively impact the transmission system. *Id.* at 14.

[42] 5 CFR 1320.11.

[43] NERC Petition at 12.

[44] *Id.* at 2.

RM14–10–000 FINAL RULE

[BAL–001–2: Real Power Balancing Control Performance] [45]

| | Number of respondents (1) | Annual number of responses per respondent (2) | Total number of responses (1)*(2)=(3) | Average burden & cost per response (4) | Total annual burden hours & total annual cost [46] (3)*(4)=(5) | Cost per respondent ($) (5)÷(1) |
|---|---|---|---|---|---|---|
| BA/RRSG: [47] Update and Maintain Energy Management Systems. | 106 | 1 | 106 | 8 hours per response.<br>$1030 (8 × $128.76). | 848 (106*8)<br>$109,180 (1030*106) | $1030 |
| BA: Record Retention [48] ..... | 106 | 1 | 106 | 4 .....<br>$112 ..... | 424<br>$11,872 | 112 |
| Total ..... | ..... | ..... | 212 | ..... | 1,272<br>$121,052 | 1,142 |

*Title:* Mandatory Reliability Standards for BAL–001–2.

*Action:* Proposed Collection FERC–725R.

*OMB Control No.:* 1902–0268.

*Respondents:* Businesses or other for-profit institutions; not-for-profit institutions.

*Frequency of Responses:* On Occasion.

*Necessity of the Information:* This proposed rule proposes to approve the Reliability Standard pertaining to requiring balancing authorities to operate such that its clock-minute average reporting ACE does not exceed its clock-minute Balancing Authority ACE Limits for more than 30 consecutive clock-minutes. The proposed Reliability Standard Requirement R2 provides each balancing authority a dynamic ACE limit that is a function of Interconnection frequency. The proposed Reliability Standard will provide dynamic limits that are balancing authority and Interconnection specific. In addition, these ACE limits are based on identified Interconnection frequency limits to ensure the Interconnection returns to a reliable state when an individual balancing authority's ACE or Interconnection frequency deviation contributes undue risk to the Interconnection.

*Internal Review:* The Commission reviewed the proposed Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for generation and demand balance throughout the Eastern and Western Interconnections as well as within the ERCOT Region.

29. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

30. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include FERC–725R and Docket Number RM14-10–000.

## IV. Environmental Analysis

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[49] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[50] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

## V. Regulatory Flexibility Act Certification

32. The Regulatory Flexibility Act of 1980 (RFA) [51] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. As shown in the information collection section, the proposed Reliability Standard applies to 106 entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 23 [52] are small business entities. Of these, the Commission estimates that approximately five percent, or one of these small entities, will be affected by the new requirements of the proposed Reliability Standard.

33. The Commission estimates that the small entities that will be affected by proposed Reliability Standard BAL–001–2 will incur one-time compliance cost up to $109,180 (*i.e.* the cost of updating and maintaining energy management systems), resulting in cost of approximately $1,030 per balancing authority and/or regulation reserve sharing groups. These costs represent an estimate of the costs a small entity could

[45] Proposed Reliability Standard BAL–001–2 applies to balancing authorities and regulation reserve sharing groups. However, the burden associated with the BA complying with Requirement R1 is not included within this table because the Commission accounted for it under Commission-approved Reliability Standards BAL–001–1.

[46] The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information (*available at http://www.bls.gov/oes/current/naics2_22.htm*) for an electrical engineer ($60.87/hour) and a lawyer ($128.76).

[47] BA=Balancing Authority; RRSG=Regulation Reserve Sharing Group.

[48] $28/hour, based on a Commission staff study of record retention burden cost.

[49] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[50] 18 CFR 380.4(a)(2)(ii).

[51] 5 U.S.C. 601–612.

[52] 21.4 percent of the total number of affected entities.

incur if the entity is identified as an applicable entity. The Commission does not consider the estimated cost per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this NOPR will not have a significant economic impact on a substantial number of small entities.

**VI. Comment Procedures**

34. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 26, 2015. Comments must refer to Docket No. RM14–10–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

35. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

36. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

37. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**VII. Document Availability**

38. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

39. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

40. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27949 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2014–0905]**

**RIN 1625–AA08**

## Special Local Regulation; Bradenton Area Riverwalk Regatta; Manatee River, Bradenton, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a special local regulation on the waters of the Manatee River in Bradenton, Florida during the Bradenton Area Riverwalk Regatta. The race is scheduled to take place annually from 11:00 a.m. to 4:30 p.m. on the first Saturday of February. The proposed special local regulation is necessary to protect the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event. The special local regulation would restrict vessel traffic in the waters of the Manatee River in the vicinity of Bradenton, Florida. It would establish the following two areas: Enforcement areas #1 and #2, where all persons and vessels, except those persons and vessels participating in the high speed boat races and those vessels enforcing the areas, are prohibited from entering, transiting through, anchoring in, or remaining within.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 26, 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 Marine Science Technician First Class Hector I. Fuentes, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@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–2014–0657 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–2014–0905 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 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*

The Coast Guard is proposing to establish this Special Local Regulation on the waters of the Manatee River in Bradenton, Florida during the Bradenton Area Riverwalk Regatta. The race is scheduled to take place annually from approximately 11:00 a.m. to 4:30 p.m. during the first Saturday of February. This proposed rule is necessary to protect the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event.

*C. Basis and Purpose*

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

The purpose of the proposed rule is to provide for the safety of life on navigable waters of the United States during the Bradenton Area Riverwalk Regatta.

*D. Discussion of Proposed Rule*

This proposed rule is necessary to establish a special local regulation that will encompass certain waters of the Manatee River in Bradenton, Florida. The proposed special local regulations will be enforced from approximately 11:00 a.m. to 4:30 p.m. normally occurring annually during the first Saturday of February. The proposed special local regulations will establish the following two areas: Enforcement areas #1 and #2, where all persons and vessels, except those persons and vessels participating in the high speed boat races and those vessels enforcing the areas, are prohibited from entering, transiting through, anchoring in, or remaining within.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the enforcement areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the enforcement areas is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

*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) The special local regulations would be enforced for only five and a half hours; (2) although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the enforcement areas without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the enforcement areas during the enforcement period if authorized by the Captain of the Port St. Petersburg or a designated representative; and (4) the Coast Guard would provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners and/or on-scene designated representatives.

2. Impact on Small Entities

Under 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.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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 rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**F. 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 proposes to amend 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 § 100.722 to read as follows:

**§ 100.722 Special Local Regulations; Bradenton Area Riverwalk Regatta, Manatee River; Bradenton, FL.**

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

(1) *Enforcement Area #1.* All waters of the Manatee River between the Green Bridge and the CSX Train Trestle contained within the following points: 27°30.73′ N, 82°34.37′ W, thence to position 27°30.73′ N, 82°34.13′ W, thence to position 27°29.97′ N, 82°34.27′ W, thence to position 27°29.59′ N, 82°34.07′ W, thence back to the original position, 27°30.73′ N, 82°34.37′ W.

(2) *Enforcement Area #2.* All waters of the Manatee River contained within the following points: 27°30.58′ N, 82°34.62′ W, thence to position 27°30.58′ N, 82°34.43′ W, thence to position 27°30.43′ N, 82°34.43′ W, thence to position 27°30.43′ N, 82°34.62′ W, thence back to the original position, 27°30.58′ N, 82°34.62′ 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 St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless an authorized race participant.

(2) Designated representatives may control vessel traffic throughout the

regulated areas as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7506, or a designated representative via VHF radio on channel 16.

(4) If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(d) *Enforcement Date.* This rule will be enforced from 11:00 a.m. to 4:30 p.m. on the first Saturday of February.

Dated: November 3, 2014.

**G.D. Case,**

*Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.*

[FR Doc. 2014–28051 Filed 11–25–14; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA–2014–0117]**

**RIN 2127–AL48**

## Federal Motor Vehicle Safety Standards; Motorcycle Brake Systems; Motorcycle Controls and Displays

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to amend Federal Motor Vehicle Safety Standards (FMVSSs) Nos. 122 and 123, to allow the use of an internationally recognized symbol as the antilock brake system (ABS) malfunction telltale. Although the use of the symbol complies with the FMVSS No. 122 requirement that the letters ''ABS'' indicate a malfunction, the height of the letters ''ABS'' within the standardized malfunction symbol on many motorcycles do not comply with the letter height requirement in FMVSS No. 122. We also are proposing a technical change to correct a mistake in the 2012 final rule adopting FMVSS No. 122.

**DATES:** Submit comments on or before December 26, 2014.

**ADDRESSES:** You may submit comments electronically to the docket identified in the heading of this document by visiting the following Web site:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of 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 (65 FR 19477–78).

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may contact Mike Pyne, Office of Crash Avoidance Standards, by telephone at (202) 366–1810. For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992. You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 24, 2012, NHTSA published a final rule in the **Federal Register** amending Federal Motor Vehicle Safety Standard (FMVSS) No. 122, *Motorcycle Brake Systems.*[1] This final rule adopted harmonized requirements and test procedures derived from a global technical regulation (GTR) for motorcycle brakes. The substantive provisions of FMVSS No. 122 had not been updated since their adoption in 1972 and no longer reflected the performance of modern motorcycle brake systems. Consistent with the 1998 United Nations Economic Commission for Europe (UNECE) Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles,[2] GTR No. 3 was established. GTR No. 3 combined the best practices of requirements and test procedures available internationally, mainly drawn from FMVSS No. 122, UNECE Regulation No. 78, and the Japanese Safety Standard JSS12–61.[3]

Among the performance requirements adopted as part of the revised FMVSS No. 122 are tests for antilock brake system (ABS) performance. Prior to the August 2012 final rule, FMVSS No. 122 contained no ABS performance requirements. Although FMVSS No. 122 does not require motorcycles to be equipped with ABS, it includes test procedures and minimum performance requirements to assess the stability and stopping performance of motorcycles that are equipped with ABS. The new tests, adopted from the GTR, include stopping distance performance requirements on high and low friction surfaces, wheel lock tests on high and low friction surfaces, and wheel lock tests for high-to-low friction and low-to-high friction surface transitions. The new performance requirements also include a performance test related to the failure of the ABS system. These new requirements are mandatory for most motorcycles manufactured on or after September 1, 2014.

[1] 77 FR 51649.

[2] The 1998 UNECE Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles (1998 Agreement) was concluded under the auspices of the United Nations and provides for the establishment of globally harmonized vehicle regulations. This 1998 Agreement, whose conclusion was spearheaded by the United States, entered into force in 2000 and is administered by the UNECE's World Forum for the Harmonization of Vehicle Regulations (WP.29). *See http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29age.html* (last accessed June 25, 2014).

[3] A copy of GTR No. 3 was placed in the docket for the NPRM associated with the final rule revising FMVSS No. 122. *See* Docket No. NHTSA–2008–0150–0002.

The prior version of FMVSS No. 122 did not include any requirements for an ABS malfunction telltale. Both the GTR and the 2008 NPRM proposing the revised FMVSS No. 122 specified that all motorcycles equipped with ABS must also be fitted with a yellow warning lamp that illuminates whenever there is a malfunction that affects the generation or transmission of signals in the motorcycle's ABS system. We provided no further specifications for the lamp in the NPRM.

In paragraph S5.1.10.2 of the final rule, consistent with other FMVSSs addressing ABS system failure [4] and with FMVSS No. 101, *Controls and Displays,*[5] we required that motorcycle brake ABS system failures must be indicated to the driver with a telltale identified by the words ''Antilock'' or ''Anti-lock'' or ''ABS.'' We also added a specification that the telltale be labeled in letters at least 3/32 inch (2.4 mm) high. This minimum letter height specification is consistent with the existing requirement for a brake failure malfunction telltale identifier for motorcycles.[6]

Several months after the agency published the August 2012 final rule, we were contacted by the Motorcycle Industry Council, Honda, and Harley-Davidson. These organizations informed NHTSA that ABS-equipped motorcycles that they produce already have ABS malfunction warning lamps and that the current practice is to use the International Organization for Standardization (ISO) symbol for ABS malfunction, which is pictured in Figure 1. The ISO symbol incorporates the letters ''ABS'' consistent with the requirement in FMVSS No. 122. However, the ISO symbol has no size requirement associated with it, nor is there a specification regarding the size of the lettering within the symbol.


Figure 1 – ISO Symbol Indicating ABS Malfunction

Honda informed NHTSA that the typical height of the symbol on a production motorcycle equipped with ABS is 7 millimeters, and the letters ''ABS'' are approximately 2 millimeters high, though the dimensions may vary. We do not have information on the range of symbol or letter sizes among various makes and models, nor are we are aware of any standard that specifies symbol or letter size.

However, based on the information provided by Honda and conversations that the agency has had with the Motorcycle Industry Council and Harley-Davidson, we believe that, in order to comply with the letter height requirement for the ABS malfunction telltale identifier in FMVSS No. 122, manufacturers would have to enlarge the symbol or the telltale lamp considerably so that the letters ''ABS'' are 3⁄32 inch (2.4 millimeters) in height. Alternatively, they could add a separate label using ''ABS'' or ''Antilock'' or ''Anti-Lock'' that are the specified minimum height in place of, or in addition to, the ISO symbol. Motorcycle manufacturers assert that this would constitute a costly redesign of the telltale or instrument panel on many ABS-equipped motorcycles without any discernible safety benefit as a result of the redesign.

Upon consideration of the concerns raised by the Motorcycle Industry Council, Honda, and Harley-Davidson, the agency is proposing to remove the letter height specification for the ABS malfunction telltale if manufacturers use the ISO symbol for ABS malfunction. We are also proposing to remove the reference to the ABS malfunction telltale specified in FMVSS No. 101 because that standard does not apply to motorcycles. Instead, we are proposing to place the specification for the ABS malfunction telltale in FMVSS No. 123, *Motorcycle Controls and Displays,* which is the corresponding FMVSS applicable to motorcycles.[7] However, if only text is used for the ABS malfunction telltale, the minimum letter height requirement would still apply.

We have no reason to believe that using the ISO symbol in lieu of text labeling at a minimum height would affect the safety of motorcycles or the general public. The types of failure indicated by the ABS malfunction telltale are electronic failures that result in the loss of ABS functionality, but do not cause loss of braking ability. As stated above, FMVSS No. 122 contains a performance requirement to ensure minimum braking capability in the event of an ABS system malfunction. Moreover, the agency has minimum performance requirements to ensure that a minimum level of braking capability is maintained even if there is a more severe system failure such as a brake fluid leak.

We request comment on whether there should be a minimum height requirement for an ABS malfunction telltale that uses the ISO symbol. Honda informed NHTSA that the height of the symbol on a motorcycle equipped with ABS is typically 7 millimeters. We request comment on whether a minimum height requirement for the ISO symbol should be applied and, if so, how large the symbol should be. Specifically, we ask whether the 7 millimeter height suggested by Honda as a minimum height (or a different height) would ensure readability without requiring a redesign of the telltale or instrument panel on many ABS-equipped motorcycles.

In view of this proposal, it is the intent of the agency not to enforce the minimum height requirement for the ABS malfunction telltale for any motorcycle that uses the ISO symbol for ABS malfunction set forth above in Figure 1. We intend to continue this nonenforcement policy until a final rule implementing this proposal becomes effective. This nonenforcement policy will provide relief to motorcycle manufacturers that use the ISO symbol for ABS system malfunction, but could not meet the September 1, 2014 deadline for compliance without incurring expenses associated with redesign of the telltale or instrument panel. Again, we have no information that adverse safety consequences would

[4] *See, e.g.,* 49 CFR 571.121, S5.1.6.2.

[5] We referenced FMVSS No. 101, notwithstanding the fact that it does not apply to motorcycles, because it had an existing labeling requirement for ABS malfunction in Table 1.

[6] *See* 49 CFR 571.122a, S5.1.3.1(d).

[7] The inclusion of the ISO symbol for ABS malfunction in FMVSS No. 123 is also consistent with the recently adopted GTR No. 12, related to the location, identification, and operation of motorcycle controls, telltales, and indicators. *See http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29wgs/wp29gen/wp29registry/ECE-TRANS-180a12e.pdf.* However, this rulemaking is not intended to implement any other provision of GTR No. 12.

result from allowing motorcycle manufacturers to use the ISO symbol for the ABS malfunction telltale rather than requiring them to add a new ABS malfunction telltale at this time.

We are also proposing a correction of a typographical error in FMVSS No. 122. In paragraph S6.3.2(d), which contains the test procedure for the dry stop test with a single brake control actuated, the brake actuation force specified for motorcycles in categories 3–1, 3–2, 3–3, and 3–5 is specified as ≤350 N and, for category 3–4 motorcycles, ≤500 N. However, the higher actuation force was intended only for category 3–5 motorcycles rather than category 3–4 motorcycles. We are proposing this correction in this NPRM to be consistent with GTR No. 3 and the intent of the agency in the final rule.

*Public Participation*

How long do I have to submit comments?

We are providing a 30-day comment period. The comment period is shorter than the customary 60-day comment period used by the agency because the requirement that motorcycles equipped with ABS contain a malfunction telltale meeting the requirements of FMVSS No. 122 took effect on September 1, 2014. We do not believe a longer comment period is necessary for the public to consider this proposal and respond to it. A shorter comment period will allow us to issue a final rule more quickly to ensure any uncertainty about the legal requirements for the ABS malfunction telltale lamp is resolved as quickly as possible.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments electronically to the docket following the steps outlined under **ADDRESSES**. You may also submit two copies of your comments, including the attachments, by mail to Docket Management at the beginning of this document, under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish to be notified upon receipt of your mailed comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments received after the specified comment closing date. If we receive a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov* and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

You may also see the comments at the address and times given near the beginning of this document under **ADDRESSES**.

## IV. Rulemaking Analyses and Notices

### *A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined not to be significant under the Department's regulatory policies and procedures.

The effects of the proposed changes are so minimal that the preparation of a full regulatory evaluation is not required. We believe that this NPRM, if adopted, would not impose any costs upon manufacturers or vehicle purchasers. It would, however, prevent motorcycle manufacturers from incurring costs associated with redesign of the ABS malfunction telltale or instrument panel that were not intended. This proposal is not expect to have any impact on safety.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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 effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)).

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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this NPRM under the Regulatory Flexibility Act. I certify that this NPRM will not have a significant economic impact on a substantial number of small entities. This proposed rule would directly impact manufacturers of motorcycles equipped with ABS. We do not believe this NPRM will have a significant economic impact on those manufacturers. This NPRM would not require any action by manufacturers, but would prevent motorcycle manufacturers from incurring costs associated with redesign of the ABS malfunction telltale or instrument panel.

*C. Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

*D. Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*E. Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This notice is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is not any information

collection requirement associated with this NPRM.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This NPRM proposes the inclusion of an ISO symbol for ABS malfunction in the FMVSS related to motorcycle controls and displays. Although this symbol is currently allowed by FMVSS No. 122, this rulemaking would remove the letter height requirement for the letters ''ABS,'' which is not included in the ISO standard.

*H. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This NPRM would not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

*I. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

*J. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

*K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*L. 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 (65 FR 19477–78).

**List of Subjects in 49 CFR Parts 571**

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.122 by revising S5.1.10.2(c) and S6.3.2(d)(2)(i) and (d)(2)(ii) to read as follows:

**§ 571.122 Standard No. 122; Motorcycle brake systems.**

* * * * *

S5.1.10.2 *Antilock brake system warning lamps.*

* * * * *

(c) The warning lamp shall be labeled in accordance with the specifications in Table 3 of Standard No. 123 (§ 571.123) for ''ABS Malfunction'' (Item No. 13).

* * * * *

S6.3.2 *Test conditions and procedure.*

* * * * *

(d) * * *

(2) * * *

(i) ≤350 N for motorcycle categories 3–1, 3–2, 3–3, and 3–4.

(ii) ≤500 N for motorcycle category 3–5.

* * * * *

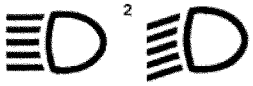
■ 3. Amend § 571.123 by revising Table 3 to read as follows:

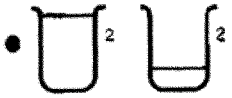
**§ 571.123 Standard No. 123; Motorcycle controls and displays.**

* * * * *

BILLING CODE 4910–59–P

**Table 3**
**Motorcycle Control and Display Identification Requirements**

| No. | Column 1 | Column 2 | Column 3 | Column 4 |
|---|---|---|---|---|
| | *Equipment* | *Control and Display Identification Word* | *Control and Display Identification Symbol* | *Identification at Appropriate Position of Control and Display* |
| 1 | Ignition | Ignition | ——— | Off |
| 2 | Supplemental Engine Stop (Off, Run) | Engine Stop |  | Off, Run |
| 3 | Manual Choke or Mixture Enrichment | Choke or Enrichener |  | ——— |
| 4 | Electric Starter | ——— |  | Start [1] |
| 5 | Headlamp Upper-Lower Beam Control | Lights |  [2] | Hi, Lo |
| 6 | Horn | Horn |  | ——— |
| 7 | Turn Signal | Turn |  [2] [3] | L, R |
| 8 | Speedometer | MPH<br>OR<br>MPH and km/h [5] | ——— | MPH [4]<br>MPH, km/h [5] |
| 9 | Neutral Indicator | Neutral |  | ——— |

| | | | | |
|---|---|---|---|---|
| 10 | Upper Beam Indicator | High Beam |  | |
| 11 | Tachometer | R.P.M. or r/min. | | |
| 12 | Fuel Tank Shutoff Valve (Off, On, Res.) | Fuel |  | Off, On, Res. |
| 13 | ABS Malfunction | ABS or Anti-lock or Antilock [6] |  | |

[1] Required only if electric starter is separate from ignition switch.
[2] Framed areas may be filled
[3] The pair of arrows is a single symbol. When the indicators for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
[4] MPH increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at 5 mph intervals. (37 F.R. 17474 – August 19, 1972. Effective: 9/1/74)
[5] If the speedometer is graduated in miles per hour (MPH) and in kilometers per hour (km/h), the identifying words or abbreviation shall be "MPH" and "km/h" in any combination of upper or lower case letters.
[6] Letters shall be at least 2.4 mm (3/32 in.) high.

Issued in Washington, DC, on November 19, 2014 under authority delegated in 49 CFR 1.95, 501.5, and 501.8.

**R. Ryan Posten,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2014–27871 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–59–C**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**RIN 0648–BE27**

## Fisheries Off West Coast States; Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan

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

**ACTION:** Notice of availability of proposed fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 24 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) for Secretarial review. Amendment 24 would modify the PCGFMP to implement default harvest control rules, make minor changes to clarify routine management measure adjustment and implementation procedures, add two rockfish species to the PCGFMP, and designate several species as Ecosystem Component Species.

**DATES:** Comments on Amendment 24 must be received on or before January 26, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2014–0138, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0138,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, 7600 Sand Point Way, NE., Seattle, WA, 98115.
- *Fax:* 206–525–4736; Attn: Sarah Williams

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Information relevant to Amendment 24, which includes a draft environmental impact statement (EIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280, or at *www.pcouncil.org.* Copies of additional reports referred to

in this document may also be obtained from the Council.

**FOR FURTHER INFORMATION CONTACT:** Sarah Williams, phone: 206–526–4646, fax: 206–526–6736, or email: *sarah.williams@noaa.gov*

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This notice is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Council's Web site at *http://www.pcouncil.org.*

**Background**

The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendment 24 to the PCGFMP.

Amendment 24 consists of three components: (1) Default harvest control rules; (2) a suite of minor changes, including clarification of routine management measures and adjustments to those measures, clarification to the harvest specifications decision making schedule, changes to the description of the biennial management cycle process, technical changes, updates to make the FMP consistent with SSC guidance on the $F_{MSY}$ proxy for elasmobranchs, and clarifications to definitions; and (3) addition of two rockfish species to the PCGFMP and the designation of EC species.

**Default Harvest Control Rules, Clarifications, and Adding Species**

Over the past 3 years, the Council has been examining the harvest specifications and management measures decision-making process, and related analytical requirements in an effort to simplify these processes. Several biennial harvest specifications cycles have not met their intended January 1 start date and it was thought that efficiencies could be gained by adjusting Council decision-making and the analysis undertaken each biennial cycle. Therefore, the Council undertook Amendment 24 to examine ways to streamline the Council decision-making in each biennium to implement the harvest specifications and management measures. This resulted in several changes to how the Council will address harvest specifications beginning in the 2017–2018 biennium.

The use of default harvest control rules and their addition to the FMP is intended to simplify the Council's harvest specifications process and acknowledge that the Council generally maintains the policy choices from the previous biennium to determine the annual catch limits for the next biennium. Under Amendment 24, the harvest control rules used to determine the previous biennium's harvest specifications (*i.e.,* overfishing limits, acceptable biological catches, and annual catch limits) would automatically be applied to the best scientific information available to determine the future biennium's harvest specifications. NMFS would implement harvest specifications based on the default harvest control rules unless the Council makes a different recommendation. In addition to the use of defaults to simplify the harvest specifications process, Amendment 24 makes changes to the description of the type of management measures that may be addressed through the biennial process. Clarifying that the management measures should be: (1) Management measures to be classified as routine the first time these measures are used; (2) adjustments to current management measures that are classified as routine; and (3) new management measures, not previously analyzed. This clarifies the focus of management measures and is intended to simplify the management measures proposed through each biennial cycle.

The addition of sunset rockfish to the PCGFMP recognizes new information from the most recent stock assessment on vermillion rockfish, which shows that there are two stocks (vermillion and sunset rockfish) instead of one as previously thought. Blackspotted rockfish are being added to the PCGFMP because blackspotted/rougheye were assessed as one stock and a sorting requirement is proposed for blackspotted/rougheye rockfish through the 2015–2016 harvest specifications and management measures proposed rule.

**Designation of Ecosystem Component Species**

Finally, Amendment 24 designates several species and species groups as Ecosystem Component (EC) species. The concept of EC species was added to the PCGFMP under Amendment 23, which revised the PCGFMP to comply with the revised MSA National Standard 1 Guidelines. However, no species were designated as EC species at that time. Generally, EC species should be a non-target stock, not be subject to overfishing or determined to be overfished or approaching an overfished condition, and not likely to become so in the absence of management measures; and not generally retained for sale or personal use. Amendment 24 proposes to designate the following species, which were already in the PCGFMP, as EC species: big skate, California skate, Pacific grenadier, soupfin shark, spotted ratfish, and finescale codling. Additionally, the following species or species groups are proposed to be added to the PCGFMP as EC species: Aleutian skate, Bering/sandpaper skate, roughtail/black skate, all other skates, giant grenadier, and all other grenadiers. EC species are not considered ''in the fishery'', and do not require establishment of harvest specifications (*e.g.* OFLs, ABCs and ACLs).

**Public Comments**

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. A proposed rule to implement Amendment 24 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Amendment 24, along with the groundfish specifications and management measures for 2015 and 2016, in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: November 21, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–28034 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 79, No. 228
Wednesday, November 26, 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

### Submission for OMB Review; Comment Request

November 21, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 26, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Foot-and-Mouth Disease; Prohibition on Importation of Farm Equipment.

*OMB Control Number:* 0579–0195.

*Summary of Collection:* The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. Regulations contained in 9 CFR chapter 1, subchapter D, parts 91 through 99 prohibits the importation of used farm equipment into the United States from regions in which foot-and-mouth disease or rinderpest exist, unless the equipment has been stream-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products.

*Need and Use of the Information:* APHIS will collect information through the use of a certification statement completed by the farm equipment exporter and signed by an authorized official of the national animal health service of the region of origin, stating that the steam-cleaning of the equipment has been done. This is necessary to help prevent the introduction of food-and-mouth disease into the United States. If the information were not collected APHIS would be forced to discontinue the importation of any used farm equipment from FMD affected regions, a development that could have a damaging financial impact on exporters and importers of this equipment.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 132.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 182.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–28032 Filed 11–25–14; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

### Notice of Intent To Request Approval To Establish a New Information Collection

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The National Institute of Food and Agriculture published a document in the **Federal Register** on November 6, 2014 concerning a request to establish a new information collection for letter of intent. The document did not contain the burden hours.

**FOR FURTHER INFORMATION CONTACT:** Robert Martin, *rmartin@nifa.usda.gov*

### Correction

In the **Federal Register** on November 6, 2014, in FR Doc. 014–26404, on page 65925, add the following:

ESTIMATED ANNUAL BURDEN

| Title | Form No. | Respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|---|
| Letter of Intent Form (LOI) (Individual) | N/A | 4,858 | 1 | 4,858 | 2 | 9,716 |
| Assurance Statement (State) | NIFA–2008 | 2,000 | 1 | 2,000 | 0.5 | 1,000 |
| Fellowship/Scholarships Entry/Exit Form (State) | NIFA–2010 | 150 | 1 | 150 | 3 | 450.0 |
| Supplemental Information Form (State) | N/A | 5,500 | 1 | 5,500 | 2 | 11,000 |

ESTIMATED ANNUAL BURDEN—Continued

| Title | Form No. | Respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|---|
| Supplemental Information Form (Individual) | N/A | 50 | 1 | 50 | 2 | 100.0 |
| Supplemental Information Form (Private) | N/A | 600 | 1 | 600 | 2 | 1200.0 |
| Supplemental Information Form (Federal) | N/A | 50 | 1 | 50 | 2 | 100.0 |
| Proposal Type Form (State) | N/A | 2,050 | 1 | 2,050 | 0.25 | 512.5 |
| Proposal Type Form (Private) | N/A | 50 | 1 | 50 | 0.25 | 12.5 |
| Proposal Type Form (Federal) | N/A | 50 | 1 | 50 | 0.25 | 12.5 |
| Application Modification Form | N/A | 0 | 1 | 0 | 0.08 | 0.0 |
| Total | | | | | | 24,388 |

Dated: November 20, 2014.

**Robert Holland,**

*Associate Director for Operations, National Institute of Food and Agriculture.*

[FR Doc. 2014–28025 Filed 11–25–14; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology, Commerce.

*Title:* Proposed Information Collection; Comment Request; Organization of Scientific Area Committees (OSAC) Membership Application.

*OMB Control Number:* 0639–0070.

*Form Number(s):* None.

*Type of Request:* Regular.

*Number of Respondents:* 1,000 per year.

*Average Hours per Response:* 0.50 hour.

*Burden Hours:* 500 per year.

*Needs and Uses:* The information requested will allow NIST along with the Department of Justice (DOJ) to fill new positions created within the Organization of Scientific Area Committees (OSAC) and to replace positions vacated by resignation or rotation of more than 600 current members to enable a coordinated U.S. approach to Standards for the Forensic Science Disciplines to include broad participation from Forensic Science Practitioners, Researchers, Metrologists, Accreditation Bodies, Defense, and Prosecution.

*Affected Public:* Individuals.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: November 20, 2014.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–27925 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### First Responder Network Authority; First Responder Network Authority Board Meetings

**AGENCY:** First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Board of the First Responder Network Authority (FirstNet) will convene an open public meeting of the Board on December 10, 2014, preceded by meetings of the Board Committees on December 9, 2014.

**DATES:** On December 9, 2014 between 9:00 a.m. and 5:00 p.m. Mountain Standard Time there will be sequential meetings of FirstNet's four Board Committees: (1) Governance and Personnel; (2) Technology; (3) Outreach; and (4) Finance. The FirstNet Board will hold a meeting on December 10, 2014, between 9:00 a.m. and 12:00 p.m. Mountain Standard Time.

**ADDRESSES:** The meetings on December 9 and 10, 2014 will be held at the Salt Lake City Police Department, 475 South 300 East, Salt Lake City, Utah 84114–5497. The meetings will be held in the auditorium.

**FOR FURTHER INFORMATION CONTACT:** Uzoma Onyeije, Secretary, FirstNet, 12201 Sunrise Valley Drive Reston, VA 20192: telephone (703) 648–4165; email *uzoma.onyeije@firstnet.gov*. Please direct media inquiries to Corey Ray at (703) 648–4109.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Board of FirstNet will convene an open public meeting of the Board on December 10, 2014, preceded by meetings of the Board Committees on December 9, 2014.

*Background:* The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), established FirstNet as an independent authority within NTIA that is headed by a Board. The Act directs FirstNet to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

*Matters To Be Considered:* FirstNet will post detailed agendas of each meeting on its Web site, *http://www.firstnet.gov,* prior to the meetings. The agenda topics are subject to change. Please note that the subjects that will be discussed by the Committees and the Board may involve commercial or financial information that is privileged or confidential, personnel matters, or other legal matters affecting FirstNet. As such, the Committee chairs and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

*Times and Dates of December 2014 Meetings:* On December 9, 2014, between 9:00 a.m. and 5:00 p.m.

Mountain Standard Time there will be sequential meetings of FirstNet's four committees. The full FirstNet Board meeting will be held on December 10, 2014, between 9:00 and 12:00 p.m. Mountain Standard Time.

*Place:* The meetings on December 9 and 10, 2014 will be held at the Salt Lake City Police Department, 475 South 300 East, Salt Lake City, Utah 84114–5497. The meetings will be held in the auditorium.

*Other Information:* These meetings are open to the public and press on a first-come, first-served basis. Space is limited. In order to get an accurate headcount, all expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@firstnet.gov.* If the number of RSVPs indicates that expected attendance has reached auditorium capacity, FirstNet will respond to all subsequent notices indicating that auditorium capacity has been reached and that in person viewing may no longer be available but that the meeting may still be viewed by webcast as detailed below. For access to the meetings, valid, government issued photo identification may be requested for security reasons.

The meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Uzoma Onyeije, Secretary, FirstNet, at (703) 648–4165 or *uzoma.onyeije@firstnet.gov* at least five (5) business days before the meeting.

The meetings will also be webcast. Please refer to FirstNet's Web site at *www.firstnet.gov* for webcast instructions and other information. If you have technical questions regarding the webcast, please contact Ruben Vasquez at (703) 648–4195 or by email at *ruben.vasquez@firstnet.gov.* The meetings will also be available by phone. Please call 888–997–9859 and provide the password ''FirstNet.''

*Records:* FirstNet maintains records of all Board proceedings. Minutes of the Board Meeting and the Committee meetings will be available at *www.firstnet.gov.*

Dated: November 20, 2014.

**Stuart Kupinsky,**

*Chief Counsel, First Responder Network Authority.*

[FR Doc. 2014–28006 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–IL–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Utah State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision 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). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC

*Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

*Docket Number:* 14–021. *Applicant:* Utah State University, Logan, Utah 84322–2400. *Instrument:* Respirometer for measuring the oxygen consumption of aquatic animals.

*Manufacturer:* Loligo Systems, Denmark. *Intended Use:* See notice at 79 FR 60137, October 6, 2014. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to better understand how the ability of aquatic organisms to obtain oxygen under different environmental conditions affects their growth, survivorship, distribution, and abundance. The phenomenon being studied is the rate of oxygen consumption by aquatic invertebrates, using the instrument under different temperatures and pollution concentrations. Continuous measurement of metabolic (oxygen consumption) response to stress by small aquatic organisms (<10mm in length) requires a flow-through system with oxygen probes and equipment that can both be programmed to precisely increase the temperature of a water bath and automatically detect ug level changes in oxygen concentrations, without which the research could not be conducted.

*Docket Number:* 14–023. *Applicant:* Louisiana State University, Baton Rouge, LA 70803. *Instrument:* Scanning Probe Microscope (SPM)—scanning tunneling microscopy.

*Manufacturer:* SPECS Surface Nano Analysis, Germany. *Intended Use:* See notice at 79 FR 60137, October 6, 2014. *Comments:* None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. *Reasons:* The instrument will be used to elucidate catalytic properties of metal and metal-oxide systems, uncovering new schemes by which organic molecules become environmentally hazardous upon chemisorption. Scanning tunneling microscopy (STM) will be used to probe the nanoscale atomic structure, growth, and atomic/molecular dynamics of a variety of systems, including metal nanoclusters on oxides and grasphene, metal oxide surfaces and metal surfaces. All experiments will be conducted in ultra-high vacuum conditions, including in addition the STM, other surface sciences probes such as electron-energy loss spectroscopy, x-ray and UV photoemission spectroscopy. The electronics and STM head must provide 60 frames per second scan rate with pixel density of 128×128, the STM head must be mounted on an 8 inch flange with a vertical face, the instrument must have the ability to sputter clean the tip without removing it from the STM scan head, the tunneling bias voltage must be applied to the sample, and the preamp must collect current from the tip.

Dated: November 17, 2014.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Enforcement and Compliance.*

[FR Doc. 2014–28056 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–014]**

### 53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Negative Determination of Critical Circumstances; and Postponement of Final Determination and Extension of Provisional Measures

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''Department'') preliminarily determines that 53-foot domestic dry containers (''domestic dry containers'')

from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is October 1, 2013, through March 31, 2014. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

**DATES:** *Effective Date:* November 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Brian Davis or John Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–0195, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published the notice of initiation of this investigation on May 19, 2014.[1] Pursuant to section 733(c)(1)(A) of the Act, on August 28, 2014, the Department postponed this preliminary LTFV determination by a period of 50 days.[2]

## Scope of the Investigation

The merchandise subject to investigation is closed (*i.e.,* not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport [3] of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including ''53-foot containers,'' ''53-foot dry containers,'' ''53-foot domestic dry containers,'' ''domestic dry containers'' and ''domestic containers.'' Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for ''instruments of international traffic'' pursuant to 19 U.S.C. 1322 and 19 CFR 10.41a may be classified under subheading 9803.00.50, HTSUS.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive. For a complete description of the scope of the investigation, *see* Appendix I to this notice.

Various parties submitted comments on the scope. For a discussion of these comments, *see* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Decision Memorandum for the Preliminary Determination,'' dated concurrently with, and hereby adopted by, this notice (''Preliminary Decision Memorandum'').[4] The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located in room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

## Methodology

The Department conducted this investigation in accordance with section 731 of the Act. We calculated export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value (''NV'') in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

## Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[5]

## Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist for the exporter-producer combinations listed below during the period October 1, 2013, through March 31, 2014:

| Exporter | Producer | Weighted-average dumping margin (percent) |
|---|---|---|
| Hui Zhou Pacific Container Co., Ltd./Qingdao Pacific Container Co., Ltd./Qidong Singamas Energy Equipment Co., Ltd./Singamas Management Services Limited. | Hui Zhou Pacific Container Co., Ltd./Qingdao Pacific Container Co., Ltd./Qidong Singamas Energy Equipment Co., Ltd. | 153.24 |
| PRC-Wide Entity | | 24.27 |

As detailed in the Preliminary Decision Memorandum, China International Marine Containers (Group) Co., Ltd., China International Marine Containers (HK) Ltd., Xinhui CIMC Special Transportation Equipment Co., Ltd., Nantong CIMC-Special Transportation Equipment Manufacture Co., Ltd., and Qingdao CIMC Container Manufacture Co., Ltd. (collectively, ''CIMC''), a mandatory respondent in this investigation, did not demonstrate that it is entitled to a separate rate and we consider CIMC to be the PRC-Wide Entity.

[1] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 79 FR 28674 (May 19, 2014) (''*Initiation Notice*'').

[2] *See 53-Foot Domestic Dry Containers From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 79 FR 51305 (August 28, 2014).

[3] ''Intermodal transport'' refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

[4] For a list of topics discussed in the Preliminary Decision Memorandum, *see* Appendix II to this notice.

[5] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

**Preliminary Negative Determination of Critical Circumstances**

On October 30, 2014, Stoughton Trailers LLC (''Petitioner''), filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of domestic dry containers from the PRC.[6] We preliminarily determine that Petitioner's critical circumstances allegation is deficient because it does not contain information regarding how ''the importer knew or should have known that the exporter was selling the merchandise at less than fair value and that there was likely to be material injury by reason of such sales.'' [7] Therefore, we preliminarily determine that critical circumstances do not exist for Singamas and the PRC-wide entity. A discussion of our determination can be found in the Preliminary Decision Memorandum at the section, ''Critical Circumstances.''

**Disclosure and Public Comment**

The Department intends to disclose calculations performed for this preliminary determination to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance, through Enforcement and Compliance's electronic records system, ACCESS, no later than seven days after the date on which the final verification report is issued in this proceeding.[8] Rebuttal briefs, limited to issues raised in case briefs, may be submitted through ACCESS no later than five days after the deadline for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically through ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time. Hearing requests must be received by the Department within 30 days after the date of publication of this notice [10] and should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be presented at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of domestic dry containers from the PRC, as described in the ''Scope of the Investigation'' section above, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.**

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit [11] equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies [12] and estimated domestic subsidy pass-through,[13] as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity, 24.27 percent; and (3) for all non-PRC exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Furthermore, as stated above and consistent with our practice, we will instruct CBP to require a cash deposit equal to the amount by which NV exceeds the export price or constructed export price, less the amount of the countervailing duty (''CVD'') rate determined to constitute an export subsidy. In this LTFV investigation, with regard to the PRC-wide entity rate (which is based on CIMC's data),[14] export subsidies constitute 4.75 percent [15] of CIMC's preliminarily calculated CVD rate in the companion CVD investigation. Therefore, we will offset the PRC-wide rate of 24.27 percent by the CVD rate attributable to export subsidies (*i.e.,* 4.75 percent) to calculate the preliminary PRC-wide entity cash deposit rate for this LTFV investigation.

We are adjusting the preliminary cash deposit rate for estimated domestic subsidy pass-through for Singamas (*i.e.,* 6.39 percent). However, we are not adjusting the PRC-wide entity rate for estimated domestic subsidy pass-through because we have no basis upon which to make such an adjustment.[16]

**Postponement of Final Determination and Extension of Provisional Measures**

Pursuant to requests from the mandatory respondents Singamas [17] and

[6] *See* Letter from Petitioner to the Secretary of Commerce, ''53-Foot Domestic Dry Containers from the People's Republic of China,'' dated October 30, 2014.

[7] *See* section 733(e)(1)(A)(ii) of the Act.

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.310(c).

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[12] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[13] For further discussion, *see* the Preliminary Decision Memorandum at the section, ''Section 777A(f) of the Act.''

[14] For further discussion, *see* the Preliminary Decision Memorandum at the section, ''The PRC-wide Entity.''

[15] The following subsidy program in the preliminary determination of the companion CVD investigation is an export subsidy: Export Seller's Credits from China Ex-Im Bank (4.75 percent for CIMC). *See Countervailing Duty Investigation of 53-Foot Domestic Dry Containers From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 79 FR 58320 (September 29, 2014) and accompanying Preliminary Decision Memorandum at 21–22.

[16] *See* Preliminary Decision Memorandum at the section, ''Section 777A(f) of the Act.''

[17] *See* Letter from Singamas to the Secretary of Commerce regarding ''53-Foot Domestic Dry Containers from the People's Republic of China; Request to Extend Final Determination,'' dated November 14, 2014.

CIMC [18] and Petitioner,[19] we are postponing the final determination. Further, Singamas and CIMC requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly.[20] Accordingly, we intend to make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[21]

## International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this investigation is affirmative, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, threatened with material injury, or is materially retarded, by reason of imports of domestic dry containers from the PRC, or sales (or the likelihood of sales) for importation, of the merchandise under consideration before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 19, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—Scope of the Investigation

The merchandise subject to investigation is closed (*i.e.,* not open top) van containers exceeding 14.63 meters (48 feet) but generally measuring 16.154 meters (53 feet) in exterior length, which are designed for the intermodal transport [22] of goods other than bulk liquids within North America primarily by rail or by road vehicle, or by a combination of rail and road vehicle (domestic containers). The merchandise is known in the industry by varying terms including ''53-foot containers,'' ''53-foot dry containers,'' ''53-foot domestic dry containers,'' ''domestic dry containers'' and ''domestic containers.'' These terms all describe the same article with the same design and performance characteristics. Notwithstanding the particular terminology used to describe the merchandise, all merchandise that meets the definition set forth herein is included within the scope of this investigation.

Domestic containers generally meet the characteristic for closed van containers for domestic intermodal service as described in the American Association of Railroads (AAR) Manual of Standards and Recommended Practices Intermodal Equipment Manual Closed Van Containers for Domestic Intermodal Service Specification M 930 Adopted: 1972; Last Revised 2013 (AAR Specifications) for 53-foot and 53-foot high cube containers. The AAR Specifications generally define design, performance and testing requirements for closed van containers, but are not dispositive for purposes of defining subject merchandise within this scope definition. Containers which may not fall precisely within the AAR Specifications or any successor equivalent specifications are included within the scope definition of the subject merchandise if they have the exterior dimensions referenced below, are suitable for use in intermodal transportation, are capable of and suitable for double-stacking [23] in intermodal transportation, and otherwise meet the scope definition for the subject merchandise.

Domestic containers have the following actual exterior dimensions: An exterior length exceeding 14.63 meters (48 feet) but not exceeding 16.154 meters (53 feet); an exterior width of between 2.438 meters and 2.60 meters (between 8 feet and 8 feet 6⅜ inches); and an exterior height of between 2.438 meters and 2.908 meters (between 8 feet and 9 feet 6½ inches), all subject to tolerances as allowed by the AAR Specifications. In addition to two frames (one at either end of the container), the domestic containers within the scope definition have two stacking frames located equidistant from each end of the container, as required by the AAR Specifications. The stacking frames have four upper handling fittings and four bottom dual aperture handling fittings, placed at the respective corners of the stacking frames. Domestic containers also have two forward facing fittings at the front lower corners and two downward facing fittings at the rear lower corners of the container to facilitate chassis interface.

All domestic containers as described herein are included within this scope definition, regardless of whether the merchandise enters the United States in a final, assembled condition, or as an unassembled kit or substantially complete domestic container which requires additional manipulation or processing after entry into the United States to be made ready for use as a domestic container.

The scope of this investigation excludes the following items: (1) Refrigerated containers; (2) trailers, where the cargo box and rear wheeled chassis are of integrated construction, and the cargo box of the unit may not be separated from the chassis for further intermodal transport; (3) container chassis, whether or not imported with domestic containers, but the domestic containers remain subject merchandise, to the extent they meet the written description of the scope.

Imports of the subject merchandise are provided for under subheading 8609.00.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Imports of the subject merchandise which meet the definition of and requirements for ''instruments of international traffic'' pursuant to 19 U.S.C. 1322 and 19 CFR 10.41a may be classified under subheading 9803.00.50, HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum



[FR Doc. 2014–28054 Filed 11–25–14; 8:45 am]

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[18] *See* Letter from CIMC to the Secretary of Commerce regarding ''Antidumping Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Extension of Final Determination'' dated November 17, 2014.

[19] *See* Letter from Petitioner to the Secretary of Commerce regarding ''53-Foot Domestic Dry Containers from the People's Republic of China,'' dated November 14, 2014.

[20] *Id.*

[21] *See also* 19 CFR 351.210(b)(2) and (e).

[22] ''Intermodal transport'' refers to a movement of freight using more than one mode of transportation, most commonly on a container chassis for on-the-road transportation and on a rail car for rail transportation.

[23] ''Double-stacking'' refers to two levels of intermodal containers on a rail car, one on top of the other.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–992, A–560–826]**

### Monosodium Glutamate From the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty (AD) orders on monosodium glutamate (MSG) from the People's Republic of China (the PRC) and the Republic of Indonesia (Indonesia). In addition, the Department is amending its final determination of sales at less than fair value (LTFV) from the PRC to correct certain ministerial errors.

**DATES:** Effective Date: November 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Milton Koch at (202) 482–2584 (the PRC); or Gene Calvert at (202) 482–3586 (Indonesia), AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(c), on September 29, 2014, the Department published affirmative final determinations of sales at LTFV in the AD investigations of MSG from the PRC and Indonesia.[1] On November 10, 2014, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of MSG from the PRC and Indonesia.[2] In addition, the ITC found in its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's final affirmative critical circumstances findings.[3]

#### Scope of the Orders

The products covered by these orders are monosodium glutamate (MSG), whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in these orders when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in these orders regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG in monohydrate form has a molecular formula of $C_5H_8NO_4Na$-$H_2O$, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of $C_5H_8NO_4Na$, a CAS registry number of 142–47–2, and a UNII number of C3C196L9FG.

Merchandise covered by these orders is currently classified in the Harmonized Tariff Schedule (HTS) of the United States at subheading 2922.42.10.00. Merchandise covered by these orders may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. These tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

#### Amendment to the Final Determination of Sales at Less Than Fair Value of MSG From the PRC

On September 29, 2014, the Department published its affirmative final determination in the proceeding covering MSG from the PRC.[4] In accordance with 19 CFR 351.224(b), on September 24, 2014, the Department disclosed to interested parties the details of its calculations for the final determination. On September 29, 2014, Ajinomoto North America Inc. (Petitioner), petitioner in the investigation, and Langfang Meihua Bio-Technology Co., Ltd., Tongliao Meihua Biological SCI–TECH Co., Ltd., Meihua Group International Trading (Hong Kong) Limited, Meihua Holdings Group Co., Ltd., and Meihua Holdings Group Co., Ltd., Bazhou Branch (collectively, the Meihua Group), a respondent in the PRC investigation, timely submitted ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct these alleged ministerial errors. On October 6, 2014, the Meihua Group submitted rebuttal comments to Petitioner's ministerial error allegations.

After analyzing all comments and rebuttal comments that were submitted by interested parties, we determined that, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), certain ministerial errors were made with respect to the Meihua Group's margin calculation and the PRC-wide entity rate.[5] Specifically, the Department inadvertently failed to: (1) Select the appropriate highest transaction-specific margin for the PRC-wide entity rate, and (2) adjust certain costs of the Meihua Group's ancillary operations regarding its MSG production. The amended dumping margins are provided, below.

#### Antidumping Duty Orders

As stated above, on November 10, 2014, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of MSG from the PRC and Indonesia.[6] Because the ITC determined that imports of MSG from the PRC and Indonesia are materially injuring a U.S. industry, unliquidated entries of such merchandise from the PRC and Indonesia, entered or withdrawn from warehouse, for consumption are subject

[1] *See Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances,* 79 FR 58326 (September 29, 2014) (*PRC Final Determination*), and *Monosodium Glutamate From the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value,* 79 FR 58329 (September 29, 2014) (*Indonesia Final Determination*).

[2] *See Monosodium Glutamate from China and Indonesia,* USITC Investigation Nos. 731–TA–1229–1230 (Final) Publication 4499 (November 2014) (*ITC Determinations*).

[3] *Id.*

[4] *See PRC Final Determination.*

[5] For a detailed discussion of the alleged ministerial errors, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding, ''Final Determination of Antidumping Duty Investigation of Monosodium Glutamate from the People's Republic of China: Allegation of Ministerial Errors,'' dated November 20, 2014.

[6] *See ITC Determinations.*

to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of MSG from the PRC and Indonesia. These antidumping duties will be assessed on unliquidated entries of MSG from the PRC and Indonesia entered, or withdrawn from warehouse, for consumption on or after May 8, 2014, the date of publication of the preliminary determination,[7] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determinations as further described below.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of MSG from the PRC and Indonesia. We will also instruct CBP to require cash deposits equal to the amounts indicated below. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits at rates equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit at rates equal to the estimated weighted-average antidumping duty margins listed below.[8] The relevant all-others rate for Indonesia or the rate for the PRC-wide entity, as applicable, apply to all exporter and producer combinations not specifically listed.

**Provisional Measures**

Section 773(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of MSG from the PRC and Indonesia, we extended the four-month period to no more than six months in each case.[9] In the underlying investigations, the Department published the preliminary determinations on May 8, 2014. Therefore, the six-month period beginning on the date of publication of the preliminary determinations ended on November 4, 2014 (*i.e.,* the last day of that six-month period was November 3, 2014). Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

As a result, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of MSG from the PRC and Indonesia, entered, or withdrawn from warehouse, for consumption on or after November 4, 2014, the date the provisional measures expired, until and through the day proceeding the date of publication of the ITC's final injury determinations in the **Federal Register.** Suspension of liquidation resumes on the date of publication of the ITC's final determination in the **Federal Register.** The weighted-average dumping margins are as follows:

THE PRC

| Exporter | Producer | Weighted-average dumping margin (percent) |
|---|---|---|
| Langfang Meihua Bio-Technology Co., Ltd./Meihua Group International Trading (Hong Kong) Limited. | Tongliao Meihua Biological SCI–TECH Co., Ltd./Meihua Holdings Group Co., Ltd., Bazhou Branch. | 20.09 |
| Fujian Province Jianyang Wuyi MSG Co., Ltd | Fujian Province Jianyang Wuyi MSG Co., Ltd | 20.09 |
| Neimenggu Fufeng Biotechnologies Co., Ltd | Neimenggu Fufeng Biotechnologies Co., Ltd | 20.09 |
| Baoji Fufeng Biotechnologies Co., Ltd | Baoji Fufeng Biotechnologies Co., Ltd | 20.09 |
| PRC-wide Entity | | 39.03 |

The PRC-wide entity includes Shandong Linghua Monosodium Glutamate Incorporated Company (Shandong Linghua), a mandatory respondent in this investigation.

INDONESIA

| Exporter or producer | Weighted-average dumping margin (percent) |
|---|---|
| PT Cheil Jedang Indonesia | 6.19 |
| All Others | 6.19 |

**Critical Circumstances**

With regard to the ITC's negative critical circumstances determinations on imports of MSG from the PRC, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 7, 2014 (*i.e.,* 90 days prior to the date of publication of the *PRC Preliminary Determination*), but before May 8, 2014, (*i.e.,* the date of publication of the *PRC Preliminary Determination*).

**Notifications to Interested Parties**

This notice constitutes the AD orders with respect to MSG from the PRC and

[7] *See Monosodium Glutamate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 26408 (May 8, 2014) (*PRC Preliminary Determination*), and *Monosodium Glutamate From the Republic of Indonesia: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 26406 (May 8, 2014).

[8] *See* section 736(a)(3) of the Act.

[9] *See* the April 23, 2014, Letter to the Secretary from the Meihua Group, ''Monosodium Glutamate from the People's Republic of China: Request for Extension of the Final Determination,'' and the April 28, 2014, Letter to the Secretary from PT. Cheil Jedang Indonesia and CJ America, Inc., ''Antidumping Duty Investigation of Monosodium Glutamate from Indonesia: Conditional Request to Postpone the Final Determination.''

Indonesia pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders and the amended final determination for PRC are published in accordance with sections 735(e), 736(a), and 777(i) of the Act, and 19 CFR 351.211 and 351.224(e).

Dated: November 20, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–28053 Filed 11–25–14; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Sanctuary System Business Advisory Council; Public Meeting

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting via web conference call of the Sanctuary System Business Advisory Council (Council). The web conference call is open to the public, and participants can dial into the call. Participants who choose to use the web conferencing feature in addition to the audio will be able to view the presentations as they are being given.

**DATES:** Members of the public wishing to participate in the meeting must register in advance by December 10, 2014. The meeting will be held Thursday, December 11, 2014, from 3:00 p.m. to 4:30 p.m. ET, and an opportunity for public comment will be provided at 4:05 p.m. ET. These times and the agenda topics described below are subject to change.

**ADDRESSES:** The meeting will be held via web conference call. Register by contacting Rebecca Holyoke at *rebecca.holyoke@noaa.gov* or (301) 713–7264. Webinar and teleconference capacity may be limited.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Holyoke, Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713– 7264, Fax: 301–713–0404; email: *rebecca.holyoke@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Keys, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustains healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (Council) has been formed to provide advice and recommendations to the Director regarding the relationship of the ONMS with the business community. Additional information on the Council can be found at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

*Matters To Be Considered:* The fourth meeting of the Council will provide an opportunity for council representatives to hear about ONMS efforts to promote national marine sanctuaries as sentinel sites for change detection and building a better understanding of coastal, marine, and Great Lakes ecosystems (*i.e.,* ONMS Sentinel Monitoring Program). Discussions will focus on potential expansion of or developing new collaborations to conduct research and monitoring, including engaging citizen scientists from sanctuary communities. The agenda is subject to change. The agenda is available at *http://sanctuaries.noaa.gov/management/bac/welcome.html.*

**Authority:** 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: November 7, 2014.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2014–27726 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Representative and Address Provisions.

*Agency Approval Number:* 0651–0035.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 140,863 hours annually.

*Number of Respondents:* 560,595 responses per year.

*Avg. Hours per Response:* The USPTO estimates that it will take the public approximately 3 minute (0.05 hours) to 1.5 hours to prepare the appropriate form or documents and submit to the USPTO.

*Needs and Uses:* This information collection includes the information necessary to submit a request to grant or revoke power of attorney for an application, patent, or reexamination proceeding, and for a registered practitioner to withdraw as attorney or agent of record. This collection also includes the information necessary to change the correspondence address for an application, patent, or reexamination proceeding, to request a Customer Number and manage the correspondence address and list of practitioners associated with a Customer Number, and to designate or change the correspondence address or fee address for one or more patents or applications by using a Customer Number.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0035 copy request'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 26, 2014 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 20, 2014.

**Marcie Lovett,**

*Records Management Division Director, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2014–27930 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Financial Transactions.

*Agency Approval Number:* 0651–0043.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 86,263 hours annually.

*Number of Respondents:* 2,590,950 responses per year.

*Avg. Hours per Response:* The USPTO estimates that it will take the public approximately 1 to 7 minutes (0.02 to .12 hours) to prepare the appropriate form or documents and submit to the USPTO.

*Needs and Uses:* Under 35 U.S.C. 41 and 15 U.S.C. 1113, the United States Patent and Trademark Office (USPTO) charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The provisions of 35 U.S.C. 41 and 15 U.S.C. 1113 are implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209. This information collection includes associated payment and account forms for the aforementioned financial transactions and methods.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov.*

Paper copies can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–43 copy request'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 26, 2014 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 20, 2014.

**Marcie Lovett,**

*Records Management Division Director, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2014–27931 Filed 11–25–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** DoD.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** The Department of Defense is publishing this notice to announce that it is renewing the charter for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (''the Board'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** This committee's charter is being renewed pursuant to 10 U.S.C. § 1114 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a), established the Board.

The Board is a statutory Federal advisory committee that provides independent advice and recommendations related to the actuarial matters associated with the Department of Defense (DoD) Medicare-Eligible Retiree Health Care Fund (''the Fund'') and other related matters. The Board, under the authority of 10 U.S.C. § 1114, will provide independent advice and recommendations related to actuarial matters associated with the Fund on matters referred by the Secretary of Defense, including those regarding:

a. Valuation of the Fund under 10 U.S.C. § 115(c);

b. Recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis; and

c. Advising the Secretary of Defense on all actuarial matters necessary to make determinations in order to finance liabilities of the Fund on an actuarially sound basis.

The Board reports to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary. The Board shall periodically, but not less than once every four years, report to the President and the Congress on the status of the Fund and will include recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

The Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) may act upon the Board's advice and recommendations.

The members are selected from among qualified professional actuaries who are members of the Society of Actuaries. The Board members will serve for a term of 15 years with annual renewals; except those Board members appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed and serve only until the end of such term. Board members may serve after the end of the term until a successor has taken the oath of office. The Secretary of Defense or the Deputy Secretary of Defense appoints the Board members. The Board's chair will be designated by the USD(P&R), on behalf of the Secretary of Defense. Board members who are not full-time or permanent part-time Federal employees, will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members and will, under the authority of 10 U.S.C. § 1114(a)(3), serve with compensation, to include travel and per diem for official travel, in accordance with 5 U.S.C. § 5703. Board members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee (RGE) members.

A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform

functions vested in the Board and for no other reason.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board.

Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or USD(P&R), as the Board's Sponsor.

Such subcommittees shall not work independently of the Board, and shall report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officer or employee.

All subcommittee members must be appointed by the Secretary of Defense or the Deputy Secretary of Defense to a term of service of one-to-four years, with annual renewals, even if the member in question is already a member of the Board, and no subcommittee members will serve more than two consecutive terms of service, unless authorized by the Secretary of Defense or Deputy Secretary of Defense. Subcommittee members who are full-time or permanent part-time Federal employees, will be appointed as experts or consultants pursuant to 41 CFR 102–3.130(a), to serve as regular government employee (RGE) members. Subcommittee members, who are not full-time or permanent part-time Federal employees, shall be appointed pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem related to the Board or its subcommittees, subcommittee members will serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Board's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD employee, appointed in accordance with established DoD policies and procedures.

The Board's DFO is required to be in attendance at all meetings of the Board and any subcommittees for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to established DoD policies and procedures, must attend the entire duration of all meetings of the Board and its subcommittees.

The DFO, or the Alternate DFO, calls all meetings of the Board and its subcommittees; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures; and chairs meetings when directed to do so by the official to whom the Board reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries.

All written statements shall be submitted to the DFO for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: November 21, 2014.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2014–27999 Filed 11–25–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2014–ICCD–0132]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Charter School Facilities National Questionnaire

**AGENCY:** Office of Innovation and Improvement (OII), 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 an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before December 26, 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–0132 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, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Soumya Sathya, 202–260–0819.

**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:* Charter School Facilities National Questionnaire.

*OMB Control Number:* 1855–0024.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local and Tribal Governments.

*Total Estimated Number of Annual Responses:* 369.

*Total Estimated Number of Annual Burden Hours:* 1,107.

*Abstract:* According to Part B section 5201 of the Elementary and Secondary Education Act, one of the established purposes of the Charter Schools Program at the U.S. Department of Education (ED) is to encourage ''States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools''. To help achieve this purpose, the Charter School Program needs reliable data to understand the current facilities landscape for charter schools. There have been discussions on the struggles of charter schools for equitable and adequate access to facilities and facilities financing, yet there were no official studies, reports, or analyses explicitly discussing the facility landscape of charter schools and the similarities and differences between charter school and traditional public school facilities. The Charter Schools Program, through the National Charter School Resource Center, administers a questionnaire conducted by the Colorado League of Charter Schools to gather data on charter schools facilities. This data helps to assess the true facilities challenges of the charter schools and what actions ED and the SEAs must take to better financially support the facilities needs of quality charter schools. ED would like to continue to use and administer this questionnaire in additional states and compile the data from all states into a facilities database. ED plans to conduct this survey in approximately three to four states per year, depending on the size of the state and local resources of the CSO to support the survey. This database will provide comprehensive information about the facilities for charter schools and the issues that charter schools face in trying to obtain adequate facilities. The League will produce a report and an analysis summarizing the findings per state.

Dated: November 20, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–27938 Filed 11–25–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2014–ICCD–0133]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals With Disabilities Education Act

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

**DATES:** Interested persons are invited to submit comments on or before December 26, 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–0133 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, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Rebecca Walawender, 202–245–7399.

**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:* State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals with Disabilities Education Act.

*OMB Control Number:* 1820–0600.

*Type of Review:* A reinstatement of a previously approved information collection.

*Respondents/Affected Public:* State, Local and Tribal Governments.

*Total Estimated Number of Annual Responses:* 73,503.

*Total Estimated Number of Annual Burden Hours:* 347,449.

*Abstract:* OMB Information Collection 1820–0600 reflects the provisions in the Act and the Part B regulations requiring States and/or local educational agencies (LEAs) to collect and maintain

information or data and, in some cases, report information or data to other public agencies or to the public. However, such information or data are not reported to the Secretary. Data are collected in the areas of private schools, parentally placed private school students, State high cost fund, notification of free and low cost legal services, early intervening services, notification of hearing officers and mediators, State complaint procedures, and the LEA application under Part B.

Dated: November 20, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–27939 Filed 11–25–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2014–ICCD–0136]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program Improvement Plan (PIP)

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before December 26, 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–0136 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, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Edward West, 202–245–6145.

**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:* Program Improvement Plan (PIP).

*OMB Control Number:* 1820–0693.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local and Tribal Governments.

*Total Estimated Number of Annual Responses:* 20.

*Total Estimated Number of Annual Burden Hours:* 125.

*Abstract:* Pursuant to Section 106 of the Rehabilitation Act of 1973, as amended, Vocational Rehabilitation (VR) agencies found to be out of compliance with federal requirements as a result of failing to meet established performance standards must develop for Rehabilitation Service Administration (RSA) approval a program improvement plan (PIP) using the on-line form located on the RSA management information system (MIS). The PIP must contain goals established by the agency, including measurable targets, by which it will assess its progress toward meeting the required minimum performance levels, along with strategies for the achievement of the goals. In accordance with regulations at 34 CFR 361.89(c), RSA reviews an agency's progress toward achieving the goals established in the PIP. For this purpose, it requires that the agency report its progress on a quarterly basis.

Dated: November 20, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–27940 Filed 11–25–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Membership of the Performance Review Board

**AGENCY:** Office of Management, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Secretary publishes a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Department.

**DATES:** *Effective Date:* November 26, 2014.

**SUPPLEMENTARY INFORMATION:**

**Membership**

Title 5, U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register.** The following persons may be named to serve on the Performance Review Board:

Anderson, Margo K.
Anthony, Perry E.
Appel, Charles J.
Baker, Jeffrey S.
Battle, Sandra G.
Betka, Sue E.
Buck, Ruthanne L.
Canellos, Ernest C.
Carr, Peggy G.
Carter, Denise L.
Chapman, Christopher
Chavez, Anthony
Chism, Monique M.
Conaty, Joseph C.
Cuffeegraves, Cassandra L.
Culatta, Richard
Dabby, Nadya C.
Dipaolo, John K.
Eliadis, Pamela D.
Ellis, Kathryn A.
Feely, Harry M.

Galanter, Seth M.
Garland, Teresa A.
Garnett, Patsy A.
Gil, Libia S.
Goniprow, Alexander T.
Graham, William D.
Grewal, Satyamdeep S.
Hall, Linda W.
Harris, Danny A.
Haynes, Leonard L. III
Hurt, John W. III
Jenkins, Harold B.
Kean, Larry G.
Kim, Robert
Koeppel, Dennis P.
Lim, Jeanette J.
Lucas, Richard J.
Luczak, Ronald J.
Maestri, Philip A.
Manning, James F.
Mariani, Tyra A.
Mcfadden, Elizabeth A.
Mcintosh, Amy B.
Mclaughlin, Maureen A.
Minor, James T.
Moore, Kenneth R.
Musgrove, Melody B.
Osgood, Debora L.
Pendleton, Audrey J.
Pepin, Andrew, J.
Riddle, Paul N.
Robison, Gregory
Ropelewski, James L.
Rosenfelt, Philip H.
Ryder, Ruth E.
Santy, Ross Jr.
Sasser, Tracey L.
Shilling, Russell D.
Skelly, Thomas P.
Soltis, Timothy F.
Stracke, Linda A.
Studley, Jamienne S.
Styles, Kathleen M.
Swenson, Sue Ellen
Tada, Wendy
Thomas, Milton L. Jr.
Tschida, John T.
Uvin, Johan E.
Vadehra, Emma
Washington, Mark
Willbanks, Linda R.
Williams, Jerry E.
Wills, Randolph E.
Winchell, Susan A.
Wood, Gary H.
Wood, Hamilton E. Jr.
Yudin, Michael K.

**FOR FURTHER INFORMATION CONTACT:** Valarie Barclay, Acting Director, Executive Resources Division, Human Capital and Client Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., Room 2C152, LBJ, Washington, DC 20202–4573. Telephone: (202) 453–5918. If you use a telecommunications device for the deaf (TDD), or text telephone (TTY), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

*Accessible Format:* Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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You may also access documents of the Department published in the **Federal Register** by using the 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: November 21, 2014.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2014–28035 Filed 11–25–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP15–14–000]**

### Texas Gas Transmission, LLC; Notice of Application

Take notice that on November 12, 2014, Texas Gas Transmission, LLC (Texas Gas), filed an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct, operate, and maintain certain pipelines and appurtenant facilities extending from Henderson County, Kentucky to Mount Vernon, Posey County, Indiana (Southern Indiana Market Lateral Project). The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to J. Kyle Stephens, Vice President, Regulatory Affairs & Rates, Texas Gas Transmission, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, telephone (713) 479–8059, fax (866) 459–7336, and email: *Kyle.Stephens@bwpmlp.com.*

The proposed Southern Indiana Market Lateral Project was designed to meet the specific market demand of Texas Gas' two industrial customers in southern Indiana: Midwest Fertilizer Company, LLC and SABIC Innovative Plastics Mt. Vernon, LLC. The project involves the construction of: Approximately 29.9 miles, 20-inch diameter pipeline; approximately 0.90 miles, 10-inch diameter pipeline; and appurtenant facilities. The proposed facilities will provide up to 166 MMcf per day of firm natural gas transportation capacity. Texas Gas executed the Precedent Agreements with the customers providing firm transportation services at negotiated rates for a primary term of 20 years. Texas Gas also requests authorization to establish an initial recourse rate for firm and interruptible services using the proposed project. The cost of the proposed facilities is approximately $79.7 million. Texas Gas proposed an in-service date of July 1, 2016.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* 5:00 p.m. Eastern Time on December 11, 2014.

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28023 Filed 11–25–14; 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 electric corporate filings:

*Docket Numbers:* EC15–33–000.

*Applicants:* Macho Springs Power I, LLC.

*Description:* Application for Authorization under Section 203 of the Federal Power Act and Requests for Waivers, Confidential Treatment, Shortened Comment Period and Expedited Treatment of Macho Springs Power I, LLC.

*Filed Date:* 11/14/14.

*Accession Number:* 20141114–5025.

*Comments Due:* 5 p.m. ET 12/5/14.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1789–004; ER10–1768–003; ER10–1793–003; ER10–1770–003; ER10–1771–003; ER12–1250–003.

*Applicants:* PSEG Energy Resources & Trade LLC, Public Service Electric and Gas Company, PSEG Power Connecticut LLC, PSEG Fossil LLC, PSEG Nuclear LLC, PSEG New Haven LLC.

*Description:* Notice of Non-Material Change in Status of PSEG Energy Resources & Trade LLC, et al.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5228.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER10–2585–004; ER14–1569–001; ER10–2619–004; ER10–2616–006; ER11–4400–003; ER14–883–002; ER10–2617–004; ER10–2613–004.

*Applicants:* Casco Bay Energy Company, LLC, Dynegy Energy Services, LLC, Dynegy Kendall Energy, LLC, Dynegy Marketing and Trade, LLC, Illinois Power Marketing Company, Ontelaunee Power Operating Company, LLC, Sithe/Independence Power Partners, L.P., Dynegy Power Marketing, Inc.

*Description:* Supplement to June 30, 2014 Updated Market Power Analysis of the Dynegy Northeast MBR Sellers.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5207.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER14–717–001.

*Applicants:* NorthWestern Corporation.

*Description:* Compliance filing per 35: Response to Deficiency Letter re Order No. 784 Compliance Filing (Montana) to be effective 2/17/2014.

*Filed Date:* 11/14/14.

*Accession Number:* 20141114–5022.

*Comments Due:* 5 p.m. ET 12/5/14.

*Docket Numbers:* ER14–2551–001.

*Applicants:* Duke Energy Progress, Inc., Duke Energy Florida, Inc., Duke Energy Carolinas, LLC.

*Description:* Compliance filing per 35: Errata Filing OATT Order No. 792 to be effective 8/4/2014.

*Filed Date:* 11/14/14.

*Accession Number:* 20141114–5041.

*Comments Due:* 5 p.m. ET 12/5/14.

*Docket Numbers:* ER15–401–000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Kittitas NITSA SA No 506 Amendment 1 to be effective 10/1/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5197.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–402–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing per 35: 2014–11–13_EIM_Waiver to be effective N/A.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5198.

*Comments Due:* 5 p.m. ET 11/17/14.

*Docket Numbers:* ER15–403–000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Port of Seattle NITSA SA No 484 to be effective 10/1/2014.

*Filed Date:* 11/14/14.

*Accession Number:* 20141114–5000.

*Comments Due:* 5 p.m. ET 12/5/14.

*Docket Numbers:* ER15–404–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* Petition for Approval of Disposition of Proceeds of Penalty Assessments of California Independent System Operator Corporation.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5225.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–405–000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): LGE and KU MBR 205 Amendments to be effective 11/15/2014.

*Filed Date:* 11/14/14.

*Accession Number:* 20141114–5044.

*Comments Due:* 5 p.m. ET 12/5/14.

*Docket Numbers:* ER15–406–000.

*Applicants:* LG&E Energy Marketing Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): LEM 205 MBR Amendment to be effective 11/15/2014.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5046.
*Comments Due:* 5 p.m. ET 12/5/14.
*Docket Numbers:* ER15–407–000.
*Applicants:* Southern California Edison Company.
*Description:* Tariff Withdrawal per 35.15: Notices of Cancellation to IFA & Distribution Service Agmt with Sierra Power to be effective 1/14/2015.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5052.
*Comments Due:* 5 p.m. ET 12/5/14.
*Docket Numbers:* ER15–408–000.
*Applicants:* AEP Texas North Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): TNC-Southwest Texas EC-Golden Spread EC IA to be effective 10/20/2014.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5070.
*Comments Due:* 5 p.m. ET 12/5/14.
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: November 14, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27946 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP15–163–000.
*Applicants:* Cimarron River Pipeline, LLC.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rates 2014–06–19 to be effective 12/10/2014.
*Filed Date:* 11/10/14.
*Accession Number:* 20141110–5115.
*Comments Due:* 5 p.m. ET 11/24/14.
*Docket Numbers:* RP15–164–000.
*Applicants:* Venice Gathering System, L.L.C.
*Description:* Compliance filing per 154.203: Compliance Filing 111014 to be effective 12/31/9998.
*Filed Date:* 11/10/14.
*Accession Number:* 20141110–5250.
*Comments Due:* 5 p.m. ET 11/24/14.
*Docket Numbers:* RP15–165–000.
*Applicants:* Ozark Gas Transmission, L.L.C.
*Description:* § 4(d) rate filing per 154.204: Negotiated Rate Entergy K820175 to be effective 1/1/2015.
*Filed Date:* 11/12/14.
*Accession Number:* 20141112–5012.
*Comments Due:* 5 p.m. ET 11/24/14.
*Docket Numbers:* RP15–166–000.
*Applicants:* Gas Transmission Northwest LLC.
*Description:* § 4(d) rate filing per 154.403(d)(2): Annual Fuel Filing 2014 to be effective 1/1/2015.
*Filed Date:* 11/12/14.
*Accession Number:* 20141112–5099.
*Comments Due:* 5 p.m. ET 11/24/14.
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.
The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.
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: November 12, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27948 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1789–004; ER10–1768–003; ER10–1793–003; ER10–1770–003, ER10–1771–003; ER12–1250–003.
*Applicants:* PSEG Energy Resources & Trade LLC, Public Service Electric and Gas Company, PSEG Power Connecticut LLC, PSEG Fossil LLC, PSEG Nuclear LLC, PSEG New Haven LLC.
*Description:* Supplement to November 13, 2014 Notice of Non-Material Change in Status of PSEG Energy Resources & Trade LLC, et al.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5149.
*Comments Due:* 5 p.m. ET 12/4/14.
*Docket Numbers:* ER14–2657–000.
*Applicants:* El Paso Electric Company.
*Description:* Second Supplement to August 14, 2014 El Paso Electric Company tariff filing.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5082.
*Comments Due:* 5 p.m. ET 12/5/14.
*Docket Numbers:* ER15–45–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Tariff Amendment per 35.17(b): Att. AE—MWP Start-Up Offer Recovery—No. ER15–45—Motion to Defer Action to be effective 12/31/9998.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5191.
*Comments Due:* 5 p.m. ET 12/5/14.
*Docket Numbers:* ER15–409–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* Tariff Withdrawal per 35.15: 2014–11–14_BPA_IntraHourAgreementTermination to be effective 10/21/2014.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5142.
*Comments Due:* 5 p.m. ET 12/5/14.
*Docket Numbers:* ER15–410–000.
*Applicants:* Arizona Public Service Company.
*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 217 Exhibit B.GLA Revision No. 4 to be effective 1/19/2015.
*Filed Date:* 11/14/14.
*Accession Number:* 20141114–5210.
*Comments Due:* 5 p.m. ET 12/5/14.
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: November 14, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27947 Filed 11–25–14; 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 electric corporate filings:

*Docket Numbers:* EC15–31–000.

*Applicants:* Tucson Electric Power Company.

*Description:* Application Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration of Tucson Electric Power Company.

*Filed Date:* 11/12/14.

*Accession Number:* 20141112–5453.

*Comments Due:* 5 p.m. ET 12/3/14.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1511–005; ER10–2231–004; ER10–1714–005; ER10–2011–007.

*Applicants:* Kentucky Utilities Company, LG&E Energy Marketing Inc., PPL EnergyPlus LLC, Louisville Gas and Electric Company.

*Description:* Second Supplement to June 30, 2014 Triennial Market Power Update of the PPL Southeast Companies.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5140.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER10–1838–007; ER13–752–006; ER10–1899–007; ER10–1903–007; ER10–1902–007; ER14–1630–004; ER10–1967–007; ER10–1968–007; ER11–4462–011; ER10–1971–018; ER10–1951–008; ER10–1975–016; ER10–1986–007; ER10–1990–007; ER10–1993–007.

*Applicants:* Backbone Mountain Windpower LLC, Energy Storage Holdings, LLC, FPL Energy Illinois Wind, LLC, FPL Energy MH50, L.P., FPL Energy Marcus Hook, L.P., Mantua Creek Solar, LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, NEPM II, LLC, NextEra Power Marketing, LLC, NextEra Energy Services Massachusetts, LLC, North Jersey Energy Associates, A Limited Partnership, Pennsylvania Windfarms, Inc., Somerset Windpower, LLC, Waymart Wind Farm L.P.

*Description:* Notification of Change in Status of NextEra Resources Entities under ER10–1838, et al.

*Filed Date:* 11/12/14.

*Accession Number:* 20141112–5456.

*Comments Due:* 5 p.m. ET 12/3/14.

*Docket Numbers:* ER10–2253–012*; ER10–3319–016*.

*Applicants:* Astoria Energy LLC, Astoria Energy II LLC.

*Description:* Notice of Non-material Change in Status of Astoria Energy LLC and Astoria Energy II LLC.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5105.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER10–2651–003.

*Applicants:* Lockhart Power Company.

*Description:* Supplement to June 30, 2014 Southeast Triennial Update of Lockhart Power Company.

*Filed Date:* 10/9/14.

*Accession Number:* 20141009–5258.

*Comments Due:* 5 p.m. ET 11/28/14.

*Docket Numbers:* ER12–569–007; ER13–712–006; ER10–1849–006; ER11–2037–006; ER12–2227–006; ER10–1887–006; ER10–1920–008; ER10–1928–008; ER10–1952–006; ER10–1961–006; ER12–1228–008; ER14–2707–002; ER10–2720–008; ER11–4428–008; ER12–1880–007; ER12–895–006; ER14–2710–002; ER14–2708–003; ER14–2709–002; ER13–2474–002; ER10–1971–019.

*Applicants:* Blackwell Wind, LLC, Cimarron Wind Energy, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Ensign Wind, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Sooner Wind, LLC, Gray County Wind Energy, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, Mammoth Plains Wind Project, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Steel Flats Wind Project, LLC, NextEra Power Marketing, LLC.

*Description:* Notification of Change in Status of NextEra Resources Entities under ER12–569, et al.

*Filed Date:* 11/12/14.

*Accession Number:* 20141112–5459.

*Comments Due:* 5 p.m. ET 12/3/14.

*Docket Numbers:* ER14–2542–001.

*Applicants:* Emera Maine.

*Description:* Compliance filing per 35: Amended Order No. 792 Compliance Filing to be effective 1/13/2015.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5100.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER14–2705–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing per 35: Compliance Filing per 10/31/2014 Order in Docket No. ER14–2705–000 to be effective 11/1/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5102.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–70–000.

*Applicants:* Erie Power, LLC.

*Description:* Second Supplement to October 9, 2014 Erie Power, LLC tariff filing.

*Filed Date:* 11/6/14.

*Accession Number:* 20141106–5025.

*Comments Due:* 5 p.m. ET 11/20/14.

*Docket Numbers:* ER15–301–000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Tariff Cancellation per 35.17(a): Port of Seattle NITSA No 484—Withdrawal to be effective N/A.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5141.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–394–000.

*Applicants:* DTE Electric Company.

*Description:* DTE Electric Company Notice of Termination of Must Run Agreement.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5061.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–395–000.

*Applicants:* CL Power Sales Eight, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Revised Market-Based Rate Tariff to be effective 11/14/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5069.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–396–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4041; Queue W3–160 to be effective 10/22/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5097.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–397–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4042; Queue Y3–109 to be effective 10/27/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5108.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–398–000.

*Applicants:* Saja Energy LLC.

*Description:* Tariff Withdrawal per 35.15: Notice of cancellation to be effective 11/14/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5114.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–399–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014–11–13 Attachment X Study Deposits filing to be effective 11/14/2014.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5139.

*Comments Due:* 5 p.m. ET 12/4/14.

*Docket Numbers:* ER15–400–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) rate filing per 35.13(a)(2)(iii): 2014–11–13 Schedule 44 reconcile to Schedule 46 Filing to be effective 3/1/2015.

*Filed Date:* 11/13/14.

*Accession Number:* 20141113–5181.

*Comments Due:* 5 p.m. ET 12/4/14.

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: November 13, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27945 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL15–21–000]**

### New England Power Generators Association, Inc. (Complainant) v. ISO New England Inc. (Respondent); Notice of Complaint

Take notice that on November 14, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, the New England Power Generators Association, Inc (NEPGA or Complainant) filed a formal complaint against the ISO New England Inc (ISO–NE or Respondent), requesting that the Commission issue an order directing ISO–NE to (1) disqualify all Demand Response Capacity Resources from the ninth Forward Capacity Auction and (2) file revisions to its Transmission, Markets & Services Tariff, as more fully explained in the Complaint.

The Complainant certifies that copies of the complaint were served on the contacts for ISO–NE 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 electronic 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 December 4, 2014.

Dated: November 14, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–27944 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL14–103–000]**

### Tilden Mining Company L.C., Empire Iron Mining Partnership (Complainants) v. Midcontinent Independent System Operator, Inc.; Wisconsin Electric Power Company (Respondents); Notice of Amended Complaint

Take notice that on November 14, 2014, pursuant to Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212, and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e), 825(e), and 825(h), Tilden Mining Company, L.C. and Empire Iron Mining Partnership (the Mines), filed a formal amended complaint against Midcontinent Independent System Operator, Inc. (MISO) and Wisconsin Electric Power Company (WEPCO), regarding the actions by these parties to form a second Presque Isle System Support Resource Agreement and to effectuate the splitting of WEPCO's current single local balancing authority and the creation of a new local balancing authority in the Michigan Upper Peninsula without Commission approval, as more fully explained in the complaint.

The Mines certify that copies of the complaint were served on the contacts for MISO and WEPCO as listed on the Commission's list of Corporate Officials, and upon each person named on the official service list maintained by the Secretary in the captioned proceeding.

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 electronic 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 December 4, 2014.

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28020 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PL15–1–000]**

### Cost Recovery Mechanisms for Modernization of Natural Gas Facilities

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Proposed policy statement.

**SUMMARY:** In this proposed Policy Statement, the Commission seeks to provide greater certainty concerning the ability of interstate natural gas pipelines to recover the costs of modernizing their facilities and infrastructure to enhance the efficient and safe operation of their systems. The proposed Policy Statement explains the standards the Commission would require interstate natural gas pipelines to satisfy in order to establish simplified mechanisms, such as trackers or surcharges, to recover costs associated with replacing old and inefficient compressors and leak-prone pipes and performing other infrastructure improvements and upgrades to enhance the efficient and safe operation of their pipelines. The Commission requests comments on this Proposed Policy Statement. Initial Comments are due 30 days after publication of this order in the **Federal Register**, with reply comments due 50 days after publication in the **Federal Register**.

**DATES:** Initial Comments are due December 26, 2014, and Reply Comments are due January 15, 2015.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Monique Watson (Technical Information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8384, *Monique.Watson@ferc.gov*

David E. Maranville (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6351, *David.Maranville@ferc.gov*

**SUPPLEMENTARY INFORMATION:**

### Proposed Policy Statement

1. In this proposed Policy Statement, the Commission seeks to provide greater certainty concerning the ability of interstate natural gas pipelines to recover the costs of modernizing their facilities and infrastructure to enhance the efficient and safe operation of their systems. The proposed Policy Statement explains the standards the Commission would require interstate natural gas pipelines to satisfy in order to establish simplified mechanisms, such as trackers or surcharges, to recover costs associated with replacing old and inefficient compressors and leak-prone pipes and performing other infrastructure improvements and upgrades to enhance the efficient and safe operation of their pipelines. The Commission requests comments on this Proposed Policy Statement. Initial Comments are due 30 days after publication of this order in the **Federal Register**, with reply comments due 50 days after publication in the **Federal Register**.

### I. Background

2. There have been several recent legislative actions, and resulting regulatory initiatives, to address natural gas pipeline infrastructure safety and reliability. In 2012, Congress passed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.[1] That act includes requirements for the Department of Transportation to take various actions to reduce the risk of future pipeline failures. Among other things, the Pipeline Safety Act requires the Department of Transportation to (1) consider expansion and strengthening of its integrity management regulations, (2) consider requiring automatic shut-off valves on new pipeline construction, (3) require pipelines to reconfirm their Maximum Allowable Operating Pressures (MAOP), and (4) conduct surveys to measure progress in plans for safe management and replacement of cast iron pipelines.

3. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is in the process of implementing a multi-year Pipeline Safety Reform Initiative to comply with the Pipeline Safety Act's mandate to enhance the agency's ability to reduce the risk of future pipeline failures.[2] Prior to the Pipeline Safety Act's enactment, on August 25, 2011, PHMSA published an Advance Notice of Proposed Rulemaking (ANOPR) titled ''Pipeline Safety: Safety of Gas Transmission Pipelines,'' which asked all stakeholders whether PHMSA should modify its existing integrity management and other pipeline safety regulations for interstate natural gas pipelines.[3] The ANOPR requested public comment on a range of topics related to current industry practices, the effects of enhanced regulations on safety and cost, and the best method to implement proposed regulations. For example, PHMSA sought comments on shut-off valves and remote controlled

[1] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, 49 U.S.C. 60101 (2012) (Pipeline Safety Act).

[2] Written Statement of Cynthia Quarterman, Administrator, PHSMA, before the U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials (May 20, 2014), *http://transportation.house.gov/uploadedfiles/2014-05-20-quarterman.pdf* (Quarterman Testimony) at 3.

[3] *Pipeline Safety: Safety of Gas Transmission Pipelines,* (RIN: 2137–AE72), 76 FR 53086 (August 25, 2011).

shut-off valves. In addition, PHMSA held a public leak detection and valve workshop on March 28, 2012.

4. Also as part of the ANOPR process, PHSMA is considering expanding the definition of a High Consequence Area (HCA) so that more miles of pipeline may become subject to integrity management requirements.[4] PHMSA is also considering potential new rules related to repair criteria, including applying the integrity management repair criteria to non-HCAs; reassessing the repair criteria in areas where the population has grown since the pipeline was constructed; requiring methods to validate in-line inspection tool performance and qualifications of personnel; and implementing risk tiering such that repairs in an HCA have priority over repairs in a non-HCA. PHMSA held a Class Location Methodology workshop on April 16, 2014. Based on the comments from the ANOPR and the workshop, PHMSA ''has started drafting a report to Congress on this issue.'' [5]

5. PHMSA is also considering changes to its requirements that pipelines perform baseline and periodic assessments of pipeline segments in an HCA through one or a combination of in-line inspection, pressure testing, direct assessment of external and internal corrosion, or other technology demonstrated to accurately assess the condition of a pipe. In June 2013, as updated in September 2013, PHMSA issued a flow chart reflecting its draft Integrity Verification Process for natural gas pipelines.[6] To this end, PHMSA seeks information as to what anomalies have been detected using the various assessment methods, and proposes to include criteria in the regulations that would require more rigorous corrosion control.

6. In addition to pipeline safety issues, there have been growing concerns about the emissions of greenhouse gases (GHG) in the production and transportation of natural gas. On April 15, 2014, EPA issued a series of technical white papers, for which they have requested input from peer reviewers and the public, to determine how to best pursue reductions of emissions from, inter alia, natural gas compressors.[7] The EPA Compressor White Paper discusses the most prevalent types of compressors (reciprocating and centrifugal) and compressor emission data. As relevant to this proposed policy statement, the EPA lays out several ''mitigation options for reciprocating compressors involve[ing] techniques that limit the leaking of natural gas past the piston rod packing, including replacement of the compressor rod packing, replacement of the piston rod, and the refitting or realignment of the piston rod.'' [8] The EPA also describes several mitigation options for centrifugal compressors to limit the leaking of natural gas ''across the rotating shaft using a mechanical dry seal, or capture the gas and route it to a useful process or to a combustion device.'' [9] If the EPA's white papers result in the agency imposing mitigation requirements on natural gas pipelines, such controls could be significant.[10]

7. We also note that in 2009, the EPA published a rule for mandatory reporting of greenhouse gas emissions (GHG) from sources that, in general, emit 25,000 metric tons or more of carbon dioxide equivalent per year in the United States.[11] This initiative, commonly referred to as the Greenhouse Gas Reporting Program (GHGRP), collects greenhouse gas data from facilities that conduct Petroleum and Natural Gas Systems activities, including production, processing, transportation and distribution of natural gas. Moreover, on November 14, 2014, the EPA issued a prepublication version of a final rule revising the Petroleum and Natural Gas Systems source category (Subpart W) and the General Provisions (Subpart A) of the GHGRP.[12] The final rule, which is effective January 1, 2015, imposes new requirements for the natural gas industry to monitor methane emissions and report them annually. Lastly, we note that on that same day, the EPA issued a prepublication version of a proposed rule to add calculation methods and reporting requirements for greenhouse gas emissions, as relevant here, from blowdowns of natural gas transmission pipelines between compressor stations. The EPA also proposes confidentiality determinations for new data elements contained in the proposed amendments.[13]

8. One likely result of the Pipeline Safety Act and PHMSA's rulemaking proceedings is that interstate natural gas pipelines will soon face new safety standards requiring significant capital cost expenditures to enhance the safety and reliability of their systems.[14] Moreover, pursuant to EPA's initiatives, pipelines may in the future face increased environmental monitoring and compliance costs, as well as potentially having to replace or repair existing natural gas compressors or other facilities.

9. Against this background, the Commission is proposing the instant Policy Statement in an effort to ensure that existing Commission ratemaking policies do not unnecessarily inhibit interstate natural gas pipelines' ability to expedite needed or required upgrades and improvements. The proposed Policy Statement would allow interstate natural gas pipelines to recover certain capital expenditures made to modernize pipeline system infrastructure in a manner that enhances system reliability, safety and regulatory compliance through a surcharge mechanism, subject to conditions intended to ensure that the resulting rates are just and reasonable and protect natural gas consumers from excessive costs. Further, under the proposed Policy Statement, the Commission may consider capital costs to replace compressor facilities or make other improvements in response to increased federal or state environmental regulations as eligible for inclusion in a modernization cost recovery mechanism, to the extent a pipeline shows such costs to be beyond ordinary capital investments in a pipeline's existing system for maintenance purposes.

10. The Commission generally requires that interstate natural gas

[4] An HCA is a location which is defined in the pipeline safety regulations as an area where pipeline releases have greater consequences to the safety, health and environment. Basically, these are areas with greater population density.

[5] Quarterman Testimony at 10.

[6] 78 FR 56268 (Sept. 12, 2013).

[7] See *http://www.epa.gov/airquality/oilandgas/whitepapers.html.*

[8] EPA Compressor White Paper at 29.

[9] *Id.* at 29–42.

[10] For example, the Interstate Natural Gas Association of America (INGAA) comments that one of its member companies ''reported capital costs of $865,000 for replacement of a wet seal'' on a centrifugal compressor. *See* INGAA Comments on EPA Compressor White Paper at 13 (filed June 16, 2014). INGAA also commented on the EPA's Leaks White Paper and noted that many factors could affect leak repair costs and that ''the cost of the repair may far exceed the benefit of eliminating a small leak.'' *See* INGAA Comments on EPA Leaks White Paper at 12–13 (filed June 16, 2014).

[11] Mandatory Reporting of Greenhouse Gases Rule, 74 FR 56260 (Oct. 30, 2009). *See also* 40 CFR Pt. 98 (2014).

[12] Greenhouse Gas Reporting Rule: 2014 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, Docket Nos. EPA–HQ–OAR–2011–0512 and FR–9918–95–OAR (Nov. 14, 2014).

[13] *See* Greenhouse Gas Reporting Rule: 2015 Revisions and Confidentiality Determination for Petroleum and Natural Gas Systems, Docket ID No. EPA–HQ–OAR–2014–0831 (issued Nov. 14. 2014).

[14] On July 29, 2014, the Department of Energy (DOE) announced steps to help modernize natural gas infrastructure. Moreover, on July 31, 2014, Secretary of Energy Ernest Moniz sent a letter to the Chairman of the Commission recommending the Commission explore efforts to provide greater certainty for cost recovery for new investments in modernization of natural gas transmission infrastructure as part of the FERC's work to ensure just and reasonable natural gas pipeline transportation rates.

pipelines design their open access natural gas transportation rates to recover their costs based on projected units of service.[15] This requirement means that the pipeline is at risk for under-recovery of its costs between rate cases but may retain any over-recovery. As the Commission explained in Order No. 436, this requirement gives the pipeline an incentive both to (1) ''minimize costs in order to provide services at the lowest reasonable costs consistent with reliable long-term service'' [16] and (2) ''provide the maximum amount of service to the public.'' [17]

11. Before the Pipeline Safety Act, the Commission held that capital costs incurred to comply with the requirements of pipeline safety legislation or with environmental regulations should not be included in surcharges,[18] except in the context of an uncontested settlement.[19] Noting that pipelines commonly incur capital costs in response to regulatory requirements intended to benefit the public interest, the Commission stated that recovering those costs in a tracking mechanism was contrary to the requirement to design rates based on estimated units of service because the use of cost-trackers undercuts the referenced incentives by guaranteeing the pipeline a set revenue recovery.

12. More recently, however, the Commission approved a contested settlement which included a tracker to recover substantial pipeline modernization costs that were shown to be necessary to ensure the safety and reliability of Columbia Gas Transmission LLC's (Columbia Gas) pipeline system.[20] The Columbia Gas settlement outlined significant operational and safety issues resulting from the age of its system and the corresponding inability to monitor and maintain the system using efficient modern techniques.[21] The Commission found that approving the settlement would facilitate Columbia Gas' ability to make substantial capital investments necessary to correct significant infrastructure problems, and thus provide more reliable service while minimizing public safety concerns.

13. The Commission's determination in *Columbia Gas* thus established general parameters for pipelines to consider when seeking recovery of pipeline investments for modernization costs related to improving system safety and reliability. The tracker approved in that case was designed to recover pipeline modernization capital costs of up to $300 million annually over a five year period. The Commission found that Columbia Gas' settlement included numerous positive characteristics that distinguished its cost tracking mechanism from those the Commission had previously rejected and that work to maintain the pipeline's incentives for innovation and efficiency. The key aspects of the settlement upon which the Commission relied to approve the tracker included the following.

14. First, Columbia Gas worked collaboratively with its customers to ensure that its existing base rates, to which the tracker would be added, were updated to be just and reasonable. This included a reduction in Columbia Gas' base rates and a refund to its customers.

15. Second, the settlement specifically delineated and limited the amount of capital costs and expenses that may go into the cost recovery mechanism. Moreover, the eligible facilities for which costs would be recovered through that mechanism were specified by pipeline segment and compressor station. Further, the pipeline agreed to spend $100 million for normal system maintenance annually during the initial term of the tracker, which would not be recovered through the tracker. The Commission found that these provisions should assure that the projects whose costs are recovered through the tracker go beyond the regular capital maintenance expenditures the pipeline would make in the ordinary course of business and are critical to assuring the safe and reliable operation of Columbia Gas' system.

16. Third, the Commission found that a critically important factor to its approval of the settlement was the pipeline's agreement to a billing determinant floor for calculating the cost recovery mechanism, together with an agreement to impute the revenue it would achieve by charging the maximum rate for service at the level of the billing determinant floor before it trues up any cost underrecoveries. The Commission found these provisions should alleviate its historic concern that surcharges which guarantee cost recovery diminish a pipeline's incentive to be efficient and to maximize the service provided to the public. The Commission also found that these provisions protect the pipeline's shippers from significant cost shifts if the pipeline loses shippers or must provide increased discounts to retain business.

17. Fourth, the surcharge was temporary and would terminate automatically on a date certain unless the parties agreed to extend it and the Commission approved the extension. Finally, the tracker was broadly supported by the pipeline's customers.

## II. Discussion

18. The ultimate implementation of the recent initiatives described above, to improve natural gas infrastructure safety and reliability and to address environmental issues related to the operation of natural gas pipelines, appear likely to lead to the need for interstate natural gas pipelines to make significant capital investments to modernize their systems. In light of these developments, the Commission has a duty to ensure that interstate natural gas pipelines are able to recover the costs of these system upgrades in a just and reasonable manner that does not undercut their incentives to provide service in an efficient manner and protects ratepayers from unreasonable cost shifts.

19. As noted, the Pipeline Safety Act and EPA's proposed revisions to the Petroleum and Natural Gas Systems source category address serious concerns that directly affect the public interest. Although historically the Commission has generally disfavored pipelines' use of trackers to recover costs, the high probability that the initiatives discussed will lead to imposition of significant compliance costs on pipelines justifies the consideration of such mechanisms, subject to specified conditions, as a way for pipelines to recover those costs in a timely manner, while also maintaining safe and efficient operation of pipeline systems and providing the maximum

[15] 18 CFR 284.10(c)(2) (2014).

[16] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 436, FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665, at 31,534 (1985).

[17] *Id.* at 31,537.

[18] *See Granite State Gas Transmission, Inc.,* 132 FERC ¶ 61,089, at P 11 (2010) (*Granite State*); *Florida Gas Transmission Co.,* 105 FERC ¶ 61,171, at PP 47–48 (2003) (*Florida Gas*).

[19] *See e.g., Granite State Gas Transmission, Inc.,* 136 FERC ¶ 61,153 (2011); *Florida Gas Transmission Co.,* 109 FERC ¶ 61,320 (2004). In 2012, the Commission again rejected a protested proposal that would allow the pipeline to recover regulatory safety costs through a tracker, but noted that PHSMA was in the early stages of developing regulations to implement the Pipeline Safety Act, and that the Commission would consider the need for further action as PHMSA's implementation process moved forward. *CenterPoint Energy—Mississippi River Transmission, LLC,* 140 FERC ¶ 61,253, at P 65 (2012).

[20] *Columbia Gas Transmission, LLC,* 142 FERC ¶ 61,062 (2013) (*Columbia Gas*).

[21] Columbia Gas stated in that proceeding that over fifty percent of its regulated pipeline system was over 50 years old, that a significant portion of its system contained dangerous bare steel pipeline, that many of its compressors were also dated, that many of its control systems were running on obsolete platforms, and that it was only able to inspect a small percentage of its system using modern in-line inspection tools.

amount of service at a just and reasonable cost consistent with safe operations. Establishing a framework for pipelines to accelerate the recovery of one-time capital costs necessary to make system improvements to comply with new safety and environmental requirements should maintain pipelines' incentives for innovation and efficiency and prompt them to make such necessary system modifications in an expeditious manner, in advancement of the public interest.

20. Accordingly, the Commission proposes to establish a policy outlining the analytical framework for evaluating proposed cost recovery mechanisms to recoup infrastructure modernization costs necessary for the efficient and safe operation of the pipeline's system and compliance with new regulations. The Commission proposes to base the policy on the guiding principles established in *Columbia Gas.* Pursuant to the proposed policy, a pipeline proposal for a cost recovery tracker to recover pipeline modernization costs would need to satisfy five standards:

(1) Review of Existing Rates—the pipeline's base rates must have been recently reviewed, either by means of an NGA general section 4 rate proceeding or through a collaborative effort between the pipeline and its customers; (2) Eligible Costs—the eligible costs must be limited to one-time capital costs incurred to modify the pipeline's existing system to comply with safety or environmental regulations issued by PHMSA, EPA, or other federal or state government agencies, and other capital costs shown to be necessary for the safe or efficient operation of the pipeline, and the pipeline must specifically identify each capital investment to be recovered by the surcharge; (3) Avoidance of Cost Shifting—the pipeline must design the proposed surcharge in a manner that will protect the pipeline's captive customers from costs shifts if the pipeline loses shippers or must offer increased discounts to retain business; (4) Periodic Review of the Surcharge—the pipeline must include some method to allow a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable; and (5) Shipper Support—the pipeline must work collaboratively with shippers to seek shipper support for any surcharge proposal.

21. We discuss these five proposed standards, and potential issues for comment, below.

*1. Review of Existing Rates*

22. Pursuant to this standard, the Commission proposes to require a pipeline proposing a tracker mechanism to establish that the base rates to which any surcharges would be added are just and reasonable and reflect the pipeline's current costs and revenues as of the date of the initial approval of the tracker mechanism. While in *Columbia Gas* the pipeline did this through a negotiated settlement with its shippers in which it agreed to reduce its base rates and establish a revenue sharing mechanism for base rate revenues above a certain level, the Commission will consider methods other than a pre-negotiated base rate settlement by which the pipeline could establish that its current base rates are just and reasonable. For example, concurrently with the pipeline's filing to establish the tracker, the pipeline could make a new NGA general section 4 rate filing, or the pipeline could file a cost and revenue study in the form specified in section 154.313 of the Commission's regulations showing that its existing rates are just and reasonable. The Commission seeks input on these or other acceptable approaches for pipelines to demonstrate that existing base rates are just and reasonable.

*2. Eligible Facilities*

23. The Commission intends that any tracking mechanism authorized under this policy be used by pipelines to recover only capital costs incurred to modify their existing systems to address the safety and other concerns discussed above. Accordingly, the Commission proposes that the capital costs eligible for recovery through the tracking mechanism authorized under the proposed policy be limited to one-time capital costs to modify the pipeline's existing system to comply with safety and environmental regulations, such as those being considered by PHMSA and by the EPA, as well as other capital costs shown to be necessary for the safe or efficient operation of the pipeline.

24. As we have recognized previously, interstate natural gas pipelines routinely make capital investments related to system maintenance in the ordinary course of business. It will continue to be the Commission's policy that such ordinary capital maintenance costs should not be included in a tracker mechanism. Permitting normal system capital maintenance costs to be recovered through a surcharge mechanism would inhibit a pipeline's incentives to minimize costs and maximize service because it would guarantee a certain level of cost recovery. Thus, the Commission proposes to establish a policy that, in order for a pipeline to recover costs through a proposed modernization surcharge mechanism, it would need to demonstrate that the costs to be included are not normal capital maintenance expenditures but are costs necessary to address system safety, efficiency, or other similar concerns, such as in *Columbia Gas,* or to comply with federal or state regulations.

25. The Commission also proposes to require that, when the pipeline files to establish a tracker mechanism, it should specifically identify in its proposal the projects eligible for recovery, the facilities to be upgraded or installed by those projects, and an upper limit on the capital costs related to each project to be included in the surcharge. This will allow an upfront determination that the costs are eligible for recovery through the tracker and avoid later disputes about which costs or facilities qualify for such recovery. These requirements will also help ensure that normal capital expenditures to maintain the pipeline's system will not be eligible for recovery through a surcharge mechanism.[22] Allowing pipelines to only recover costs incurred to address critical system efficiency, safety, and environmental concerns and requirements through a tracker will provide the pipeline with an inducement to make the necessary modifications on an expedited basis without inhibiting the pipeline's incentive to provide the maximum level of service. Allowing such recovery will also advance the public's interest in the safe, efficient and environmentally sound operation of the nation's natural gas pipeline system.

26. In relation to this standard, the Commission also seeks comments on the following questions:

- Should the costs of modifications to compressors for the purpose of waste heat recovery be eligible for recovery under a modernization surcharge?
- This proposed policy statement would limit the capital costs eligible for recovery through the surcharge to costs incurred to modify the pipeline's existing system. However, the Commission requests comment on whether there are any capital costs associated with the expansion of the pipeline's existing capacity or its extension to serve new markets that may reasonably be included in the surcharge as necessary one-time capital expenditures to comply with safety and environmental regulations.

[22] For example, the costs allowed to be recovered through Columbia Gas' modernization program are limited to capital costs to modify the pipeline's existing system that go beyond its normal capital investments to modify its system, and costs of expansions are expressly excluded from that surcharge.

• Should capital costs incurred to minimize pipeline facility emissions be considered for inclusion in the surcharge, even if those costs are not expressly required to comply with environmental regulations?

• Should non-capital maintenance costs associated with environmentally sound operation of a compressor be considered for inclusion in the surcharge?

• Under what circumstances should the Commission permit a pipeline to include in the tracking mechanism the costs of additional projects not identified in the pipeline's original filing to establish the tracking mechanism?

*3. Avoid Cost Shifts*

27. As noted above, the Commission's general open access interstate natural gas transportation rate regulations require that a pipeline's costs be recovered based on projected units of service. 18 CFR 284.10(c)(2) (2014). This requirement results in pipelines being placed at risk for any cost underrecovery between rate cases but also allows pipelines to retain any over recovery during that period, thereby providing pipelines with an incentive to minimize costs and to provide the maximum amount of service to the public.

28. The recovery of certain costs through a tracker mechanism, however, reduces those incentives because it guarantees the pipeline recovery of those costs. Moreover, a tracker mechanism can shift costs to the pipeline's captive customers. If a pipeline recovering costs through a tracker or surcharge loses shippers or must offer increased discounts to retain business, a tracker mechanism may shift the amounts previously paid by those shippers directly and automatically to the pipeline's remaining shippers. This direct cost shifting is one of the reasons the Commission has generally disfavored trackers, namely that the cost shifting described would occur without consideration of any offsetting items that would generally be considered in a section 4 rate proceeding, and which the pipeline would normally need to justify to recover.[23]

29. Accordingly, as a prerequisite to the Commission approving a modernization cost tracker, and thereby effectively granting an exemption from the requirement that a pipeline recover costs based on projected units of service, the Commission proposes to establish a policy that the pipeline is required to design the surcharge in a manner that will protect the pipeline's shippers from significant cost shifts. One way to accomplish this goal may be that approved in *Columbia Gas*, where the pipeline sought to provide rate stability and safeguard shippers against cost shifts resulting from losses in billing determinants by agreeing to a floor on the billing determinants that could be used to design the surcharge. The provisions of the *Columbia Gas* tracker require the pipeline to design the surcharge based on the greater of actual annual billing determinants or the agreed upon floor, and to impute the revenue it would achieve by charging the maximum rate for service at the level of the billing determinant floor before trueing up any cost under-recoveries. The Commission found that these provisions alleviated the historical concern that allowing the recovery of capital costs through a surcharge will diminish the pipeline's incentive to operate efficiently and maximize service to the public, as well as provided protections from cost shifts if the pipeline lost customers or had to offer increased discounts to retain business.[24] While the Commission found this to be a just and reasonable way to ensure the prevention of cost shifts, we are open to considering other methods that may similarly protect a pipeline's customers.

*4. Periodic Review of Surcharge*

30. Under this standard, the Commission proposes to require pipelines seeking approval of a modernization surcharge to include some method to allow a periodic review of whether the surcharge and the pipeline's base rates remain just and reasonable. For example, in *Columbia Gas*, the pipeline agreed to make the surcharge a temporary part of its rates (the surcharge expires automatically after five years), and included a requirement that the pipeline make a new NGA section 4 filing if it wants to continue the surcharge. The settlement also requires *Columbia Gas* to file a new NGA general section 4 rate case at that time. While the Commission intends to require that surcharge proposals must include a mechanism for periodic review, we remain open to, and seek comments on, reasonable methods of accomplishing this goal aside from that approved in *Columbia Gas.*

*5. Shipper Support*

31. The Commission expects any pipeline seeking approval of a pipeline modernization surcharge to work collaboratively with its shippers to seek support for the pipeline's proposal.[25] We note, however, that while we strongly encourage the pipeline to attempt to garner support for its proposal among all interested parties, the Commission may nonetheless approve any proposal the pipeline demonstrates to be just and reasonable without one-hundred percent shipper agreement. Thus, the Commission does not intend to require support from all shippers as a prerequisite to approval of a cost recovery surcharge.

32. In addition to the considerations outlined above, the Commission also seeks comment on the following related issues:

• Accelerated Amortization

33. The capital costs included in the *Columbia Gas* surcharge are treated as rate base items, and thus *Columbia Gas* is allowed to recover a return on equity on the portion of those costs financed by equity. Consistent with the rate base treatment of those costs, they are to be depreciated over the life of *Columbia Gas'* system.[26] The Commission requests comments on whether pipelines should also be allowed to use accelerated amortization methodologies, akin to that approved by the Commission for hurricane repair cost trackers,[27] to recover the costs of any facilities installed pursuant to a modernization cost recovery mechanism. Under such a methodology the costs would not be included in the pipeline's rate base, and the pipeline would not recover any return on equity with respect to the costs financed by equity. Instead, the pipeline would only be allowed to recover the interest necessary to compensate it for the time value of money. The Commission has approved amortization periods for hurricane or storm surcharges ranging from one year to four years at the Commission's interest rate for refunds.[28]

[23] For example, in order to recover costs associated with discounted rates the pipeline may have offered to certain shippers, the pipeline must demonstrate that the discount was required to meet competition. *Policy for Selective Discounting by Natural Gas Pipelines,* 113 FERC ¶ 61,173 (2005). In the case of a tracker, no such showing is required by the pipeline to recover the covered costs from its remaining customers.

[24] *Columbia Gas,* 142 FERC ¶ 61,062 at P 25.

[25] As we noted in *Columbia Gas*, the proposed surcharge had the support of a broad spectrum of the pipeline's shippers.

[26] *Columbia Gas*, 142 FERC ¶ 61,062 at P 9.

[27] *See, e.g., Sea Robin Pipeline Co., LLC,* 144 FERC ¶ 61,008 (2013) (*Sea Robin*).

[28] *See, e.g., Sea Robin Pipeline Co.*, 137 FERC ¶ 61,201, at P 51 (2011) (approving 4-year recovery period for hurricane surcharge and finding surcharge to be just and reasonable); *High Island Offshore System, L.L.C.*, 135 FERC ¶ 61,105, (2011); *Stingray Pipeline Co., L.L.C.*, 127 FERC ¶ 61,308 (2009) (approving tariff provisions that allowed up to 36 months to amortize hurricane-related costs); *Discovery Transmission LLC*, 122 FERC ¶ 61,099, at

Continued

Thus, the Commission seeks comments on whether pipelines should be permitted to use accelerated amortization methodologies, such as those approved for hurricane trackers, to recover the costs of any facilities installed pursuant to the modernization cost recovery mechanism, or whether the Commission should require pipelines to depreciate facilities subject to a modernization cost tracker over the life of the facilities.

• Reservation Charge Credits

34. The Commission requests comments on whether it should make any adjustments to its current reservation charge crediting policy in light of the proposed Policy Statement. As noted, given recent legislative and other actions to address pipeline efficiency, safety, and environmental concerns, it is likely that pipelines will be required to meet additional requirements that may include performing facility upgrades and replacements. This work, particularly the replacement of existing compressors or pipelines, may result in disruption of primary firm service. Pursuant to the Commission's existing reservation charge crediting policies, such one-time outages, if necessary to comply with government orders, may be treated as *force majeure* outages, for which only partial reservation charge credits are required.[29] Thus, the Commission seeks comment on whether it should modify its existing reservation crediting policy to require pipelines with modernization cost trackers to provide full reservation charge credits during periods that the pipeline must interrupt primary firm service to replace or install eligible facilities under the provisions of the modernization tracker.

• Other Considerations

35. The Commission welcomes comments on any other issues or factors the Commission should consider for inclusion in the Policy Statement as a prerequisite for approving a modernization cost recovery mechanism.[30]

P 8 (2008) (approving a 12-month recovery period for a hurricane surcharge subject to a cap with any uncollected amounts due to the cap to be recovered in a subsequent period); *Chandeleur Pipe Line Co.*, 117 FERC ¶ 61,250 (2006) (approving 12-month hurricane surcharge recovery period that was subsequently extended to 24 months).

[29] *See e.g., TransColorado Gas Transmission Co., LLC*, 144 FERC ¶ 61,175 (2013); *Gulf South Pipeline Co., LP*, 144 FERC ¶ 61,215 (2013).

[30] Because the proposed policy statement would address issues pertaining to the Commission's review of natural gas rate filings, the statement is categorically excluded from the requirements of the National Environmental Policy Act (NEPA), thus neither an environmental assessment nor an environmental impact statement is required. *See* 18 CFR 380.4(a)(25) (2014).

## III. Procedure for Comments

36. The Commission invites interested persons to submit written comments on the Commission's proposed policy to establish guidelines for pipelines to implement trackers or surcharges to recover infrastructure modernization costs as discussed above. Comments are due 30 days from the date of publication in the **Federal Register** and reply comments are due 50 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. PL15–1–000, and must include the commentor's name, the organization it represents, if applicable, and its address. To facilitate the Commission's review of the comments, commentors are requested to provide an executive summary of their position. Additional issues the commentors wish to raise should be identified separately. The commentors should double space their comments.

37. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

38. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

39. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## IV. Document Availability

40. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

41. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number (excluding the last three digits) in the docket number field.

42. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (email at *public.referenceroom@ferc.gov*).

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28015 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14628–000]**

### Minnesota Leased Housing Associates IV, Limited Partnership; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Alternative Licensing Process, and Requesting Cooperating Agency Status

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Alternative Licensing Process.

b. *Project No.:* 14628–000.

c. *Date Filed:* July 28, 2014.

d. *Submitted By:* Minnesota Leased Housing Associates IV, Limited Partnership (Minnesota Housing Associates).

e. *Name of Project:* A-Mill Artists Loft Hydroelectric Project.

f. *Location:* On the Mississippi River, in the city of Minneapolis, Hennepin County, Minnesota. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Owen Metz, 2905 Northwest Blvd., Suite 150, Plymouth, MN 55441; (763) 354–5618; email *ometz@dominiuminc.com.*

i. *FERC Contact:* Janet Hutzel at (202) 502–8675; or email at *janet.hutzel@ferc.gov.*

j. Minnesota Housing Associates filed its request to use the Alternative Licensing Process] on July 29, 2014.

Minnesota Housing Associates provided public notice of its request on September 17, 2014. In a letter issued November 13, 2014, the Director of the Division of Hydropower Licensing approved Minnesota Housing Associates' request to use the Alternative Licensing Process.

k. *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 paragraph o 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).

l. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act. We are also initiating consultation with the Minnesota State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are designating Minnesota Housing Associates as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

n. Minnesota Housing Associates filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

o. *Deadline for filing requests for cooperating agency status:* 60 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file 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–14628–000.

p. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

q. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 13, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28014 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13704–002; Project No. 13701–002; Project No. 13703–002; Project No. 13702–002]**

### FFP Missouri 2, LLC; Notice of Technical Meeting

a. *Project Names and Numbers:* From upstream to downstream order, Arkabutla Lake Hydroelectric Project No. 13704, Sardis Lake Hydroelectric Project No. 13701, Enid Lake Hydroelectric Project No. 13703, and Grenada Lake Hydroelectric Project No. 13702.

b. *Date and Time of Meeting:* December 2, 2014; 2:30 p.m. Eastern Time (1:30 p.m. Central Time).

c. *Place:* Telephone conference with the Mississippi Department of Environmental Quality, the U.S. Army Corps of Engineers, and Rye Development, LLC.

d. *FERC Contact:* Jeanne Edwards, *jeanne.edwards@ferc.gov* or (202) 502–6181.

e. *Purpose of Meeting:* To discuss the water quality study report results filed on November 13, 2013 for the projects listed above.

f. A summary of the meeting will be prepared and filed for the projects' records.

g. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Jeanne Edwards at *jeanne.edwards@ferc.gov* or (202) 502–6181 by close of business Tuesday, November 25, 2014, to R.S.V.P. and to receive specific instructions on how to participate.

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28021 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI14–07–000]**

### Bass/Wilson Properties, LLC; Notice of Petition for Declaratory Order and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No:* DI14–07–000.

c. *Date Filed:* September 23, 2014.

d. *Applicant:* Bass/Wilson Properties, LLC.

e. *Name of Project:* Bass/Wilson Hydropower Project.

f. *Location:* The proposed Bass/Wilson Hydropower Project will be located on Wilson Stream, in the town of Wilton, Franklin County, Maine.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* Bass/Wilson Properties, LLC, 845 U.S. Route 2, Wilton, ME 04294; telephone: (207) 645–4448, or Email address: *randy@cousineau.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or Email address: *Jennifer.Polardino@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) (2013) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to

submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI14–07–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The existing run-of-river Bass/Wilson Hydroelectric Project will consist of the following existing facilities: (1) A nine-foot-high dam at the outlet of Wilson Stream; (2) an existing bulkhead, waste gate, canal, and a two-foot-high, eight-foot-wide tailrace built prior to 1887; (3) a turbine room and powerhouse constructed in 1904. The applicant proposes to install: (1) A 78-kilowatt turbine generating unit for electrical production rated at 18 feet of net head with an average flow of 65 cubic feet per second; (2) an intake through a concrete wall on the upstream end of the building in the current power canal; (3) a 36-inch to 48-inch diameter fiberglass conduit in the existing raceway under the building; (4) and appurtenant facilities. The power generated will be used on-site and all excess power will be distributed via connection to the interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—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, .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.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28019 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL15–15–000]**

### PJM Interconnection, L.L.C.; Notice of Initiation of Proceeding and Refund Effective Date

On November 20, 2014, the Commission issued an Order to Show Cause in Docket No. EL15–15–000, initiating a proceeding pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), directing PJM Interconnection, L.L.C. to either revise its Open Access Transmission Tariff to provide that a generation or non-generation resource owner will no longer receive reactive power capability payments after it has deactivated its unit and to clarify the treatment of reactive power capability payments for units transferred out of a fleet; or show cause why it should not be required to do so. *PJM Interconnection, L.L.C.,* 149 FERC ¶ 61,132 (2014).

The refund effective date in Docket No. EL15–15–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28024 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CD15–2–000]**

### Consolidated Irrigation Company; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On November 12, 2014, the Consolidated Irrigation Company filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Glendale Conduit Hydro Project would have an installed capacity of 450 kilowatts (kW) and would be located on the existing 36-inch-diameter Combined Conduit, which joins the Cub River conduit and Mink Creek conduits. These conduits are used to transport water for irrigation. The project would be located near the city of Preston in Franklin County, Idaho.

*Applicant Contact:* Lyla Dettmer, 98 East 880 North Suite #5, Preston, ID 83263, Phone No. (208) 852–0562, ext 101.

*FERC Contact:* Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) One proposed 52.5-foot-long, 36-inch-diameter pipe; (2) a proposed 36- by 32-foot powerhouse containing a turbine generator unit with an installed capacity 450 kW; (3) the proposed tailrace structure which distributes the water into the irrigation system; and (4) appurtenant facilities. The proposed

project would have an estimated annual generating capacity of 2,631 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

| Statutory provision | Description | Satisfies (Y/N) |
|---|---|---|
| FPA 30(a)(3)(A), as amended by HREA ... | The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. | Y |
| FPA 30(a)(3)(C)(i), as amended by HREA | The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit. | Y |
| FPA 30(a)(3)(C)(ii), as amended by HREA | The facility has an installed capacity that does not exceed 5 megawatts ..... | Y |
| FPA 30(a)(3)(C)(iii), as amended by HREA. | On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA. | Y |

*Preliminary Determination:* Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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. 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.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD15–2–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: November 19, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28012 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 18 CFR 385.2001–2005 (2013).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 13466–003]**

## City of Gresham; Notice of Effectiveness of Surrender

On October 18, 2011, the Commission issued an Order Granting Exemption from Licensing (Conduit) [1] to the City of Gresham (exemptee) for the proposed City of Gresham Wastewater Treatment Plant Outfall Hydroelectric Project, FERC No. 13466. The small conduit hydropower project would be located at the exemptee's Wastewater Treatment Plant, in Multnomah County, Oregon.

On October 21, 2014, the exemptee filed an application with the Commission to surrender the exemption. The exemptee has reevaluated the economics of the project and has decided not to move forward with construction of the project, citing insufficient economic returns and cheaper alternatives in reducing greenhouse gas emissions.

Accordingly, the Commission accepts the exemptee's surrender of its exemption from licensing, effective 30 days from the date of this notice, at the close of business on Thursday, December 18, 2014. No license, exemption, or preliminary permit applications for the project site may be filed until Friday, December 19, 2014.

Dated: November 19, 2014.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2014–28013 Filed 11–25–14; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *City of Gresham,* 137 FERC ¶ 62,053 (2011).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD14–14–000]**

### Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Workshop on Operator Actions in RTO and ISO Markets

As announced in a Notice issued on October 10, 2014, the Federal Energy Regulatory Commission (Commission) will hold a workshop on Tuesday, December 9, 2014, to commence a discussion with industry on operator actions in energy and ancillary service markets operated by the Regional Transmission Organizations and Independent System Operators. The workshop will commence at 8:45 a.m. and conclude at 4:30 p.m. and will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This workshop is free of charge and open to the public. Commission members may participate in the workshop.

The agenda and a list of participants for this workshop are attached. Those who plan to attend the workshop are encouraged to complete the registration form located at *https://www.ferc.gov/whats-new/registration/12-09-14-form.asp.* There is no registration deadline.

The workshop will be transcribed. Transcripts of the workshop will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). Additionally, there will be a free webcast of the workshop. The webcast will allow persons to listen to the workshop but not participate. Anyone with Internet access who wants to listen to the workshop can do so by navigating to the Calendar of Events at *www.ferc.gov,* locating the technical workshop in the Calendar, and clicking on the webcast link. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

While this workshop is not for the purpose of discussing specific cases, the workshop may address matters at issue in the following Commission proceedings that are pending: Cal. Indep. Sys. Operator Corp., Docket Nos. ER15–50 and ER15–402; Calpine Energy Serv., L.P., Docket No. ER15–376; *Duke Energy Corp.* v. *PJM Interconnection, L.L.C.*, Docket No. EL14–45; *FirstEnergy Solutions Corp.* v. *PJM Interconnection, L.L.C.*, Docket No. EL13–47; *Indicated Load-Serving Entities* v. *Midcontinent Indep. Transmission Sys. Operator, Inc.*, Docket No. EL13–75; ISO New England, Inc., Docket No. ER15–257; Midcontinent Indep. Sys. Operator, Inc., Docket Nos. ER14–1736 and ER14–2445; *Midcontinent Indep. Sys. Operator, Inc.* v. *Sw. Power Pool, Inc.,* Docket No. EL14–30; Midwest Indep. Transmission Sys. Operator, Inc., Docket No. EL11–34; *N. Ind. Pub. Serv. Co.* v. *Midcontinent Indep. Sys. Operator, Inc.,* Docket No. EL13–88; Old Dominion Elec. Coop., Docket No. ER14–2242; PJM Interconnection, L.L.C., Docket Nos. EL13–95, ER14–1144, ER14–1145, and ER14–2705; Sw. Power Pool, Inc., Docket Nos. ER12–1179, ER14–1174, ER14–2399, and ER14–2850; and *Sw. Power Pool, Inc.* v. *Midcontinent Indep. Sys. Operator, Inc.,* Docket No. EL14–21.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about the workshop, please contact: *Logistical Information*, Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*. *Technical Information*, Emma Nicholson, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8846, *emma.nicholson@ferc.gov*.

Dated: November 20, 2014.

**Kimberly D. Bose,**

*Secretary.*

**Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators**

**Operator Actions**

**Docket No. AD14–14–000**

**December 9, 2014**

**Agenda**

On December 9, 2014, a third and final workshop in this docket will be held to address matters of price formation in the energy and ancillary services markets administered by the Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs).[1] The workshop will focus on operator actions that affect price formation.

8:45 a.m.–9:00 a.m.—Welcome and Opening Remarks

9:00 a.m.–12:00 p.m.—Panel 1: Operator Actions in RTOs and ISOs (with a 15-minute break)

Panel 1 will address the nature of operator-initiated out-of-market resource commitments and operator adjustments to market inputs. Recognizing that the current state-of-the-art computational tools do not allow unit commitment and economic dispatch algorithms to consider all relevant system constraints, panelists will be asked to discuss whether and how to incorporate otherwise un-modeled constraints (*e.g.,* voltage constraints) into the unit commitment and economic dispatch processes. Topics will include: the extent to which un-modeled constraints require operator actions outside of the market; how operators (and market designers) consider which constraints to model; under what circumstances unit commitment decisions should be made as part of the day ahead or real-time market, or as part of the residual unit commitment process; and, when making commitments as part of the market processes, under what circumstances such commitments should be reflected in energy and ancillary services prices. Panelists will also be asked about the types of information that the RTOs and ISOs currently release publicly about operator actions, including the granularity and timing of such information. Panelists will be asked to discuss current or recent RTO and ISO efforts to improve the price formation process as it relates to un-priced or

[1] *Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators,* Notice of Workshop, Docket No. AD14–14–000 (Oct. 10, 2014).

otherwise out-of-market operator actions.

Panelists:

- Peter Brandien, ISO New England Inc.
- Mark Rothleder, California Independent System Operator Corporation
- Jeff Bladen, Midcontinent Independent System Operator, Inc.
- Wes Yeomans, New York Independent System Operator, Inc.
- Adam Keech, PJM Interconnection, L.L.C.
- Sam Ellis, Southwest Power Pool, Inc.

12:00 p.m.–1:15 p.m.—Lunch

1:15 p.m.–2:45 p.m.—Panel 2: Experience with Operator Actions

Panel 2 will focus on the experience market participants have with out-of-market operator actions. In particular, this panel will explore the extent to which panelists believe such operator actions affect the operation and revenues/costs of market participants that own generation assets and serve load. Panelists will be asked to provide specific examples, based on their experience, of operator actions that they believe have negatively impacted the price formation process. To the extent possible, panelists will be asked to discuss differences among the approaches taken by the RTOs and ISOs to incorporate otherwise un-modeled constraints into the unit commitment and economic dispatch processes. Panelists will also be asked to comment on the information that would be most helpful to them in understanding why resources are committed for reasons other than economics and how those commitments affect prices and make-whole charges. Finally, panelists will be asked for their recommendations to improve the price formation process.

Panelists:

- Andrew Hartshorn, NRG/Boston Energy Trading & Marketing
- Michael Schnitzer, NorthBridge Group, speaking on behalf of Entergy Nuclear Power Marketing, LLC
- Michael Evans, Shell Energy North America (U.S.), L.P.
- Edward Tatum, Old Dominion Electric Cooperative
- John A. Anderson, Electricity Consumers Resource Council (ELCON)
- Steve Wofford, Exelon Corporation
- Tom Kaslow, GDF SUEZ Energy North America, Inc
- Mark Smith, Calpine Corporation
- Joel Gordon, PSEG.

3:00 p.m.–4:30 p.m.—Panel 3: Options to Reduce the Market Impacts of Operator Actions

Panel 3 will focus on practices that RTOs and ISOs have adopted, plan to adopt, or might consider adopting to incorporate otherwise un-modeled constraints (*e.g.,* voltage constraints) into the unit commitment and economic dispatch processes. These practices include, but are not limited to: Pricing run enhancements to expand the types of resources that are eligible to set the clearing price for energy; adjustments to better align the market model with the physical operation of the system; transmission constraint relaxation; ramping products and reserve products that better reflect the costs of supplemental commitments operators might make to address uncertainty. Panelists will be asked to discuss the factors that influence the ability to adopt any of the above practices and to discuss the considerations made when choosing among these practices. Panelists will also be asked to discuss other options to better reflect currently un-priced operator actions in market clearing prices.

Panelists:

- David Patton, Potomac Economics
- Matthew White, ISO New England Inc.
- Andrew Hartshorn, NRG/Boston Energy Trading & Marketing
- Michael Schnitzer, NorthBridge Group, speaking on behalf of Entergy Nuclear Power Marketing, LLC
- Steve Wofford, Exelon Corporation
- Edward Tatum, Old Dominion Electric Cooperative
- John A. Anderson, ELCON

[FR Doc. 2014–28022 Filed 11–25–14; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9919–86–Region 5]**

### Notification of a Public Teleconference of the Great Lakes Advisory Board

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) announces a teleconference of the Great Lakes Advisory Board (Board). The purpose of this teleconference is to discuss the Great Lakes Restoration Initiative covering (GLRI) FY15–19 and other relevant matters.

**DATES:** The teleconference will be held Tuesday, December 9, 2014 from 10 a.m. to 12 p.m. Central Time, 11 a.m. to 1 p.m. Eastern Time. An opportunity will be provided to the public to comment.

**ADDRESSES:** The public teleconference will be held by teleconference only. The teleconference number is: (877) 744–6030; Participant code: 32202688.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *Cestaric.Rita@epa.gov.* General information on the GLRI and the Board can be found at *http://www.glri.us* under the ''Public Engagement'' tab.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 18 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions, and as technical experts.

*Availability of Meeting Materials:* The agenda and other materials in support of the teleconference will be available on the GLRI Web site at *http://www.glri.us* under the ''Public Engagement'' tab in advance of the teleconference.

*Procedures for Providing Public Input:* Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the DFO directly.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by December 4, 2014 to be placed on the list of public speakers for the meeting.

*Written Statements:* Written statements must be received by December 8, 2014 so that the information may be made available to the Board for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters

are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

*Accessibility:* For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least 7 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 13, 2014.

**Cameron Davis,**

*Senior Advisor to the Administrator.*

[FR Doc. 2014–28008 Filed 11–25–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2014–0558; FRL–9919–04]**

### Proposed Removal of Certain Inert Ingredients From Approved Chemical Substance List for Pesticide Products; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA issued a notice in the **Federal Register** of October 22, 2014, concerning the removal of certain chemical substances from the current listing of inert ingredients approved for use in pesticide products because the inert ingredients are no longer used in any registered pesticide product. This document extends the comment period for 60 days, from November 21, 2014, to January 20, 2015. Pesticide registrants and other stakeholders potentially impacted by the EPA proposal requested an extension on the comment period stating that more time was needed to confirm the chemical substances against the registrations. EPA grants the extension request to provide stakeholders with sufficient time to conduct the necessary record verifications.

**DATES:** Comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0558, must be received on or before January 20, 2015.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 22, 2014 (79 FR 63120) (FRL–9916–22).

**FOR FURTHER INFORMATION CONTACT:** Cameo G. Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency; 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 305–5454; email address: *smoot.cameo@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** document of October 22, 2014. In that document, EPA solicits comment from stakeholders on EPA's proposal to remove 72 inert ingredients from the approved chemical substance list for pesticide products. EPA is hereby extending the comment period, which was set to end on November 21, 2014, to January 20, 2015.

To submit comments, or access the public docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 22, 2014. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: November 17, 2014.

**James J. Jones,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2014–27899 Filed 11–25–14; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0754, 3060–0249, 3060–0568, 3060–0716]**

### Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before January 26, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0754.

*Title:* Children's Television Programming Report, FCC Form 398.

*Form Number:* FCC Form 398.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 1,962 respondents; 7,848 responses.

*Estimated Time per Response:* 12 hours.

*Frequency of Response:* Recordkeeping requirement; Quarterly reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 94,176 hours.

*Total Annual Cost:* $4,708,800.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Commercial full-power and Class A television broadcast stations are required to file the Children's Television Programming Report, FCC Form 398 each calendar quarter. FCC Form 398 is a standardized form that provides a consistent format for reporting the children's educational

television programming aired by licensees to meet their obligation under the Children's Television Act of 1990 (CTA) and facilitates efforts by the public and the FCC to monitor compliance with the CTA.

Commercial full-power and Class A television stations are required to complete FCC Form 398 each calendar quarter and to place the form in the station's public inspection file. Stations must also file the form each quarter with the Commission. Stations use FCC Form 398 to report, among other things, the core children's educational and informational programs the station aired the previous calendar quarter and the core programs they plan to air in the upcoming calendar quarter. FCC Form 398 also includes a ''Preemption Report'' that must be completed for each core program that was preempted during the quarter. This ''Preemption Report'' requests information on the date of each preemption, the reason for the preemption and, if the program was rescheduled, the date and time the program was re-aired.

*OMB Control Number:* 3060–0249.

*Title:* Sections 74.781, 74.1281 and 78.69, Station Records.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; Not-for-profit institutions; State, Federal or Tribal Governments.

*Number of Respondents and Responses:* 13,811 respondents; 20,724 responses.

*Estimated Time per Response:* .375 hour–1 hour.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 11,726 hours.

*Total Annual Cost:* $8,295,600.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 74.781 requires the following:

(a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this Chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment or improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 74.1281 requires the following:

(a) The licensee of a station authorized under this Subpart shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by § 17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(1) The nature of such extinguishment or improper functioning.

(2) The date and time the extinguishment of improper operation was observed or otherwise noted.

(3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.1265(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 78.69 requires each licensee of a CARS station shall maintain records showing the following:

(a) For all attended or remotely controlled stations, the date and time of the beginning and end of each period of transmission of each channel;

(b) For all stations, the date and time of any unscheduled interruptions to the transmissions of the station, the duration of such interruptions, and the causes thereof;

(c) For all stations, the results and dates of the frequency measurements made pursuant to § 78.113 and the name of the person or persons making the measurements;

(d) For all stations, when service or maintenance duties are performed, which may affect a station's proper operation, the responsible operator shall sign and date an entry in the station's records, giving:

(1) Pertinent details of all transmitter adjustments performed by the operator or under the operator's supervision.

(e) When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made as follows:

(1) The time the tower lights are turned on and off each day, if manually controlled.

(2) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(3) In the event of any observed or otherwise known failure of a tower light:

(i) Nature of such failure.

(ii) Date and time the failure was observed or otherwise noted.

(iii) Date, time, and nature of the adjustments, repairs, or replacements made.

(iv) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(v) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(4) Upon completion of the 3-month periodic inspection required by § 78.63(c):

(i) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

(f) For all stations, station record entries shall be made in an orderly and legible manner by the person or persons competent to do so, having actual knowledge of the facts required, who shall sign the station record when starting duty and again when going off duty.

(g) For all stations, no station record or portion thereof shall be erased, obliterated, or willfully destroyed within the period of retention required by rule. Any necessary correction may be made only by the person who made the original entry who shall strike out the erroneous portion, initial the correction made, and show the date the correction was made.

(h) For all stations, station records shall be retained for a period of not less than 2 years. The Commission reserves the right to order retention of station records for a longer period of time. In cases where the licensee or permittee has notice of any claim or complaint, the station record shall be retained until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for filing of suits upon such claims.

*OMB Control Number:* 3060–0568.

*Title:* Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit, State, Local or Tribal Government.

*Number of Respondents and Responses:* 4,030 respondents; 11,970 responses.

*Estimated Time per Response:* 2 minutes–10 hours.

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 612 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 59,671 hours.

*Total Annual Cost:* $74,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* 47 CFR 76.970(h) requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access):

(a) A complete schedule of the operator's full-time and part-time leased access rates;

(b) How much of the cable operator's leased access set-aside capacity is available;

(c) Rates associated with technical and studio costs;

(d) If specifically requested, a sample leased access contract; and

(e) Operators must maintain supporting documentation to justify scheduled rates in their files.

47 CFR 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

47 CFR 76.975(b) requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

47 CFR 76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

*OMB Control Number:* 3060–0716.

*Title:* Sections 73.88, 73.318, 73.685 and 73.1630, Blanketing Interference.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents and Responses:* 21,000 respondents; 21,000 responses.

*Estimated Time per Response:* 1 to 2 hours.

*Frequency of Response:* Third party disclosure requirement.

*Total Annual Burden:* 41,000 hours.

*Total Annual Cost:* None.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extend of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference. The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary. Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2014–27983 Filed 11–25–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0208]**

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before December 26, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0208.

*Title:* Section 73.1870, Chief Operators.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit; not-for-profit institutions.

*Number of Respondents and Responses:* 18,498 respondents; 36,996 responses.

*Estimated Time per Response:* 0.166–26 hours.

*Frequency of Response:* Recordkeeping requirement; third party disclosure requirement.

*Total Annual Burden:* 484,019 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2014–27984 Filed 11–25–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0113]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before January 26, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0113.

*Type of Review:* Extension of a currently approved collection.

*Title:* Broadcast EEO Program Report, FCC Form 396.

*Form Number:* FCC Form 396.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 2,000 respondents and 2,000 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* Renewal reporting requirement.

*Total Annual Burden:* 3,000 hours.

*Total Annual Cost:* $300,000.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained under Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The Broadcast Equal Employment Opportunity Program Report, FCC Form 396, is a device that is used to evaluate a broadcaster's EEO program to ensure that satisfactory efforts are being made to comply with FCC's EEO requirements. FCC Form 396 is required to be filed at the time of renewal of license by all AM, FM, TV, Low Power TV and International stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2014–28036 Filed 11–25–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 012042–007.

*Title:* MOL/ELJSA Slot Exchange Agreement.

*Parties:* Evergreen Line Joint Service Agreement and Mitsui O.S.K. Lines, Ltd.

*Filing Party:* Robert Yoshitomi, Esq.; Nixon Peabody, LLP; Gas Company Tower; 555 West Fifth Street 46th Floor; Los Angeles, CA 90013.

*Synopsis:* The amendment reduces the geographic scope of the agreement, revises the number of slots exchanged, and revises the termination provision and other terms.

*Agreement No.:* 012303.

*Title:* HLAG/Norasia Space Charter Agreement.

*Parties:* Hapag-Lloyd AG and Norasia Container Lines Limited.

*Filing Party:* Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The agreement authorizes Hapag-Lloyd to charter space to Norasia in the trade between Puerto Rico and the Caribbean Coast of Colombia.

*Agreement No.:* 012304.

*Title:* Hanjin/UASC/CMA CGM/CSCL Vessel Sharing and Slot Charter Agreement.

*Parties:* Hanjin Shipping Co., Ltd.; United Arab Shipping Co, S.A.G.; CMA CGM S.A.; and China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively ''CSCL'').

*Filing Party:* Mark J. Fink, Esq. and Joshua Stein, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The agreement would authorize the parties to cooperate through a combination of vessel sharing and slot charter arrangements on routes between ports in the United Arab Emirates, Pakistan, India, Saudi Arabia, Egypt, Italy, France, Spain, Morocco, and Malta, on the one hand, and the U.S. East Coast, on the other hand.

*Agreement No.:* 012305.

*Title:* Siem Car Carriers AS/Nippon Yusen Kaisha Space Charter Agreement.

*Parties:* Siem Car Carriers AS and Nippon Yusen Kaisha.

*Filing Party:* Ashley W. Craig, Esq. and Elizabeth K. Lowe, Esq.; Venable LLP; 575 Seventh Street NW., Washington, DC 20004.

*Synopsis:* The agreement authorizes the parties to engage in a limited range of cooperative activities, including but not limited to, vessel space chartering in the trade between South Korea, Japan, China, Hong Kong, and Mexico, on the one hand, and the U.S. East and West Coasts, on the other hand.

By Order of the Federal Maritime Commission.

Dated: November 21, 2014.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2014–28002 Filed 11–25–14; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

November 24, 2014.

**TIME AND DATE:** 10:00 a.m., Thursday, December 4, 2014.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Brody Mining, LLC,* Docket Nos. WEVA 2009–1000, et al. (Issues include whether the Administrative Law Judge erred by vacating certain ''significant and substantial'' designations and ''unwarrantable failure to comply'' designations.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2014–28092 Filed 11–24–14; 11:15 am]

**BILLING CODE 6735–01–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 December 09, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Brian D. Lucas, Fort Myers, Florida, individually and as trustee for Charles Vincent Lucas Trust dated 12/26/2007 and Jack Roderick Lucas Trust, both of Annapolis, Maryland, and Trust FBO Grant Joseph Lucas 12/22/04, Fort Myers, Florida; Bay Harbour L.P., and its general partner Peninsula Investments, Inc., Bonita Springs, Florida; David Lucas, Fort Myers, Florida, individually and as trustee for Brian David Lucas Trust u/a/d 12/15/76 and Trust FBO Grady David Lucas 12/26/06, both of Fort Myers, Florida, and Trust FBO Caroline Jenna Lucas 7/10/09, Cape Coral, Florida; Jack Roderick Lucas, Fort Myers, Florida; Michael Ukleja and Louise Ukleja, both of Long Beach, California; Megan Lucas Spears, Tampa, Florida; and Kevin M. Lucas and Karen S. Lucas, both of Annapolis, Maryland;* to retain voting shares of Finemark Holdings, Inc., and indirectly retain voting shares of Finemark National Bank & Trust, both of Fort Myers, Florida.

Board of Governors of the Federal Reserve System, November 20, 2014.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2014–27942 Filed 11–25–14; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0300; Docket No. 2014–0001; Sequence 5]**

### Submission to OMB for Review; General Services Administration Acquisition Regulation; Implementation of Information Technology Security Provision

**AGENCY:** General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB information collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding Implementation of Information Technology Security Provision. A notice was published in the **Federal Register** at 79 FR 54722 on September 12, 2014. No comments were received.

**DATES:** Submit comments on or before December 26, 2014.

**ADDRESSES:** Submit comments identified by Information Collection 3090–0300, Implementation of Information Technology Security Provision, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0300. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0300, Implementation of Information Technology Security Provision''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0300, Implementation of Information Technology Security Provision'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0300.

*Instructions:* Please submit comments only and cite Information Collection 3090–0300, Implementation of Information Technology Security Provision, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dana Munson, Procurement Analyst, Office of Acquisition Policy, at 202–357–9652 or via email at *dana.munson@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### A. Purpose

Clause 552.239–71 requires contractors, within 30 days after contract award, to submit an IT Security Plan to the Contracting Officer and Contacting Officer's Representative that describes the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under the contract. The clause will also require that contractors submit written proof of IT security authorization six months after contract award, and verify that the IT Security Plan remains valid annually.

#### B. Annual Reporting Burden

*Respondents:* 103.
*Responses per Respondent:* 2.
*Hours per Response:* 5.
*Total Burden Hours:* 1,030.

#### C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0300, Implementation of Information Technology Security Provision, in all correspondence.

Dated: November 20, 2014.

**Jeffrey Koses,**

*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2014–27997 Filed 11–25–14; 8:45 am]

**BILLING CODE 6820–61–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## DEPARTMENT OF AGRICULTURE

### Announcement of the Seventh 2015 Dietary Guidelines Advisory Committee Meeting

**AGENCY:** Office of the Secretary, Office of the Assistant Secretary for Health Department of Health and Human Services; and Food, Nutrition and Consumer Services and Research, Education, and Economics, U.S. Department of Agriculture.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act (FACA), the U.S. Department of Health and Human Services (HHS), in collaboration with the U.S. Department of Agriculture (USDA), is hereby giving notice that a meeting of the 2015 Dietary Guidelines Advisory Committee (DGAC) will be held and will be open to the public by Internet access only.

**DATES:** This meeting will be held on December 15, 2014, from 8:00 a.m.–5:30 p.m. E.S.T.

**ADDRESSES:** The meeting will be accessible to the public by webcast on the Internet only.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer (DFO), 2015 DGAC, Richard D. Olson, M.D., M.P.H.; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Alternate DFO, 2015 DGAC, Kellie (O'Connell) Casavale, Ph.D., R.D., Nutrition Advisor; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Lead USDA Co-Executive Secretary, Colette I. Rihane, M.S., R.D., Director, Office of Nutrition Guidance and Analysis, Center for Nutrition Policy and Promotion, USDA; 3101 Park Center Drive, Room 1034; Alexandria, VA 22302; Telephone: (703) 305–7600; Fax: (703) 305–3300; and/or USDA Co-Executive Secretary, Shanthy A. Bowman, Ph.D., Nutritionist, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA; 10300 Baltimore Avenue, BARC-West Bldg 005, Room 125; Beltsville, MD 20705–2350; Telephone: (301) 504–0619. Additional information about the 2015 DGAC and the agenda for this meeting will be made available on the Internet at *www.DietaryGuidelines.gov.*

**SUPPLEMENTARY INFORMATION:** Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) the Secretaries of Health and Human Services (HHS) and Agriculture (USDA) are directed to issue at least every five years a report titled *Dietary Guidelines for Americans.* The law instructs that this publication shall contain nutritional and dietary information and guidelines for the general public, shall be based on the preponderance of scientific and medical knowledge current at the time of publication, and shall be promoted by each federal agency in carrying out any federal food, nutrition, or health program. The *Dietary Guidelines for Americans* was issued voluntarily by HHS and USDA in 1980, 1985, and 1990; the 1995 edition was the first statutorily mandated report, followed by subsequent editions at appropriate intervals. To assist with satisfying the mandate, a discretionary federal advisory committee is established every five years to provide independent, science-based advice and recommendations. The DGAC consists of a panel of experts who were selected from the public/private sector. Individuals who were selected to serve on the Committee have current scientific knowledge in the field of human nutrition and chronic disease.

*Appointed Committee Members:* Fourteen members serve on the 2015 DGAC. They were appointed by the Secretaries of HHS and USDA in May 2013. Information on the DGAC membership is available at *www.DietaryGuidelines.gov.*

**Authority:** The 2015 DGAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended.

*Committee's Task:* The work of the DGAC is solely advisory in nature and time-limited. The Committee is tasked with developing recommendations based on the preponderance of current scientific and medical knowledge using a systematic review approach. The DGAC will examine the current *Dietary Guidelines for Americans,* take into consideration new scientific evidence and current resource documents, and develop a report that is to be given to the Secretaries of HHS and USDA. The report will outline science-based recommendations and rationales which will serve as the basis for developing the eighth edition of the *Dietary Guidelines for Americans.* This will be the seventh meeting of the 2015 DGAC. Meeting dates, times, locations, and other relevant information are announced at least 15 days in advance of each meeting via **Federal Register** notice. As stipulated in the charter, the Committee will be terminated after delivery of its final report to the Secretaries of HHS and USDA or two years from the date the charter was filed, whichever comes first.

*Purpose of the Meeting:* In accordance with FACA and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations.

*Meeting Agenda:* The meeting agenda will include (a) review of Committee work since the last public meeting and (b) review of the recommendations of the Committee's draft report.

*Meeting Registration:* The meeting will be publicly accessible by webcast on the Internet. Registration is required and is expected to open on December 2, 2014. To register, please go to *www.DietaryGuidelines.gov* and click on the link for ''Meeting Registration.'' To register by phone, please call National Capitol Contracting, Andrea Popp at (703) 243–9696 by 5:00 p.m. E.S.T. December 10, 2014. Registration must include name, affiliation, and phone number or email address. After registering, individuals will receive webcast access information via email.

*Written Public Comments:* Written comments from the public will continue to be accepted throughout the Committee's deliberative process. Written public comments can be submitted and/or viewed at *www.DietaryGuidelines.gov* using the ''Submit Comments'' and ''Read Comments'' links, respectively. There is no deadline for comment submission prior to this public meeting. The Committee requests that commenters provide a brief (250 words or less) summary of the points or issues in the comment text box. If commenters are providing literature or other resources, complete citations or abstracts and electronic links to full articles or reports are preferred instead of attaching these documents to the comment. All comments to the Committee must be received by midnight (E.S.T.) on December 30, 2014, after which the time period for submitting written comments to the Committee expires. The ability to view public comments will continue to be available. After the Committee's report is submitted to the Secretaries of HHS and USDA, the public will be notified via the **Federal Register** (a) that the report is available at *www.DietaryGuidelines.gov,* (b) of a request for public comments on the report, and (c) of a date and registration

instructions for a public comment meeting.

*Meeting Documents:* Documents pertaining to Committee deliberations, including meeting agendas, summaries, and webcasts will be available on *www.DietaryGuidelines.gov* under ''Meetings.'' Meeting information will continue to be accessible online, at the NIH Library, and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone (240) 453–8280; Fax: (240) 453–8281.

Dated: November 13, 2014.

**Don Wright,**

*Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.*

Dated: November 7, 2014.

**Angela Tagtow,**

*Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.*

Dated: November 10, 2014.

**Chavonda Jacobs-Young,**

*Administrator, Agricultural Research Service, U.S. Department of Agriculture.*

[FR Doc. 2014–27992 Filed 11–25–14; 8:45 am]

**BILLING CODE 4150–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Office of the Assistant Secretary for Preparedness and Response; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of the Assistant Secretary for Preparedness and Response (ASPR), as last amended at 78 FR 25277 April 30, 2013. This organizational change is to realign the Medical Reserve Corps from the HHS Office of the Assistant Secretary of Health to ASPR under the Office of Emergency Management and is consistent with authorities established under Sections 1703, 2811(c)(2)(D), and 2813 of the Public Health Service Act, as modified by the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5). The change is as follows.

I. Under Part A, Chapter AN, Section AN.00, Mission, add ''Authority over and responsibility for the Medical Reserve Corps.''

II. Delegations of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective on the date of publication in the **Federal Register**.

Dated: November 19, 2014.

**Sylvia M. Burwell,**

*Secretary.*

[FR Doc. 2014–28030 Filed 11–25–14; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services is being amended at Chapter AC, Office of the Assistant Secretary for Health (OASH), as last amended at 77 FR 2012–30005–30007, dated May 21, 2012. This amendment reflects the realignment of the Medical Reserve Corps from OASH to the Office of the Assistant Secretary for Preparedness and Response and is consistent with authorities established under Sections 1703, 2811(c)(2)(D), and 2813 of the Public Health Service Act, as modified by the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5). The change is as follows.

I. Under Part A, Chapter AC, OASH makes the following changes:

A. Under Section ACM.00, Mission, delete ''(7) Maintaining and overseeing the activities of the Volunteer Medical Reserve Corps program (42 U.S.C. 300hh–15).''

B. Under Section ACM.10, Organization, delete ''Division of the Civilian Volunteer Medical Reserve Corps (ACM5).''

C. Under Section ACM.20, Functions, delete section ''(d) Division of the Civilian Volunteer Medical Reserve Corps (ACM5)'' in its entirety.

II. Delegations of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Dated: November 19, 2014.

**Sylvia M. Burwell,**

*Secretary.*

[FR Doc. 2014–28028 Filed 11–25–14; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Guest Researcher Program; Delegation of Authority

Notice is hereby given that I have delegated to the Chief Operating Officer, Centers for Disease Control and Prevention (CDC) and Director, Human Resources Office, CDC, without authority to redelegate, the authority vested in the Director, CDC, under Section 301(a)(2), Title III of the Public Health Service (PHS) Act (42 U.S.C. 241), as amended.

This delegation became effective upon date of signature. I hereby affirm and ratify any actions taken that involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: November 6, 2014.

**Thomas R. Frieden, M.D., M.P.H.,**

*Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–27874 Filed 11–25–14; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for and amount of compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on October 1, 2014, through October 31, 2014. This list provides the name of petitioner, city, and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: November 18, 2014.

**Mary K. Wakefield,**

*Administrator.*

**List of Petitions Filed**

1. Leyla Dagach-Imbarack, Miami, Florida, Court of Federal Claims No: 14–0930V.

2. Lisa Johnson, Lowell, Massachusetts, Court of Federal Claims No: 14–0931V.

3. Tony Oliveira and Debi Oliveira on behalf of J. O., Clifton Park, New York, Court of Federal Claims No: 14–0932V.

4. Sandra White, Huntsville, Alabama, Court of Federal Claims No: 14–0933V.

5. Michelle Dixon-Jones, Baltimore, Maryland, Court of Federal Claims No: 14–0934V.

6. Barbara Perez, Westlake, Ohio, Court of Federal Claims No: 14–0935V.

7. Matraeca Weydert, Parris Island, South Carolina, Court of Federal Claims No: 14–0942V.

8. Kimberly Silvey, Memphis, Tennessee, Court of Federal Claims No: 14–0943V.

9. Jordan Garfinkel, New York, New York, Court of Federal Claims No: 14–0944V.

10. Tyrone Gordly, Spanaway, Washington, Court of Federal Claims No: 14–0945V.

11. John Osele, Buffalo, New York, Court of Federal Claims No: 14–0946V.

12. Terrance Bernstein, Omaha, Nebraska, Court of Federal Claims No: 14–0950V.

13. Elizabeth Nicole Robinson, Columbia, Missouri, Court of Federal Claims No: 14–0952V.

14. Carrie Reyes, Schofield, Wisconsin, Court of Federal Claims No: 14–0953V.

15. Alfa Dia, Columbus, Ohio, Court of Federal Claims No: 14–0954V.

16. Amy Lee Dillson, Hixson, Tennessee, Court of Federal Claims No: 14–0959V.

17. Wendy Ward, Bethesda, Maryland, Court of Federal Claims No: 14–0962V.

18. Andrea Thompson, Queens, New York, Court of Federal Claims No: 14–0963V.

19. Patricia Knoll, Lincoln, Nebraska, Court of Federal Claims No: 14–0964V.

20. Matthew Thornton, Johnstown, Pennsylvania, Court of Federal Claims No: 14–0965V.

21. Michael Stevenson on behalf of Sharon Thomas, Detroit, Michigan, Court of Federal Claims No: 14–0966V.

22. Kia Starr-Knight, Pittsburgh, Pennsylvania, Court of Federal Claims No: 14–0967V.

23. Paula Nilsen, Sarasota, Florida, Court of Federal Claims No: 14–0968V.

24. Roger Noblett, Russellville, Arkansas, Court of Federal Claims No: 14–0969V.

25. Betty West, Cobbs Creek, Virginia, Court of Federal Claims No: 14–0970V.

26. Frances Keske, Kissimmee, Florida, Court of Federal Claims No: 14–0971V.

27. Kristin J. Reginelli on behalf of Lilyana Reginelli, Lyndhurst, Ohio, Court of Federal Claims No: 14–0972V.

28. Girldene Jackson, Philadelphia, Pennsylvania, Court of Federal Claims No: 14–0973V.
29. James Bergeron, Southgate, Michigan, Court of Federal Claims No: 14–0974V.
30. Margaret Bannister, Jefferson City, Missouri, Court of Federal Claims No: 14–0975V.
31. Jennifer Peabody Barr, Franklin, Tennessee, Court of Federal Claims No: 14–0977V.
32. Harvard Davis, Fair Oaks, California, Court of Federal Claims No: 14–0978V.
33. Linda Parker, Palatka, Florida, Court of Federal Claims No: 14–0979V.
34. StellaMarie Liverance, Germantown, Tennessee, Court of Federal Claims No: 14–0980V.
35. Kim Finch, Germantown, Tennessee, Court of Federal Claims No: 14–0981V.
36. Tesha Smith, Dallas, Texas, Court of Federal Claims No: 14–0982V.
37. Virginia Shives, Rockford, Illinois, Court of Federal Claims No: 14–0983V.
38. Gaena Maria Laney, Fayetteville, Arkansas, Court of Federal Claims No: 14–0984V.
39. Vivian Reinard, Doylestown, Pennsylvania, Court of Federal Claims No: 14–0987V.
40. Paula Sims, Yonkers, New York, Court of Federal Claims No: 14–0988V.
41. Tracy Czuprynski, Boston, Massachusetts, Court of Federal Claims No: 14–0990V.
42. Rochelle Beaver, Boston, Massachusetts, Court of Federal Claims No: 14–0991V.
43. Christina Lokay, King of Prussia, Pennsylvania, Court of Federal Claims No: 14–0993V.
44. Monica Chenowith on behalf of A. N., Baraboo, Wisconsin, Court of Federal Claims No: 14–0996V.
45. Shari Buetow, Baraboo, Wisconsin, Court of Federal Claims No: 14–0998V.
46. Krista Kuntzelman and James Kuntzelman on behalf of Emma Kuntzelman, Tampa, Florida, Court of Federal Claims No: 14–0999V.
47. Erin Quackenbush-Baker, Twin Falls, Idaho, Court of Federal Claims No: 14–1000V.
48. Vincent M. Cusimano, New Orleans, Louisiana, Court of Federal Claims No: 14–1003V.
49. Irwin Reich, Hicksville, New York, Court of Federal Claims No: 14–1004V.
50. Chelsey Atnip, Kaysville, Utah, Court of Federal Claims No: 14–1006V.
51. Nona Jones, Selmer, Tennessee, Court of Federal Claims No: 14–1007V.
52. William Moyer, Middlebrook, Virginia, Court of Federal Claims No: 14–1008V.
53. Isaac Bord and Elisa Pagano on behalf of Alexander Bord, Rockaway, New York, Court of Federal Claims No: 14–1009V.
54. Elizabeth Schandel, Farmingville, New York, Court of Federal Claims No: 14–1010V.
55. Garry Rehn, Elk River, Minnesota, Court of Federal Claims No: 14–1012V.
56. Catherine Smith, Sault Sainte Marie, Michigan, Court of Federal Claims No: 14–1013V.
57. Ann Marie Plastino on behalf of Alfred Plastino, Chicago, Illinois, Court of Federal Claims No: 14–1014V.
58. Bruce A. Ling, Jr., Bristol, Florida, Court of Federal Claims No: 14–1017V.
59. John Summers, Longview, Washington, Court of Federal Claims No: 14–1018V.
60. Steven T. McGehee, Greensboro, North Carolina, Court of Federal Claims No: 14–1020V.
61. Christopher Purvis, New London, Connecticut, Court of Federal Claims No: 14–1025V.
62. Renee Leetta Hunter, Bowie, Maryland, Court of Federal Claims No: 14–1026V.
63. Reuben Calixto and Sandra Calixto on behalf of D. C., Chicago, Illinois, Court of Federal Claims No: 14–1029V.
64. Heather Cook, Baraboo, Wisconsin, Court of Federal Claims No: 14–1030V.
65. Hannah Baiona, Marblehead, Massachusetts, Court of Federal Claims No: 14–1032V.
66. Christie Shine, Loma Linda, California, Court of Federal Claims No: 14–1033V.
67. Angela Clark, Shelby, North Carolina, Court of Federal Claims No: 14–1034V.
68. Razene Lewis, Bossier City, Louisiana, Court of Federal Claims No: 14–1035V.
69. David Weber, Mason, Ohio, Court of Federal Claims No: 14–1036V.
70. Barbara Verdick, Dallas, Texas, Court of Federal Claims No: 14–1039V.
71. Roberta Livolsi, Boston, Massachusetts, Court of Federal Claims No: 14–1040V.
72. Christine Haley, Boston, Massachusetts, Court of Federal Claims No: 14–1041V.
73. Richard Florida, Washington, Pennsylvania, Court of Federal Claims No: 14–1044V.
74. Helen Forrest, Jacksonville, Florida, Court of Federal Claims No: 14–1046V.
75. Connie Graham on behalf of Kaden Stuart, Duncan, Oklahoma, Court of Federal Claims No: 14–1047V.
76. James Greenamyre on behalf of Lacey J. Greenamyre, Middlebury, Vermont, Court of Federal Claims No: 14–1048V.
77. Amy Fogg, Lancaster, New Hampshire, Court of Federal Claims No: 14–1050V.
78. Julie Hallquist, Washington, District of Columbia, Court of Federal Claims No: 14–1052V.
79. Bruce A. Pederson, St. Cloud, Minnesota, Court of Federal Claims No: 14–1055V.
80. Amanda L. Isaacson, Milwaukee, Wisconsin, Court of Federal Claims No: 14–1056V.
81. Gregory Simpson and Sandra Simpson on behalf of H. S., Vienna, Virginia, Court of Federal Claims No: 14–1057V.
82. Sebastion J. Robinson, Ruston, Louisiana, Court of Federal Claims No: 14–1058V.
83. Valerie Dobbins, Greensboro, North Carolina, Court of Federal Claims No: 14–1059V.
84. John Lovelady, Boston, Massachusetts, Court of Federal Claims No: 14–1063V.
85. Marc Cosentino, Boston, Massachusetts, Court of Federal Claims No: 14–1064V.
86. Miranda Werner on behalf of P.M.S., Louisville, Kentucky, Court of Federal Claims No: 14–1065V.

[FR Doc. 2014–27987 Filed 11–25–14; 8:45 am]
BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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 Cancer Institute Special Emphasis Panel Quantitative Imaging for Evaluation of Response to Cancer Therapies.

*Date:* January 29–30, 2015.

*Time:* 10:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892–9750, 240–276–6385, *lovingeg@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel Omnibus SEP–17.

*Date:* March 25, 2015.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W124, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* David Ransom, Ph.D., Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W124, Bethesda, MD 20892–9750, 240–276–6351 *david.ransom@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 20, 2014.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–27937 Filed 11–25–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 11, 2014, 02:00 p.m. to November 11, 2014, 03:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on October 16, 2014, 79 FR 200 Pg. 62166.

The meeting will be held on December 9, 2014 instead of November 11, 2014. The meeting will start at 12:00 p.m. and will end at 2:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 20, 2014.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–27936 Filed 11–25–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket Number DHS–2013–0052]**

### Environmental Planning and Historic Preservation Program

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice of Final National Environmental Policy Act Implementing Procedures.

**SUMMARY:** The purpose of this notice is to inform the public that the Department of Homeland Security (DHS or the Department) is issuing the final update to its policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), as amended, and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's NEPA procedures are contained in Directive 023–01, Rev. 01 and Instruction Manual 023–01–001–01, Rev. 01, Implementation of the National Environmental Policy Act (herein after referred to as Directive and Instruction). This notice also responds to the comments received on the Department's draft updated procedures published on June 5, 2014 (79 FR 32563).

**DATES:** The Directive and Instruction will be effective on March 26, 2015.

**FOR FURTHER INFORMATION CONTACT:** A. Marie Ecton, Senior Environmental Specialist, Department of Homeland Security, Telephone (202) 360–5661, or Email *a.marie.ecton@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Once effective, the Directive and Instruction will apply to all of DHS, which is currently comprised of over 20 support and operational components, and help ensure the integration of environmental stewardship into DHS decision making as required by NEPA. The Directive and Instruction will serve as the DHS implementing procedures for NEPA and the CEQ regulations (as required by 40 CFR 1505.1 and 1507.3) and therefore must be read in conjunction with the CEQ regulations.

The Directive and Instruction were substantially revised to address a number of circumstances and requirements that have arisen since April 19, 2006, the effective date of the original DHS NEPA procedures (**Federal Register,** Vol. 71, No. 64, April 4, 2006). For example, when originally published in 2006 the Directive and Instruction did not apply to the following three Components of DHS: Federal Emergency Management Agency (FEMA), Customs and Border Protection (CBP), and United States Coast Guard (USCG); these three Components each maintained their own procedures for implementing NEPA when the Department was established in 2002. This revision to the Directive and Instruction incorporates FEMA, CBP, and USCG into the Department's NEPA procedures and addresses the full scope of DHS activities to which NEPA applies. When the updated procedures become effective, they will apply to all Components of DHS, including FEMA, CBP, and USCG. In addition, every Component will have the option of developing Supplemental Instructions to establish how that particular Component will meet the requirements of the final version of the DHS Directive and Instruction. In a separate yet related effort, FEMA will pursue rescission of its regulations at 44 CFR 10 and replace them with Supplemental Instructions that conform to requirements of the DHS Directive and Instruction.

The requirements put forth in the revised Directive and Instruction emphasize that the NEPA process must be appropriately integrated into the performance of DHS missions and activities and decision making. The revised Directive establishes the overall policy that DHS will comply with NEPA, and the revised Instruction establishes the procedures for ensuring this compliance is implemented in an effective and efficient manner. The Instruction covers the following: Overview of NEPA requirements, including requirements for the preparation and content of NEPA documents; management of NEPA implementation in DHS; criteria for Components to obtain a delegation of authority to approve their respective NEPA reviews; public involvement; dispute resolution; information protected from public disclosure; procedures for emergencies; review of applications from persons or organizations outside of DHS (*e.g.,* grant applications); and an identification of the types of DHS activities normally reviewed in a CATEX, Environmental

Assessment, or Environmental Impact Statement.

The CATEXs published in 2006 are being retained and are included in the Instruction (Appendix A, Table 1). In addition, the Instruction includes the following new CATEXs: One CATEX for an administrative activity; five CATEXs for real property management activities; 13 CATEXs for non-grant activities unique to FEMA's mission and authorities; and 19 CATEXs for federal assistance (*e.g.,* grant) activities. For synopses of the administrative record support for the Department's list of 2006 and new CATEXs, see the docket and the DHS NEPA Web page at *http://www.dhs.gov/nepa.*

DHS invested over three years in developing the proposed revision to its NEPA procedures. The draft revised Directive and Instruction were provided to CEQ in the fall of 2013 for review and discussion prior to the June 5, 2014 publication for public comment. DHS provided its proposed final revised Directive and Instruction to CEQ in early September 2014; CEQ responded with a letter dated November 10, 2014 prior to this publication of the final Directive and Instruction as required under 40 CFR 1507.3(a), indicating that the Department's revised procedures conform to NEPA and the CEQ regulations.

*Comments on Categorical Exclusions and DHS Response:*

DHS received a comment from the International Association of Fire Chiefs (IACF) regarding the proposed new CATEX for federally-assisted wildfire mitigation activities. To improve readability (but with no change to the scope), DHS revised the CATEX between the draft and final version to read as follows:

**N11 Federal Assistance for Wildfire Hazard Mitigation Actions. Federal assistance for wildfire hazard mitigation actions involving the creation of defensible space or hazardous fuel reduction for up to 100 feet of at-risk structures which includes the selective removal of vegetation less than 12 inches in diameter through thinning, pruning, limbing, sawing, or brush cutting; removal of downed, dead, or dry vegetation material as part of the overall action.*

*The actions must be limited to less than 100 acres of vegetation removal either individually or when combined with other reasonably foreseeable private or public actions and follow appropriate best management practices.*

Although IACF was supportive of the draft proposed CATEX, they recommended removal of the 100-foot limit on the creation of defensible space. DHS supports the mission and respects the perspective of IACF; however, for the time being DHS has decided to retain the proposed wording of the CATEX. DHS relied on only a small number of FEMA Environmental Assessments (EAs) to support development of the new CATEX, and none of those EAs included a buffer greater than 100 feet. Without sufficient information from past DHS-funded wildfire mitigation projects that demonstrates that a larger buffer results in no potential for environmental impacts, DHS currently believes that a higher level of NEPA review and impact evaluation is necessary for actions involving more than 100 acres of vegetation removal.

If, as a result of additional DHS reviews of wildfire mitigation projects, DHS is able to document and determine that the buffer can reasonably be extended because there are few to no environmental impacts associated with larger scale clearing for wildfire mitigation purposes, then DHS will consider revising the CATEX. In addition, DHS will work with subject matter experts, including IACF, to obtain other data that may support future revisions to the CATEX.

Lastly, it is important to note that if proposed vegetation clearing for wildfire mitigation purposes is greater than 100 feet from a structure, DHS can still provide grant funding for the project once the appropriate level of environmental review has been conducted.

DHS received two comments from the State of Arizona Game and Fish Department (AZGFD) regarding the following proposed CATEX for federally-assisted new construction activities:

**N8 Federal Assistance for New Construction Activities of Less Than One Acre in Undisturbed or Undeveloped Areas. Federal assistance for new construction and associated site preparation activities in undisturbed or undeveloped areas when the activities comprise less than one acre and follow best management practices to control noise, water, and air pollution. This category does not apply to new construction in undisturbed or undeveloped floodplains, wetlands, or seaward of the limit of moderate wave action (or V zone when the limit of moderate wave action has not been identified). This CATEX covers the range of activities typically necessary for new construction, including field work (e.g.orings, site inspection) and temporary staging and use of construction equipment and vehicles.*

AZGFD's first comment was that the draft proposed CATEX as written ''has the potential to impact wildlife resources in undisturbed/undeveloped areas without appropriate direct or cumulative impact analysis of construction activities. Construction activities within an acre of undisturbed or undeveloped areas have the potential to result in direct take of wildlife, habitat fragmentation, and reduced landscape wildlife permeability.'' AZGFD's second comment was a request that DHS include ''clarifying language that ensures cumulative impacts for state trust wildlife resources are identified for all related actions, and that reasonable mitigation measures are implemented'' and include ''Best Management Practices (BMPs) . . . that reduce impacts to wildlife including timing restrictions, trenching guidelines, fencing guidelines, etc.''

In response to AZGFD's comments on new CATEX N8, DHS added the following sentence to Section V.B(2) of the Instruction, which discusses how to appropriately apply CATEXs to proposed actions: ''Application of a CATEX to a proposed action presumes review and compliance under other relevant environmental planning and historic preservation laws, regulations, and Executive Orders (*e.g.,* National Historic Preservation Act, Endangered Species Act) has occurred, and that a higher level of NEPA analysis is not warranted as a result of any identified impacts to resources protected under those other requirements.'' In addition, DHS believes it has enough data from past actions to justify that no significant cumulative impacts result from the clearing of plots less than one acre each. If DHS were to provide federal assistance for the clearing of multiple one acre plots in close proximity to each other, this situation would constitute an extraordinary circumstance that would prohibit use of the CATEX and would require a higher level of NEPA analysis. The list of DHS extraordinary circumstances is provided in Section V.B(2)(c) of the Instruction; these include a consideration of impacts to protected species and habitat and environmentally sensitive areas, and a consideration of whether the proposed action is related to other actions with individually insignificant, but cumulatively significant impacts. As to cumulative impacts on habitat and species, these will get covered in the ESA consultation process; notwithstanding the new CATEX N8, DHS will consult with the U.S. Fish and Wildlife Service and relevant state agencies, such as AZGFD, for proposed

actions potentially affecting protected species and habitat.

AZGFD also commented that the definition of Cooperating Agency included in Section II of the draft Instruction was not fully consistent with the CEQ definition in 40 CFR 1508.5. DHS agrees with AZGFD, and has revised the definition accordingly in the final Instruction.

DHS received questions regarding the need for CATEXs for Congressionally-mandated activities (existing USCG CATEXs L18 and L53, and new DHS-wide CATEX C6), to which NEPA does not apply. When Congress mandates an activity, such as the transfer of DHS controlled real property to a non-Federal entity, DHS has no discretion whether or not to perform the activity; however, DHS may have discretion on some aspects of how the activity is executed. Therefore, DHS NEPA practitioners expressed the need for such CATEXs where DHS has some level of discretion and the activities have been determined not to have the potential for significant environmental impacts.

Lastly, DHS received three comments regarding the accessibility and readability of the draft revised Directive and Instruction and supporting documents; namely that the **Federal Register** notice was inadequate as a means of communicating with stakeholders and the public, that hyperlinks to the documents should have been clearly identified and easily accessible, and that the documents were difficult to comprehend. The **Federal Register** and *www.regulations.gov* are widely recognized as appropriate sources for the public to learn about and comment on Federal government initiatives. DHS wrote the documents according to style guides and writing standards applicable to the federal government as well as DHS-specific requirements of its formal Directives system. All relevant documents were and remain available to the public on the Department's NEPA Web page (*www.dhs.gov/nepa*) and on the *www.regulations.gov* Web site under Docket Number DHS–2013–0052. The June 5, 2014 **Federal Register** notice provided clear instructions to readers to visit these two Web sites to view the draft revised Directive and Instruction and supporting documents.

A copy of this **Federal Register** publication and the final Directive and Instruction and supporting documents are available on the internet at *www.regulations.gov* (Docket Number DHS–2013–0052) and *http://www.dhs.gov/nepa.*

**Teresa R. Pohlman,**

*Director of Sustainability and Environmental Programs.*

[FR Doc. 2014–27966 Filed 11–25–14; 8:45 am]

**BILLING CODE 9110–9B–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2014–0666; OMB Control Number 1625–0022]**

### Collection of Information Under Review by Office of Management and Budget

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0022, Application for Tonnage Measurement of Vessels. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 26, 2014.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2014–0666] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE., STOP 7710, WASHINGTON DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated

collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2014–0666], and must be received by December 26, 2014. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

**Submitting Comments**

If you submit a comment, please include the docket number [USCG–2014–0666]; indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES,** but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2014–0666'' in the ''Search'' box. 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 will address them accordingly.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2014–0666'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0022.

**Privacy Act**

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (79 FR 56083, September 18, 2014) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

**Information Collection Request**

1. *Title:* Application for Tonnage Measurement of Vessels.

*OMB Control Number:* 1625–0022.

*Type of Request:* Revision of a currently approved collection.

*Respondents:* Owners of vessels.

*Abstract:* The information from this collection helps the Coast Guard to determine a vessel's tonnage. Tonnage in turn helps to determine licensing, inspections, safety requirements, and operating fees.

*Forms:* CG–5397.

*Burden Estimate:* The estimated burden has decreased from 19,160 hours to 14,610 hours a year due to a decrease in the estimated number of responses.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 20, 2014.

**Thomas P. Michelli,**

*U.S. Coast Guard, Chief Information Officer, Acting.*

[FR Doc. 2014–28043 Filed 11–25–14; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection Accreditation of Saybolt, Lp, as a Commercial Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation of Saybolt, LP, as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 12, 2014.

**DATES:** The accreditation of Saybolt, LP, as commercial laboratory became effective on June 12, 2014. The next triennial inspection date will be scheduled for June 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12, that Saybolt, LP, 109 Woodland Dr., LaPlace, LA 70068, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

Saybolt, LP is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–08 | ASTM D–86 | Standard test method for distillation of petroleum products at atmospheric pressure. |
| 27–58 | ASTM D–5191 | Standard test method for Vapor pressure of Petroleum products (Mini Method). |

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | ASTM D–287 | Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method). |
| 27–03 | ASTM D–4006 | Standard test method for water in crude oil by distillation. |
| 27–48 | ASTM D–4052 | Standard test method for density and relative density of liquids by digital density meter. |
| 27–13 | ASTM D–4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–04 | ASTM D–95 | Standard test method for water in petroleum products and bituminous materials by distillation. |
| 27–05 | ASTM D–4928 | Standard Test Method for Water in crude oils by Coulometric Karl Fischer Titration. |
| 27–46 | ASTM D–5002 | Standard test method for density and relative density. |
| 27–11 | ASTM D–445 | Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity). |
| 27–54 | ASTM D–1796 | Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure). |
| 27–06 | ASTM D–473 | Standard test method for sediment in crude oils and fuel oils by the extraction method. |
| 27–50 | ASTM D–93 | Standard test methods for flash point by Penske-Martens Closed Cup Tester. |

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 20, 2014.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2014–28029 Filed 11–25–14; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Saybolt, LP, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Saybolt, LP, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of June 11, 2014.

**DATES:** The approval of Saybolt, LP, as commercial gauger became effective on June 11, 2014. The next triennial inspection date will be scheduled for June 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Saybolt, LP, 190 James Dr. East, Suite 110, St. Rose, LA 70087, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Saybolt, LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|---|---|
| 3 | Tank gauging. |
| 7 | Temperature determination. |
| 8 | Sampling. |
| 11 | Physical properties. |
| 12 | Calculations. |
| 17 | Maritime measurement. |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 20, 2014.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services Directorate.*

[FR Doc. 2014–28018 Filed 11–25–14; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2014–N212; FXES1112040000–156–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; Polk County, FL

**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 a Habitat Conservation Plan (HCP). Vulcan Materials Company, Florida Rock Division (dba Florida Rock Industries, Inc., a subsidiary of Vulcan Materials Company) (applicant), requests an ITP under the Endangered Species Act of 1973, as amended (Act). The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the sand skink and gopher tortoise. We invite written comments on the ITP application and HCP.

**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 December 26, 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 TE42144B–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, Wildlife Biologist, South Florida Ecological Services Office, Vero Beach, FL (see **ADDRESSES**); telephone: 772–562–3909, extension 315.

**SUPPLEMENTARY INFORMATION:** We announce the availability of an ITP application and HCP. Vulcan Materials Company, Florida Rock Division (dba Florida Rock Industries, Inc., a subsidiary of Vulcan Materials Company) (applicant), requests an ITP under the Act. The applicant proposes incremental mining of sand reserves throughout the permitted mining limits of the approximately 537.46-acre project area over the life of the mine. Construction activities associated with the Sandland Sand Mine (project) will take place within Sections 31 and 32, Township 29 South, Range 28 East, and Sections 5 and 6, Township 30 South, Range 28 East, Polk County, Florida.

The project has been divided into 10 phases (1B, 2, 3–10), based on the anticipated progression of the mining operation. Within the first three phases (1B–3) the applicant anticipates impacting about 17.71 acres of breeding, feeding, and sheltering habitat for the sand skink (*Neopseps reynoldsi*), bluetail mole skink (*Eumeces egregius lividus*), and gopher tortoise (*Gopherus polyphemus*), incidental to land preparation for the expansion of existing sand mining operations within the project. The extent of direct impacts in future phases is currently undetermined; however, based on the current USFWS guidelines, within the remaining phases (4–10), approximately 150.98 acres of the site appear to be suitable for the two skink species and the gopher tortoise. The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the skinks and gopher tortoise.

**Applicant's Proposed Project**

We received an application from the applicant for an ITP, along with a proposed HCP. The applicant requests a 15-year permit under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). The applicant proposes incremental mining of sand reserves throughout the permitted mining limits of the approximately 537.46-acre project area over the life of the mine. The project has been divided into 10 phases, based on the anticipated progression of the mining operation. Within the first three phases (1B–3), the applicant anticipates impacting about 17.71 acres of breeding, feeding, and sheltering habitat for the sand skink, bluetail mole skink, and gopher tortoise, incidental to land preparation for project.

The extent of direct impacts in future phases is currently undetermined; however, based on the current USFWS guidelines, within Phases 4–10, approximately 150.98 acres of the site appear to be suitable for the two skink species and the gopher tortoise. The applicant's HCP describes the minimization and mitigation measures proposed to address the effects of the project on the skinks and gopher tortoise. In advance of the progression of the mining operations into future phases, quantitative surveys will be conducted for the skinks and gopher tortoises to determine the occupancy and extent of occupancy within these suitable areas. The completion of these surveys will be subject to the Service's approved survey guidelines at the time the surveys are conducted.

The applicant proposes to mitigate for impacts to occupied skink habitat within Phases 1B–3 at a ratio of 2:1, by purchasing approximately 35.42 mitigation bank credits at the Tiger Creek Conservation Bank in Polk County, Florida, a bank within the service area of skinks. Direct impacts to occupied skink habitat within the future phases will be mitigated at the same ratio, utilizing the same mitigation bank. Additionally, the applicant proposes to mitigate for impacts to occupied gopher tortoise habitat within Phases 1B–4, as well as in future phases, by relocating gopher tortoises and any recovered eggs to a recipient site approved by the Florida Fish and Wildlife Conservation Commission.

**Our Preliminary Determination**

The Service has made a preliminary determination that the applicant's project, including the mitigation 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). 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 project, 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. The applicants' proposed project qualifies as a ''low-effect'' project, as more fully explained in our environmental action statement and associated Low Effect Screening Form. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

**Public Comment**

If you wish to comment on the ITP application and HCP, you may submit comments by any one of the following methods:

*Email: Brian_Powell@fws.gov.* Use ''Attn: Permit number TE42144B–0'' as your message subject line.

*Fax:* Brian Powell, (772) 562–4288, Attn.: Permit number TE42144B–0.

*U.S. mail:* Brian Powell, Wildlife Biologist, South Florida Ecological Services Field Office, Attn: Permit number TE42144B–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

*In-person drop-off:* You may drop off information during regular business hours at the above office address.

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.

**Next Steps**

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meet 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.

### 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: November 20, 2014.

**Robert Progulske,**

*Field Supervisor, South Florida Ecological Services Office.*

[FR Doc. 2014–28005 Filed 11–25–14; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R2–ES–2014–N226; FXES1113 0200000–156–FF02ENEH00]**

## Receipt of Six Incidental Take Permit Applications for Participation in the Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on six incidental take permit applications for take of the federally listed American burying beetle resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permits would be issued under the approved *Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

**DATES:** To ensure consideration, written comments must be received on or before December 26, 2014.

**ADDRESSES:** You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marty Tuegel, Branch Chief, by U.S. mail at Environmental Review, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

**SUPPLEMENTARY INFORMATION:**

### Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on six incidental take permit (ITP) applications for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permits would be issued to the applicants under the *Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The ICP was made available for comment on April 16, 2014 (79 FR 21480), and approved on May 21, 2014 (publication of the finding of no significant impact (FONSI) notice was on July 25, 2014; 79 FR 43504). The ICP and the associated environmental assessment/FONSI are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these documents.

### Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications under the ICP, for incidental take of the federally listed American burying beetle (*Nicrophorus americanus;* ABB). Please refer to the appropriate permit number (*i.e.,* TE–XXXXXX) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

*Permit TE–49742B*

*Applicant:* BP America Production Company, Houston, TX.

Applicant requests a new permit for oil and gas upstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma.

*Permit TE–49745B*

*Applicant:* PetroQuest Energy, LLC, Tulsa, OK.

Applicant requests a new permit for oil and gas upstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma.

*Permit TE–49749B*

*Applicant:* MarkWest Oklahoma Gas Company, LLC, Tulsa, OK.

Applicant requests a new permit for oil and gas midstream production, including construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

*Permit TE–51880B*

*Applicant:* LINN Operating, Inc., Oklahoma City, OK.

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

*Permit TE–51520B*

*Applicant:* Bravo Arkoma, LLC, Tulsa, OK.

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

*Permit TE–B*

*Applicant:* Pantera Energy Company, Amarillo, TX.

Applicant requests a new permit for oil and gas upstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure within Oklahoma.

**Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: November 19, 2014.

**David Mendais,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 2014–28007 Filed 11–25–14; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2014–0091]**

### Atlantic Wind Lease Sale 4 (ATLW4) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts—Final Sale Notice; MMAA104000

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Massachusetts.

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of four commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Massachusetts, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering four leases for sale using a multiple factor auction format: Lease OCS–A 0500, Lease OCS–A 0501, Lease OCS–A 0502, and Lease OCS–A 0503. The four lease areas (LAs) are identical to those announced in the *Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Massachusetts,* which was published on June 18, 2014, in the **Federal Register** with a 60-day public comment period (79 FR 34771). This FSN contains information pertaining to the areas available for leasing, lease provisions and conditions, auction procedures, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the leases resulting from this lease sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

**DATES:** BOEM will hold a mock auction for the eligible bidders on January 26, 2015. The monetary auction will be held online and will begin at 8:30 a.m. Eastern Standard (EST) on January 29, 2015. Additional details are provided in the section entitled, ''Deadlines and Milestones for Bidders.''

**FOR FURTHER INFORMATION CONTACT:** Jessica Stromberg, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *jessica.stromberg@boem.gov.*

**Authority:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (''the Act''), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211 and 585.216.

*Background:* The four LAs offered in this FSN are the same areas BOEM announced in the PSN on June 18, 2014 (79 FR 34771). BOEM received 25 comment submissions in response to the PSN, which are available in the **Federal Register** docket for this notice through BOEM's Web site at: *http://www.boem.gov/State-Activities-Massachusetts/*. BOEM also has posted a document containing responses to comments submitted during the PSN comment period and a list of other changes that BOEM has implemented for this lease sale since publication of the PSN. The document entitled, *Response to Comments and Explanation of Changes* can be found at the following URL: *http://www.boem.gov/State-Activities-Massachusetts/*.

On June 18, 2014, BOEM published a Notice of Availability (NOA) (79 FR 34781) for the revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore Massachusetts pursuant to the National Environmental Policy Act (NEPA). Consultations occurred concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and the Coastal Zone Management Act (CZMA). BOEM prepared and executed a programmatic agreement (PA) to guide its consultations under section 106 of the National Historic Preservation Act (NHPA). The PA provides for consultations to continue through BOEM's decision-making process regarding the approval, approval with modification, or disapproval of a lessee's Site Assessment Plan (SAP), and allows for phased identification and evaluation of historic properties. The four LAs identified in this FSN together comprise the Massachusetts Wind Energy Area (WEA) described in the preferred alternative in the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic OCS Offshore Massachusetts Revised Environmental Assessment,* which can be found at: *http://www.boem.gov/State-Activities-Massachusetts/*.

Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a SAP or Construction and Operations Plan (COP).

List of Eligible Bidders: BOEM has determined that the following companies are legally, technically, and financially qualified, pursuant to 30 CFR 585.106 and 107, to hold a commercial wind lease offshore Massachusetts, and are therefore eligible to participate in this lease sale as bidders.

| Company name | Company No. |
|---|---|
| Deepwater Wind New England, LLC | 15012 |
| EDF Renewable Development, Inc. | 15027 |
| Energy Management, Inc. | 15015 |
| Fishermen's Energy, LLC | 15005 |
| Green Sail Energy LLC | 15045 |
| IBERDROLA RENEWABLES, Inc. | 15019 |
| NRG Bluewater Wind Massachusetts, LLC | 15025 |

| Company name | Company No. |
|---|---|
| OffshoreMW LLC | 15010 |
| RES America Developments Inc. | 15021 |
| Sea Breeze Energy LLC | 15044 |
| US Mainstream Renewable Power (Offshore) Inc. | 15029 |
| U.S. Wind Inc. | 15023 |

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of a lease pursuant to this sale.

• Bidder's Financial Form (BFF): Each eligible bidder must submit a BFF to BOEM by December 15, 2014. The BFF is available at: *http://www.boem.gov/State-Activities-Massachusetts/*. Once this information has been processed, bidders may log into *pay.gov* and leave bid deposits. BOEM will not consider any BFFs submitted by eligible bidders for previous lease sales for the purposes of this auction. BOEM will only consider allowing any bidder who fails to submit the BFF by this deadline to submit the BFF after this date if BOEM determines that the failure to submit the BFF was caused by events beyond the bidder's control.

• Bid Deposits: Each bidder must submit an adequate bid deposit by January 14, 2015, as described in the ''Bid Deposits'' section. BOEM will only consider allowing any bidder who fails to submit the bid deposit by this deadline to submit the bid deposit after this date if BOEM determines that the failure to submit the bid deposit was caused by events beyond the bidder's control.

• Non-Monetary Package: Each bidder must submit a non-monetary package, if it is applying for a credit as described in the ''Non-Monetary Auction Procedures'' section of this notice, by January 14, 2015.

• Mock Auction: BOEM will hold a Mock Auction on January 26, 2015. The Mock Auction will be held online. BOEM will contact each eligible bidder and provide instructions for participation. Only bidders eligible to participate in this auction will be permitted to participate in the Mock Auction.

• Panel Convenes to Evaluate Non-Monetary Packages: On January 27, 2015, the panel described in the ''Auction Procedures'' section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, who will inform each bidder by email of the panel's determination of whether the bidder qualifies for a non-monetary credit.

• Monetary Auction: On January 29, 2015, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 8:30 a.m. EST. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. BOEM anticipates that the auction may continue on consecutive business days, as necessary, until the auction ends according to the procedures described in the Auction Format section of this notice.

• Announce Provisional Winner: BOEM will announce the provisional winner(s) of the lease sale after the auction ends.

• Reconvene the Panel: The panel will reconvene to verify auction results.

• Reject Unsuccessful Bids and Refund Monies to Unsuccessful Bidders: Once provisional winner(s) have been announced and the panel has verified the auction results, BOEM will provide unsuccessful bidders a written statement of the reasons their bids were rejected and return the bid deposits of any bidders who did not win a lease.

• Department of Justice (DOJ) Review: BOEM will allow DOJ 30 days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c), which reads, in relevant part:

*Antitrust review of lease sales.* (1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

• Deliver the Leases: BOEM will send three lease copies to each winner, with instructions on how to accept and execute the lease. The first year's rent payment is due 45 days after the winner receives the lease for execution.

• Return the Leases: Within 10 business days from receiving the lease copies, the auction winner(s) must post financial assurance, pay any outstanding balance of their bonus bids, and sign and return the three copies.

• Execute the Leases: Once BOEM has received the lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the lease and execute it, if appropriate.

Areas Offered for Leasing: The area described for leasing in this FSN are the same areas described in the Massachusetts PSN (79 FR 34771, June 18, 2014). The area to be available for sale will be auctioned as four leases: Lease OCS–A 0500, Lease OCS–A 0501, Lease OCS–A 0502, and Lease OCS–A 0503. Lease OCS–A 0500 consists of 187,523 acres, Lease OCS–A 0501 consists of 166,886 acres, Lease OCS–A 0502 consists of 248,015 acres, and Lease OCS–A 0503 consists of 140,554 acres. The total area is approximately 742,978 acres. If there are adequate bids, four leases will be issued pursuant to this lease sale. A description of the LAs and lease activities can be found in Addendum ''A'' of each lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/State-Activities-Massachusetts/*.

Map of the Area Offered for Leasing: A map of the four LAs can be found at the following URL: *http://www.boem.gov/State-Activities-Massachusetts/*.

A large scale map showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

Withdrawal of Blocks: Interested parties should note that BOEM reserves the right to withdraw portions of the LAs prior to its execution of a lease based upon relevant information provided to the Bureau.

Lease Terms and Conditions: BOEM has included specific terms, conditions, and stipulations for the OCS commercial wind leases in the Massachusetts WEA in each lease. BOEM reserves the right to apply additional terms and conditions to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. Each lease is available on BOEM's Web site at: *http://www.boem.gov/State-Activities-Massachusetts/*. Each lease consists of an instrument with 20 sections and the following seven attachments:

• Addendum ''A'' (Description of Leased Area and Lease Activities);

• Addendum ''B'' (Lease Term and Financial Schedule);

• Addendum ''C'' (Lease-Specific Terms, Conditions, and Stipulations);

• Addendum ''D'' (Project Easement);

• Addendum ''E'' (Rent Schedule);

• Appendix A to Addendum ''C'' (Incident Report: Protected Species Injury or Mortality); and

• Appendix B to Addendum ''C'' (Required Data Elements for Protected Species Observer Reports).

Addenda ''A'', ''B'', and ''C'' provide detailed descriptions of lease terms and conditions. Addenda ''D'' and ''E'' will be completed at the time of COP approval.

Plans: Pursuant to 30 CFR 585.601, the lessee must submit a SAP within the 1 year Preliminary Term. Pursuant to 30 CFR 585.235, if the lessee intends to continue its commercial lease with an operations term, the lessee must submit a COP at least 6 months before the end of the site assessment term.

Financial Terms and Conditions: This section provides an overview of the basic annual payments that the Lessee must pay under the lease terms, and the financial assurance requirements that will be associated with each lease.

Rent: The first year's rent payment of $3 per acre for the entire LA is due within 45 days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, *i.e.,* the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged for the portion of the lease not authorized for commercial operations, *i.e.,* not generating electricity. However, instead of geographically dividing the LA into acreage that is ''generating'' and acreage that is ''non-generating,'' the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity of the project that is not yet in operation. The fraction is the nameplate capacity not yet authorized for commercial operations at the time payment is due, divided by the maximum nameplate capacity after full installation of the project, as described in the COP. This fraction is then multiplied by the amount of rent that would be due for the lessee's entire LA at the rental rate of $3 per acre to obtain the annual rent due for a given year.

For example, for a hypothetical lease the size of 742,978 acres (the size of the entire Massachusetts WEA), the amount of rent payment would be $2,228,934 per year if no portion of the LA is authorized for commercial operations. If 500 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and its most recent approved COP specifies a maximum nameplate capacity of 1000 MW, the rent payment would be $1,114,467. For the above example, this would be calculated as follows: 500 MW/1000 MW × ($3/acre × 742,978 acres) = $1,114,467.

If the lessee submits an application for relinquishment of a portion of the LA within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the LA. Later relinquishments of any LA will reduce the lessee's rent payments due for the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable would be $70 per statute mile. For any additional acreage required, the lessee must also pay the greater of $5 per acre per year or $450 per year.

Operating Fee: For the purposes of calculating the initial annual operating fee payment, an operating fee rate is applied to the wholesale market value of the electricity established by the Northeast-Massachusetts Hub power market and expected to be generated from the project during its first 12 months of operations. This initial payment is prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the start of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the wholesale market value of the projected annual electric power production. For the purposes of this calculation, the market value is the product of the project's nameplate capacity, the total number of hours in the year (8,760), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, an annual operating fee for a 100 MW wind facility operating at 40% capacity (decimal equivalent is 0.4) with a regional wholesale power price of $40/MWh under an operating fee rate of 2% (decimal equivalent is 0.02) would be calculated to be $280,320 as follows: Annual operating fee = 100 MW × 8,760 hours/year × 0.4 × $40/MWh power price × 0.02.

*Operating Fee Rate:* The operating fee rate is set at 0.02 (*i.e.,* 2%) during the entire life of commercial operations.

*Nameplate Capacity:* Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if the Lessee has 20 turbines in commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind facility at the rated wind speed of the turbines would be 100 MW.

*Capacity Factor:* The capacity factor relates to the amount of energy delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. This factor is represented as a decimal between zero and one. There are several reasons why the amount of power delivered is less than the theoretical 100% of capacity. For a wind facility, the capacity factor is mostly determined by the availability of wind. Transmission line loss and down time for maintenance or other purposes also affect the capacity factor.

The capacity factor for the year in which the commercial operation date occurs and for the first six full years of commercial operations on the lease is set at 0.4 (*i.e.,* 40%) to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth year, the capacity factor may be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor may be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

*Wholesale Power Price Index:* The wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast–Massachusetts Hub power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual *State of the Markets Report* with specific reference to the summary entitled, ''Electric Market Overview: Regional Spot Prices.'' The wholesale power price is published as the annual spot price and then adjusted for inflation using the implicit price deflator. The original spot price is inflated to the year in which the operating fee is to be due. Data on annual implicit price deflators are reported by the U.S. Department of

Commerce's Bureau of Economic Analysis.

Financial Assurance: Within 10 business days after receiving the lease copies, the provisional winner must provide an initial lease-specific bond or other approved means of meeting the Lessor's initial financial assurance requirements in the amount of $100,000. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. BOEM will determine the amount of supplemental and decommissioning financial assurance requirements on a case-by-case basis.

The financial terms can be found in Addendum ''B'' of the lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/State-Activities-Massachusetts/.*

Bid Deposit: A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than January 14, 2015, each bidder must have submitted a bid deposit of $450,000 per unit of desired initial eligibility. Each lease is worth one unit of bid eligibility in the auction. Any participant intending to bid on only one of the leases during the auction must submit a bid deposit of $450,000. The required bid deposit for any participant intending to bid on multiple leases in the first round of the auction will be the number of leases the bidder intends to bid on multiplied by $450,000. For example, the required bid deposit for any participant intending to bid on three leases in the first round of the auction will be $1,350,000. BOEM will only consider allowing any bidder who fails to submit the bid deposit by this deadline to submit the bid deposit after this date if BOEM determines that the failure to submit the bid deposit was caused by events beyond the bidder's control. Bid deposits will be accepted online via *pay.gov.*

Following publication of the FSN, each bidder must fill out the BFF included in the FSN. BOEM has made a copy of the BFF available with this notice on its Web site at: *http://www.boem.gov/State-Activities-Massachusetts/.* This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov.* After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit. BOEM will not consider any BFFs submitted by eligible bidders for previous lease sales for the purposes of this auction. BOEM will only consider allowing any bidder who fails to submit the BFF by this deadline to submit the BFF after this date if BOEM determines that the failure to submit the BFF was caused by events beyond the bidder's control.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to unsuccessful bidders.

Minimum Bid: In this auction, approximately 187,523 acres will be offered for sale as Lease OCS–A 0500, approximately 166,886 acres will be offered for sale as Lease OCS–A 0501, approximately 248,015 acres will be offered for sale as Lease OCS–A 0502, and approximately 140,554 acres will be offered for sale as Lease OCS–A 0503. BOEM has established for this lease sale a minimum bid of $1 per acre for each LA. Therefore, the minimum acceptable bid will be $187,523 for Lease OCS–A 0500, $166,886 for Lease OCS–A 0501, $248,015 for Lease OCS–A 0502, and $140,554 for Lease OCS–A 0503.

**Auction Procedures**

**Summary**

For the sale of Lease OCS–A 0500, Lease OCS–A 0501, Lease OCS–A 0502, and Lease OCS–A 0503, BOEM will use a multiple-factor auction format with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and non-monetary factors, or ''variables,'' in determining the outcome of the auction. BOEM has appointed a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and verifying the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel will meet to consider non-monetary packages on January 27, 2015. The panel will determine whether any bidder has earned a non-monetary credit to be used during the auction, and, if one or more bidders have earned such a credit, the percentage of the monetary bid the credit will be worth.

The auction will balance consideration of two variables: (1) A cash bid, and (2) a non-monetary credit, *i.e.,* if a bidder holds a Community Benefits Agreement (CBA) or a Power Purchase Agreement (PPA), as described herein. In sum, these two variables comprise the multi-factor bid or ''As-Bid'' auction price. A bidder's As-Bid price, which is the sum of its cash bid and any credit portion earned, can be submitted by the bidder at BOEM's asking price or as an Intra-Round Bid price subject to certain conditions, as described more fully herein. BOEM's regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6) provide for multiple-factor auctions, wherein both monetary and non-monetary bid variables may be considered.

**Overview of the Multiple-Factor Bidding Format Proposed for This Sale**

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider a combination of factors as part of a bid. The regulations state that one bid proposal per bidder will be accepted, but do not further specify the procedures to be followed in the multiple-factor format. A multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulations leave to BOEM the determination of how to administer the multiple-factor auction format to ensure the receipt of a fair return under the Act, 43 U.S.C. 1337(p)(2)(A). BOEM has chosen to do this through an auction format that considers a non-monetary factor along with ascending bidding over multiple rounds, sharing certain useful information with bidders at the end of each auction round (*e.g.,* the number of live bids associated with each LA), and ensuring that a bidder's live bid submitted in the final round of the auction will win the LAs included in that bid. This auction format enhances competition and reduces bidder uncertainty more effectively than other auction types that BOEM considered.

BOEM's regulations at 30 CFR 585.220(a)(4) provide for a multi-round auction in which each bidder may submit only one proposal per LA or for a set of LAs in each round of the auction. This formulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulations by enabling BOEM to benefit from both the consideration of more than one bidding factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each LA offered. The asking price for a bid on more than one LA is the sum of the asking prices for each LA in the bid. Each bidder will indicate whether it is willing to meet the asking price for one or more LAs. A bid submitted at the full asking price for one or more LAs in a particular round is referred to as a ''live bid.'' A bidder must submit a live bid for at least one of the LAs in each

round to participate in the next round of the auction. As long as there is at least one LA that is included in two or more live bids, the auction continues, and the next round is held.

A bidder may meet the asking price by submitting a monetary bid equal to the asking price or, if it has earned a credit, by submitting a multiple-factor bid—that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price. A multiple-factor bid would consist of the sum of a cash portion and any credit portion that the bidder has earned.

An uncontested bid is a live bid that does not overlap with other live bids in that round. For example, a bid for two LAs is considered contested if any LA included in that bid is included in another bid—a bid cannot be ''partially uncontested.'' If a bidder submits an uncontested bid consisting of one or more LA, and the auction continues for another round, BOEM automatically carries that same live bid forward as a live bid into the next round, and BOEM's asking price for the LA(s) contained in the uncontested bid would remain unchanged from the previous round. If the price on any LA(s) in that bid rises later in the auction because another bidder places a live bid on one or more of those LAs, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price(s) goes up, the bidder that placed the previously carried-forward bid is free to bid on any LA at the new asking price(s).

Following each round in which any LA is contained in more than one live bid, BOEM will raise the asking price for that LA by an increment determined by BOEM. The auction concludes at the end of the round in which none of the four LAs is included in the live bid of more than one bidder. The series of rounds and the rising asking prices set by BOEM will facilitate consideration of the first variable—the cash portion of the bid.

The second variable—a credit of 10% of a monetary bid for holding a CBA or a credit of up to 25% of a monetary bid for holding a PPA—will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced LA in a bidder's multiple-factor bid. This credit serves to supplement the amount of a cash bid proposal made by a particular bidder in each round. In the case of a bidder holding a credit and bidding on more than one LA, the credit will be applied only on the LA with the highest asking price. More details on the non-monetary factors are found in the ''Credit Factors'' section herein.

Under BOEM's regulations at 30 CFR 585.222(d), determination of the winning bid is made by the panel. The regulations state that BOEM ''will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel . . .'' 30 CFR 585.224(h). The panel will evaluate each non-monetary package to determine whether it meets the criteria provided in this FSN, and therefore whether it will qualify for a credit for its holder. It is possible that the panel could determine that no bidder qualifies for a non-monetary credit during the auction, in which case the auction would proceed as described in this FSN. The panel will determine the winning bids for each LA in accordance with the procedures described in this FSN.

**Details of the Auction Process**

*Bidding—Live Bids*

Each bidder is allowed to submit a live bid for any number of LAs based on its ''eligibility'' at the opening of each round. A bidder's initial eligibility is determined based on the amount of the bid deposit submitted by the bidder by January 14, 2015. To be eligible to offer a bid on one LA at the start of the auction, a bidder must submit a bid deposit of $450,000. To be eligible to offer a bid on two LAs in the first round of the auction, the bidder must submit a bid deposit of $900,000; for three LAs, the bid deposit is $1,350,000; for four LAs, the bid deposit is $1,800,000. A bidder's bid deposit will be used by BOEM as a down payment on any monetary obligations incurred by the bidder should it be awarded a lease.

As the auction proceeds, a bidder's continuing eligibility is determined by the number of LAs included in its live bid submitted in the round prior to the current round. That is, if a bidder submitted a live bid on one LA in the previous round, that bidder may submit a bid that includes at most one LA in the current round. If a bidder submitted a live bid comprised of two or more LAs in the previous round, that bidder may submit a live bid that also includes that number of LAs in the current round. Unless a bidder has an uncontested bid that is carried forward into the next round, a bidder that submitted a live bid for one or more LAs may choose to submit a live bid for fewer LAs than the maximum number it is eligible to include in its bid. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

In the first round of the auction, bidders have the following options:

A bidder with an initial eligibility of one (that is, a bidder who submitted a bid deposit of $450,000) may:

- Submit a live bid on any of the four LAs, or
- Submit nothing, and drop out of the auction.

A bidder with an initial eligibility of more than one (that is, a bidder who submitted a bid deposit of $900,000 up to $1,800,000) may:

- Submit a live bid for any number of LAs up to its bid eligibility, or
- Submit nothing, and drop out of the auction.

There is no requirement that the LAs contained in a live bid be contiguous. A bidder who has included multiple LAs in a live bid can include any combination of LAs up to the bidder's bid eligibility. Before each subsequent round of the auction, BOEM will raise the asking price for any LA that received more than one live bid in the previous round. BOEM will not raise the asking price for a LA that received only one or no live bids in the previous round.

BOEM, in its sole discretion, will determine asking price increments. BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude; and
- Decreasing the increments as the asking price of a LA nears its apparent final price.

BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process.

A bidder must submit a live bid in each round of the auction (or have an uncontested live bid automatically carried forward by BOEM) for it to remain active and continue bidding in future rounds. All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of the bids they submit and can be held accountable for up to the maximum amount of those bids determined to be winning bids during the final award procedures.

Between rounds, BOEM will release the following information:

- The level of demand for each LA in the previous round of the auction (*i.e.,* the number of live bids that included the LA); and
- The asking price for each LA in the upcoming round of the auction.

In any subsequent round of the auction, if a bidder's previous round bid was uncontested, and the auction continues for another round, then BOEM will automatically carry forward that bid as a live bid in the next round. A bidder whose bid is carried forward will not have an opportunity to modify or drop its bid until some other bidder submits a live bid that overlaps with the LA(s) in the carried forward bid. In particular, for rounds in which a bidder finds its uncontested bid is carried forward, the bidder will be unable to do the following:

- Switch to any other LAs;
- Submit an Intra-Round Bid (see herein for discussion of Intra-Round Bids); or
- Drop out of the auction.

A bidder may be bound by that bid or, indeed, by any other bid which BOEM determines is a winning bid in the award stage. Hence, a bidder cannot drop an uncontested bid. In no scenario can a bidder be relieved of any of its bids from any round until a final determination is made of the winners of the auction.

Except when a bidder's bid is being carried forward by BOEM (*i.e.,* an uncontested bid), a bidder with an eligibility of one (that is, a bidder who submitted a live bid for one LA in the previous round) may:

- Submit a live bid for any of the four LAs;
- Submit an Intra-Round Bid for the same LA for which the bidder submitted a live bid in the previous round, and exit the auction; or
- Submit nothing, and drop out of the auction.

Additionally, if a bid is not carried forward by BOEM (*i.e.,* a contested bid), a bidder with an eligibility of two or more (that is, a bidder who submitted a live bid for two or more LAs in the previous round) may:

- Submit a live bid for any number of LAs up to its eligibility;
- Submit an Intra-Round Bid for the specific combination of LAs in that bidder's previous-round bid, and a live bid for any number of LAs fewer than the number of LAs in that bidder's previous-round bid;
- Submit an Intra-Round Bid for the specific combination of LAs in that bidder's previous-round bid, no live bids, and exit the auction; or
- Submit nothing, and drop out of the auction.

Subsequent auction rounds occur in this sale as long as one of the four LAs is contested. The auction concludes at the end of the round in which none of the four LAs is included in the live bid of more than one bidder, *e.g.,* all live bids are uncontested.

*Bidding—Intra-Round Bids*

All asking prices and asking price increments will be determined by the BOEM Auction Manager. Intra-round bidding allows bidders to more precisely express the maximum price they are willing to offer for a single LA or for a combination of LAs while also minimizing the chance of ties. An Intra-Round Bid must consist of a single offer price for exactly the same LA(s) included in the bidder's live bid in the previous round.

When submitting an Intra-Round Bid, the bidder is indicating that it is not willing to meet the current round's asking price, but it is willing to pay more than the previous round's asking price. In particular, in an Intra-Round Bid, the bidder specifies the maximum (higher than the previous round's asking price and less than the current round's asking price) that it is willing to offer for the specific LA(s) in its previous round's live bid.

Although an Intra-Round Bid is *not* a live bid, in the round in which a valid Intra-Round Bid is submitted for any number of LAs, the bidder's eligibility for a live bid in that same round and future rounds is permanently reduced to one less than the amount of LAs for which the bidder was eligible to bid in the previous round. In other words, once an Intra-Round Bid is submitted, the bidder will never again have the opportunity to submit a live bid on as many LAs as it has bid in previous rounds.

BOEM will not consider the presence of Intra-Round Bids for the purpose of determining whether to increase the asking price for a particular LA or to end the auction. Also, BOEM will not count or share with bidders between rounds the number of Intra-Round Bids received for each LA.

All of the Intra-Round Bids submitted during the auction will be preserved, and may be determined to be winning bids. Therefore, bidders are responsible for payment of the bids they submit and may be held accountable for up to the maximum amount of any Intra-Round Bids or live bids determined to be winning bids during the final award procedures.

Please note that all bids are treated as separate packages in deciding how and to whom to award LAs. In other words, Intra-Round bids, like all other bids consisting of more than one LA, are not divisible. The auction rules also guarantee that a final round live bid is a provisionally winning bid. Accordingly, a bidder's earlier round bid for multiple LAs, which contains one or more of the LAs included in a final round bid of a different bidder, cannot be a provisionally winning bid. For example, if an Intra-Round bid is submitted for two LAs, and in the final round a different bidder submits a live bid for only one of those lease areas, the Intra-Round bid will not be considered for the area that did not receive a live bid. Because Intra-Round bids are considered inseparable packages, in this scenario the Intra-Round bid cannot win either LA.

*Determining Provisional Winners*

After the bidding ends, BOEM will determine the provisionally winning bids in accordance with the process described in this section. This process consists of two stages: Stage 1 and Stage 2, which are described below. Once the auction ends, nothing further is required of bidders within or between Stages 1 and 2. In practice, the stages of the process will be determined by the auction software, which will analyze the monetary and credit portion of the bids, determine provisional winners, find the LAs won by the provisional winners, and calculate the applicable bid prices to be paid by the winners for the LAs they won. This evaluation will be reviewed, checked and validated by the panel. The determination of provisional winners, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and the absence of conduct detrimental to the integrity of the competitive auction.

- *Stage 1*

Live bids submitted in the final round of the auction are Qualified Bids. Live bids submitted before the final round and any Intra-Round Bids submitted in any round of the auction are Contingent Bids. In Stage 1, a bidder with a Qualified Bid is provisionally assured of winning the LA(s) included in its final round bid, regardless of any other Contingent Bids. If all four LAs receive live bids in the final round, they are awarded to bidders in Stage 1, and the second award stage is not necessary. If any LA received a Contingent Bid but not a Qualified Bid, BOEM will proceed to Stage 2 to award the leases.

Following the auction, all winning bidders must pay the price associated with their winning bids, which may consist of cash and non-monetary credits or just cash.

- *Stage 2*

In Stage 2, BOEM will consider Contingent Bids to determine if the LA(s) not awarded in Stage 1 can be awarded in Stage 2. BOEM will award these LAs in Stage 2 based upon the

Contingent Bids that maximize the total As-Bid prices in the auction. However, in order to preserve the award of Qualified Bids in Stage 1, the only circumstance in which a Contingent Bid may replace a Qualified Bid is when the Contingent Bid is submitted by the same bidder and includes the LA of the Qualified Bid it replaces. For example, if a particular bidder placed a live bid for the Lease OCS–A 0500 in the final round of the auction, in Stage 2, if there are LAs that did not receive a final round live bid, BOEM will review the bids placed in the auction to determine if the same bidder placed a Contingent Bid containing Lease OCS–A 0500 and one or more other LAs. If this Contingent Bid maximizes the As-Bid prices in the auction, BOEM may choose this bid as the winning bid instead of that bidder's Qualified Bid for Lease OCS–A 0500. If the bidder's Qualified Bid is replaced by its Contingent Bid for Lease OCS–A 0500 and one or more of the other LAs (either by an Intra-Round bid for those LAs or by a live bid comprised of those LAs), the bidder would pay the price associated with its Contingent Bid for the LAs contained therein.

Under certain circumstances, different combinations of Contingent Bids from two or more bidders may result in the same total As-Bid price. In such cases, BOEM will resolve the resulting tie with a random drawing.

In the event a bidder submits a bid for a LA that the panel and BOEM determine to be a winning bid, the bidder will be expected to sign the applicable lease documents in a timely manner and submit the full cash payment due, pursuant to 30 CFR 585.224. If a bidder fails to timely sign and pay for the lease, then BOEM will not issue the lease to that bidder, and the bidder will forfeit its bid deposit. BOEM may take into account failure of a bidder to timely pay the full amount due in determining whether the bidder is financially capable to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

**Credit Factors**

Prior to the auction, BOEM will convene a panel pursuant to 30 CFR 585.222(d) to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit applicable to the As-Bid auction price for one of the LAs in each round of the auction, as described herein. Any single PPA or CBA cannot be used by more than one bidder in the auction.

The percentage credit that will be applicable to each bidder throughout the auction and award process is determined based on the panel's evaluation of required documentation submitted by the bidders as of January 14, 2015. Bidders will be informed by email before the monetary auction about the percentage credit applicable to their bids. A bidder may not receive more than one credit, and the bid credit will be applicable to only one LA. Any non-monetary credit will be applicable only to the highest priced LA in a bid for multiple LAs. For an Intra-Round Bid containing multiple LAs, the highest priced LA will be determined using the previous round's asking prices. After application of the credit percentage to the appropriate As-Bid auction price, it will be rounded to the nearest whole dollar amount.

The bidder's credit percentage is limited to the greater of 10% for a CBA or up to 25% for a PPA. This credit percentage will be applied to the highest priced LA related to the bidder's latest live bid or Intra-Round Bid. During each round, bidders are informed by the BOEM Auction System how the credit applies to their live bid and any Intra-Round Bid. In the case of a live bid for multiple LAs, the credit will apply only to the LA having the highest current round asking price. In the case of an Intra-Round Bid for multiple LAs, the credit will apply only to the highest-priced LA, but the applicable price for calculating the credit will be based on the previous round's asking prices, not on any additional amount above the previous round's asking prices as reflected in the incremental amount associated with its Intra-Round Bid.

The panel will review the non-monetary package submitted by each bidder, and, based on the criteria of a PPA or CBA as provided in this FSN, determine whether bidders have established that they are qualified to receive a credit and the percentage at which that credit will apply. If the panel determines that no bidder has qualified for a non-monetary credit, the auction will proceed with each bidder registered with no imputed credit.

**Credit Factor Definitions**

The following definitions describe the factors for which bidders may earn a credit.

*Community Benefits Agreement*s (CBA). BOEM will provide a 10% credit for any bidder that can demonstrate that it has executed a CBA, as defined in this section. In order for a non-monetary package to qualify for a 10% credit in this auction, the BOEM-appointed panel must answer ''yes'' to the following questions:

1. Is there a legally binding contract?

2. Is the contract between:

a. A bidder; and

b. One or more community-based organizations (CBO)?

3. Has the bidder committed to provide specified community benefits?

4. Has the CBO committed in specific ways to support the project in the governmental approval process?

A community-based organization (CBO) is defined as: A legally incorporated organization whose membership includes residents or property owners of a community within the potentially affected region, the local government of the community, or an entity created or managed by the local government(s) of the community or communities.

Bidders seeking non-monetary credit for a CBA must submit the CBA as part of their non-monetary package by the date specified in this FSN. In addition, bidders must include a description of how the CBA meets the requirements outlined in this FSN. For protection of confidential business information, please see the section entitled, ''Protection of Privileged or Confidential Information'' in this notice.

*Power purchase agreement* (PPA) is any legally enforceable long-term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. Except where approval of the PPA by the Massachusetts Department of Public Utilities would not otherwise be required, such approval must be obtained before a PPA will be eligible for credit in a non-monetary package in BOEM's lease sale. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity and/or energy products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the state's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. To qualify, a PPA must contain the following terms or supporting documentation:

(i) A complete description of the proposed project;

(ii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;

(iii) A timeline for permitting, licensing, and construction;

(iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

(v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;

(vi) The term for the long-term contract;

(vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and

(viii) Copies of or citations to interconnection filings related to the PPA.

If the panel determines a bidder has executed a PPA for at least 250 MW, it will be eligible for the entire 25% credit. If the panel determines a bidder has executed a PPA for an amount less than 250 MW, the bidder may still be eligible for a non-monetary credit proportional to the PPA's fraction of 250 MW. The smaller percentage for a partial credit will be calculated according to the formula below:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible
- Full PPA = 250 MW
- Full Credit = 25%
- Partial PPA = amount (less than 250 MW) of power under contract

**Additional Information Regarding the Auction**

*Non-Monetary Auction Procedures*

All bidders seeking a non-monetary auction credit are required to submit a non-monetary auction package. If a bidder seeks a non-monetary auction credit, this submission must contain information sufficient to establish the bidder's eligibility to receive a non-monetary credit in the monetary phase of the auction. Further information on this subject can be found in the section of this notice entitled, ''Credit Factor Definitions.'' If a bidder does not submit a non-monetary package by January 14, 2015, to BOEM, then BOEM will assume that bidder is not seeking a non-monetary auction credit and the panel will not consider that bidder for a non-monetary auction credit.

*Bidder Authentication*

Prior to the auction, the Auction Manager will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain tokens for each authorized individual. Tokens are digital authentication devices. The tokens will be mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. *Bidders are to ensure that each token is returned within three business days following the auction.* An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703–787–1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

*Monetary Auction Times*

This section will describe, from a bidder's perspective, how the auction will take place. This information will be elaborated on and clarified in the Auction System Technical Supplement available on BOEM's Web site at: *http://www.boem.gov/State-Activities-Massachusetts/.* The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

The monetary auction will begin at 8:30 a.m. EST on January 29, 2015. Bidders may log in as early as 8:00 a.m. on that day. We recommend that bidders log in earlier than 8:30 a.m. on that day to ensure that any login issues are resolved prior to the start of the auction. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the Recess begins;
- During the Recess, previous Round results are posted;
- Bidders review the previous Round results and prepare their next Round bids;
- Next Round bidding begins.

The first round will last about 30 minutes, though subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are tentative. Bidders should consult the auction schedule on the bidding Web site during the auction for updated times. Bidding will continue until about 6:00 p.m. each day. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging feature to notify bidders that a revision has been made, and direct bidders to the relevant page. BOEM will also use the messaging system for other changes and items of note during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled time to place bids. Bidders should do so according to the procedures described in this notice, and the Auction System Technical Supplement. No information about the round is available until the round has closed and results have been posted, so there should be no strategic

advantage to placing bids early or late in the round.

*Alternate Bidding Procedures*

Any bidder who is unable to place a bid using the online auction and would be interested in placing a bid using the Alternate Bidding Procedures must:

• Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain to the BOEM Auction Manager the reasons for which he/she is forced to place a bid using the Alternate Bidding Procedures. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

• The Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via an Alternate Bidding Form that can be faxed to the auction manager. If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the Alternate Bidding Procedures, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion. When using the Alternate Bidding Procedures, if the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess. *Bidders are strongly encouraged to submit the Alternate Bidding Form before the round ends.* If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures. If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Except for bidders who have uncontested bids in the current round, failure to place a bid during a round will be interpreted as dropping out of the auction. It is possible that bids entered in prior rounds, before the bidder stopped bidding, may be awarded one or both LAs pursuant to BOEM's Stage 2 procedures. Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Intra-Round Bid, or if they stopped bidding during the auction.

Rejection of Bids: BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, among others, those related to: bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be rejected by the Program Manager of BOEM's Office of Renewable Energy Programs and, in that case, would not be considered for acceptance.

Process for Issuing the Leases: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease to each winning bidder. Within 10 business days after receiving the lease copies, the winning bidder must:

1. Execute the lease on the bidder's behalf;

2. File financial assurance, as required under 30 CFR 585.515–537; and

3. Pay by electronic funds transfer (EFT) the balance of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov,* the Web site bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the ''Instructions for Making Electronic Payments'' available on BOEM's Web site at: *http://www.boem.gov/State-Activities-Massachusetts/.*

If the winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if the winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

In the event that the provisional winner does not execute and return the leases according to the instructions in this notice, BOEM reserves the right to reconvene the panel to determine whether it is possible to identify a bid that would have won in the absence of the bid previously determined to be the winning bid. In the event that a new winning bid is selected by the panel, BOEM will follow the procedures in this section for determining the new winner(s).

BOEM will not execute a lease until (1) the three requirements above have been satisfied, (2) BOEM has accepted the winning bidder's financial assurance, and (3) BOEM has processed the winning bidder's payment. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 days of the date that the winning bidder receives the lease copies, the winning bidder must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at: *https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604.*

Subsequent annual rent payments must be made following the detailed instructions contained in the ''Instructions for Making Electronic Payments'' available on BOEM's Web site at: *http://www.boem.gov/State-Activities-Massachusetts/.*

Anti-Competitive Behavior: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anti-competitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will ''allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale.''

If a bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

• An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;

• An agreement among bidders not to bid for a particular LA;

• An agreement among bidders not to bid against each other; and

• Other agreements among bidders that have the effect of limiting the final auction price.

Pursuant to 43 U.S.C. 1337(c), BOEM will decline to award a lease if it is determined by the Attorney General in consultation with the Federal Trade Commission that doing so would be inconsistent with the antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see: *http://www.justice.gov/atr/public/business-resources.html,* or consult counsel.

Bidder's Financial Form Self-Certification: Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False Statements) in the BFF, which can be found on BOEM's Web site: *http://www.boem.gov/State-Activities-Massachusetts/.* The form must be filled out and returned to BOEM in accordance with the ''Deadlines and Milestones for Bidders'' section of this notice.

**Non-Procurement Debarment and Suspension Regulations**

Pursuant to regulations at 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details, such as the date and time, specified in the FSN in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (*e.g.,* earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703–787–1320 or access the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.*

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

**Protection of Privileged or Confidential Information**

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, except as required by FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (*e.g.,* the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Dated: November 17, 2014.

**Walter D. Cruickshank,**

*Acting Director, Bureau of Ocean Energy Management.*

[FR Doc. 2014–27965 Filed 11–25–14; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2014–0078; MMAA104000]**

### Outer Continental Shelf, Alaska OCS Region, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of Availability of a Second Draft Supplemental Environmental Impact Statement and Notice of Public Hearings; Correction.

**SUMMARY:** On November 7, 2014, BOEM published a notice in the **Federal Register** (79 FR 66401). BOEM is changing the venue for one of the public hearing dates. This notice makes that change.

**SUPPLEMENTARY INFORMATION:** Public Hearings: Pursuant to the regulations implementing the procedural provisions of NEPA, BOEM will hold public hearings on the Second Draft SEIS. The hearing scheduled on December 1, 2014, previously announced to occur at the Loussac Library Complex, will be held at a different location. The hearing will instead take place at the Crowne Plaza Hotel, 109 W. International Airport Road, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Michael Routhier, Program Analysis Officer and Project Manager, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823 or by telephone at (907) 334–5200.

Dated: November 17, 2014.

**Walter D. Cruickshank,**

*Acting Director, Bureau of Ocean Energy Management.*

[FR Doc. 2014–28003 Filed 11–25–14; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Proposed Amended Consent Decree Under the Clean Water Act

On November 19, 2014, the Department of Justice lodged a proposed Amended Consent Decree with the United States District Court for the Western District of Missouri in the lawsuit entitled *United States* v. *The City of Kansas City, Missouri,* Civil Action No. 4:10–cv–0497–GAF, proposing to modify the implementation schedule for certain injunctive measures required under the original Consent Decree entered in this matter on September 27, 2010, resolving Kansas City's alleged violations of the Clean Water Act (''CWA'' or ''Act'').

The Consent Decree (''CD'') requires, among other measures intended to reduce or eliminate sewage overflows from Kansas City's sewer system, that Kansas City (''KC'') build 68 million gallons of additional storage tank capacity at the City's 87th Street Pumping Station in two phases: Phase I (20 MM gallons) is due to be completed in 2016; Phase II (remaining 48 MM gallons) is due to be completed in 2024. The proposed Amendment would allow the City to defer the Phase I construction so that completion of both

phases of the project is due upon the 2024 completion date for Phase II. KC has requested this Amendment because some or all of this additional capacity may become unnecessary. In exchange for deferring Phase I of this project, KC has agreed to accelerate implementation of several other components of the injunctive relief required by the Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Kansas City,* Civil Action No. 4:10–cv–0497–GAF. DJ Reference Number 90–5–1–1–06438/1.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $ 2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2014–27957 Filed 11–25–14; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on October 28, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alazar Technologies, Inc., Pointe-Claire, Quebec City, CANADA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on August 8, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 12, 2014 (79 FR 54745).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2014–27988 Filed 11–25–14; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. D/B/A International Sematech

Notice is hereby given that, on October 30, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TowerJazz Panasonic Semiconductor Co., Ltd., Uozo City, JAPAN, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on August 1, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 3, 2014 (79 FR 52364).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2014–27986 Filed 11–25–14; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States V. Flakeboard America Limited, Celulosa Arauco Y Constitución, S.A., Inversiones Angelini Y Compañía, Limitada, and Sierrapine; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the U.S. District Court for the Northern District of California in United States of America *v.* Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., Inversiones Angelini y Compañía, Limitada and SierraPine, Civil Action No. 3:14–cv–04949. On November 7, 2014, the United States filed a Complaint alleging that Flakeboard, Arauco, and SierraPine coordinated to close SierraPine's Springfield, Oregon particleboard mill and move the mill's customers to Flakeboard before receiving federal antitrust approval under Section 7A of the Clayton Act, 15 U.S.C. 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (''Section 7A'' or ''HSR Act''). The Complaint alleges that this coordination constituted a *per se* unlawful agreement between competitors to reduce output and allocate customers in violation of

Section 1 of the Sherman Act, 15 U.S.C. 1, and a premature transfer of beneficial ownership to Flakeboard in violation of the HSR Act.

The United States and the defendants have reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment, filed the same time as the Complaint, remedies the Sherman Act violation by enjoining the defendants from reaching similar anticompetitive agreements with competitors and requiring Flakeboard to disgorge $1.15 million, the approximate amount of profits that Flakeboard illegally obtained from the closure of the Springfield mill. To resolve the HSR Act violation, the proposed Final Judgment requires the companies to pay a combined $3.8 million in civil penalties.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Northern District of California. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter Mucchetti, Chief, Litigation I Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

Amy R. Fitzpatrick (D.C. Bar #458680)
David Altschuler (D.C. Bar #983023)
Bindi Bhagat (PA Bar #308788)
Barry Creech (D.C. Bar #421070)
Claudia H. Dulmage (OH Bar #0026543)
Scott I. Fitzgerald (WA Bar #39716)
Kara Kuritz (D.C. Bar #991349)
John Lohrer (D.C. Bar #438989)
Jeffrey Vernon (D.C. Bar #1009690)

*U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Phone: (202) 532–4558, Facsimile: (202) 307–5802, Email: amy.fitzpatrick@usdoj.gov*

*[Additional counsel listed on signature page]*

*Attorneys for Plaintiff United States of America*

**United States District Court for the Northern District of California San Francisco Division**

*United States of America,* Plaintiff, v. *Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., Inversiones Angelini y Compañía Limitada,* and *Sierrapine,* Defendants.

Case No. 3:14–cv–4949

**Complaint**

The United States of America brings this civil antitrust action to challenge unlawful conduct by Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución, S.A., and Inversiones Angelini y Compañía Limitada; and SierraPine that occurred while the U.S. Department of Justice was reviewing Flakeboard's proposed acquisition of certain assets from SierraPine.

**I. Nature of the Action**

1. On January 13, 2014, Flakeboard and SierraPine executed an asset purchase agreement in which Flakeboard agreed to acquire SierraPine's particleboard mills in Springfield, Oregon, and Martell, California, and a medium-density fiberboard (MDF) mill in Medford, Oregon. The total value of the proposed transaction was approximately $107 million, plus a variable amount for inventory.

2. SierraPine's Springfield and Martell particleboard mills competed directly with Flakeboard's particleboard mill in Albany, Oregon. Particleboard is an unfinished wood product that is widely used in countertops, shelving, low-end furniture, and other finished products. Both companies also compete in the sale of MDF, a higher-end wood product that is widely used in furniture, kitchen cabinets, and decorative mouldings.

3. The transaction exceeded thresholds established by Section 7A of the Clayton Act, 15 U.S.C. 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976, as amended (''Section 7A'' or ''HSR Act''). Consequently, the HSR Act required that the defendants make premerger notification filings with the Federal Trade Commission and Department of Justice and observe a waiting period before Flakeboard obtained beneficial ownership of SierraPine's business. The waiting period seeks to ensure that the parties to a proposed transaction are preserved as independent entities while the reviewing agency—here, the Department of Justice—investigates the transaction and determines whether to challenge it.

4. Instead of preserving SierraPine as an independent business, however, Flakeboard, Arauco, and SierraPine coordinated during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard. The mill was permanently shut down on March 13, 2014, months before the HSR waiting period expired. On September 30, 2014, Flakeboard and SierraPine abandoned their proposed transaction in response to concerns expressed by the Department of Justice about the transaction's likely anticompetitive effects in the sale of MDF.

5. The defendants' coordination to close Springfield and move the mill's customers to Flakeboard constituted a per se unlawful agreement between competitors to reduce output and allocate customers in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and prematurely transferred operational control of SierraPine's business to Flakeboard during the HSR waiting period in violation of Section 7A of the Clayton Act, 15 U.S.C. 18a.

**II. Jurisdiction, Venue, and Interstate Commerce**

6. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. 4, seeking relief for the violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and under Section 7A of the Clayton Act, 15 U.S.C. 18a, to recover civil penalties for the violation of the HSR Act. This Court has jurisdiction over this action and the defendants under Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), 28 U.S.C. 1331, 1337(a), 1345, and 1355.

7. The defendants are engaged in, and their activities substantially affect, interstate commerce.

8. The defendants have stipulated to venue and personal jurisdiction in this District.

**III. The Defendants**

9. Flakeboard America Limited is a Delaware corporation with its U.S. headquarters in Fort Mill, South Carolina. Flakeboard and its related entities own numerous mills in North America that produce particleboard and MDF, including a particleboard mill in Albany, Oregon.

10. Flakeboard's parent company is Celulosa Arauco y Constitución, S.A., a Chilean company headquartered in Santiago, Chile, that also produces particleboard and other products. Arauco oversees Flakeboard's operations in North America.

11. Inversiones Angelini y Compañía Limitada is a Chilean corporation headquartered in Santiago, Chile. Inversiones Angelini is a holding company and Flakeboard's ultimate parent entity, as defined by the Premerger Notification Rules, 16 CFR 800 *et seq.* Inversiones Angelini is also the ultimate parent entity of Arauco.

12. SierraPine is a California limited partnership with its headquarters in Roseville, California. SierraPine owns an operating particleboard mill in Martell, California; the closed particleboard mill in Springfield, Oregon; a closed particleboard mill in Adel, Georgia; and an operating MDF mill in Medford, Oregon.

**IV. The HSR Act and the Asset Purchase Agreement**

13. The HSR Act imposes notification and waiting-period requirements on certain transactions that result in an acquiring person holding assets or voting securities valued above certain thresholds. Section 801(c)(1) of the Premerger Notification Rules, 16 CFR 800 *et seq.,* defines ''hold'' to mean to have ''beneficial ownership.'' One way that an acquiring person may prematurely obtain beneficial ownership of assets or voting securities it plans to acquire is by obtaining operational control of the acquired person's business before the end of the HSR waiting period. This conduct, sometimes referred to as ''gun jumping,'' violates Section 7A.

14. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), states that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which the person is in violation. For the period relevant to the Complaint, the maximum civil penalty was $16,000 per defendant, per day, according to the Debt Collection Improvement Act of 1996, Pub. L. 104–134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 61 FR 54548 (Oct. 21, 1996).

15. Flakeboard's proposed acquisition of SierraPine's mills was subject to the HSR Act. On January 22, 2014, Flakeboard's ultimate parent entity, Inversiones Angelini, and SierraPine submitted premerger notification filings to the antitrust agencies as required by Section 7A. The HSR waiting period expired on August 27, 2014, 30 days after Flakeboard and SierraPine certified compliance with the Antitrust Division's requests for additional information.

16. Before negotiating the proposed acquisition, SierraPine had no plans to shut down the Springfield mill. But during negotiations, Flakeboard made clear that it did not intend to operate Springfield after the transaction closed. Flakeboard insisted that SierraPine close the mill because Flakeboard did not want to manage the shutdown, and its parent company, Arauco, was concerned that its reputation might be harmed if it announced the closure.

17. Accordingly, SierraPine agreed in the asset purchase agreement (APA) to ''take such actions as are reasonably necessary to shut down and close all business operations at its Springfield, Oregon facility five (5) days prior to the Closing.'' The APA further provided that ''in no event shall [SierraPine] be required to shut down or close its business operations at its Springfield, Oregon facility'' until ''[a]ny required waiting periods and approvals . . . under applicable Antitrust Law shall have expired or been terminated.'' Consistent with these provisions, when Flakeboard and SierraPine executed the APA, they anticipated that SierraPine would announce and implement the Springfield closure immediately after the HSR waiting period expired, but before the transaction was consummated.

**V. The Defendants' Unlawful Conduct**

18. Despite the defendants' intentions under the APA, they subsequently entered into a series of agreements and took other actions during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard—conduct that together constituted an unlawful agreement between competitors and prematurely transferred operational control of SierraPine's business to Flakeboard.

19. On January 14, 2014, the day after executing the APA, the defendants announced Flakeboard's proposed acquisition of SierraPine's mills. SierraPine did not announce the Springfield closure at that time because it intended to continue operating Springfield if the acquisition was not consummated and knew that employees and customers would start leaving the mill as soon as news of the planned closure became public.

20. Within two days of the transaction's announcement, however, a labor issue arose that SierraPine believed would likely require it to publicly disclose the Springfield closure earlier than planned, while the transaction was still being reviewed by the Department of Justice. SierraPine immediately informed Flakeboard that the labor issue would require them to ''share the pending news on Springfield . . . before we have early determination on [the] HSR.'' The following week, SierraPine and Flakeboard discussed the Springfield closure announcement, its timing, and its ramifications. During these discussions, the companies considered the possibility that Flakeboard might waive the provision requiring SierraPine to close the mill, which they expected would avert the need to announce the Springfield closure during the HSR waiting period.

21. After consulting with Arauco, however, Flakeboard informed SierraPine that it would not waive the Springfield closure provision. As a result, the companies understood that SierraPine would announce the Springfield closure during the HSR waiting period and that the mill would close within weeks of that announcement, without regard to whether the HSR waiting period had expired and regardless of whether the underlying transaction was ultimately consummated. Consistent with this understanding, at the end of January, Flakeboard and SierraPine agreed on the content and timing of a press release announcing that Springfield would ''cease operations in an orderly manner over the next few weeks'' and that the mill would be ''permanent[ly] clos[ed].'' SierraPine issued the press release on February 4, 2014, and ceased production at Springfield on March 13, 2014, months before the HSR waiting period expired.

22. Flakeboard and SierraPine also agreed to transition Springfield's customers to Flakeboard's competing mill in Albany, Oregon. In the period leading up to the Springfield closure announcement, SierraPine gave Flakeboard competitively sensitive information about Springfield's customers—including the name, contact information, and types and volume of products purchased by each Springfield customer—and Flakeboard distributed this information to its sales employees. SierraPine also agreed to Flakeboard's request to delay the issuance of the press release from February 3 to February 4 so that Flakeboard could better position its sales personnel to contact Springfield's customers.

23. In addition, at Flakeboard's request, SierraPine instructed its own sales employees to inform Springfield customers following the Springfield closure announcement that Flakeboard wanted to serve their business and would match SierraPine's prices. Also at Flakeboard's request, SierraPine relayed

assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct SierraPine's Springfield customers to Flakeboard. A top Flakeboard sales manager underscored the purpose of these employment assurances: ''Once that [Springfield closure] announcement is made the 74 [million square feet of particleboard] from Springfield becomes fair game. I . . . want to make sure that the SierraPine sales group will be trying to direct the business to their new employer and to [Flakeboard's Albany mill].''

24. After the Springfield closure announcement, SierraPine did not compete for most of Springfield's customers from its remaining particleboard mill in Martell, California, but instead directed these customers to Flakeboard, telling them that Flakeboard could meet their needs and would honor SierraPine's prices. As SierraPine informed one Springfield customer, ''We will try and transition all business to [Flakeboard's] Albany [mill].''

25. With SierraPine's assistance, Flakeboard successfully secured a substantial amount of Springfield's business, including a significant number of new customers that Flakeboard had not previously served and additional business from customers that Springfield and Flakeboard's Albany mill both previously served. The increased sales volumes from SierraPine's Springfield customers significantly increased Flakeboard's profits.

26. Although Flakeboard and SierraPine subsequently abandoned their transaction on September 30, 2014, SierraPine's Springfield mill remains closed. Virtually all of its employees have voluntarily left or been terminated. Reopening the Springfield mill would be costly and time-consuming, and SierraPine has no plans to do so.

## VI. Violations Alleged

*First Cause of Action (Violation of Section 1 of the Sherman Act)*

27. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 26 of this Complaint.

28. Flakeboard and SierraPine are horizontal competitors in the sale of particleboard.

29. Flakeboard, Arauco, and SierraPine's coordination to close SierraPine's particleboard mill in Springfield, Oregon, and to move the mill's customers to Flakeboard constituted a contract, combination, or conspiracy in restraint of trade that was unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1. Their unlawful agreement was not reasonably necessary to achieve the procompetitive benefits of any legitimate business collaboration.

30. Flakeboard, Arauco, and SierraPine's actions to close the Springfield mill and move its customers to Flakeboard were undertaken without any assurance that their transaction would be consummated and constituted an agreement between competitors to reduce output and allocate customers that is per se unlawful under Section 1 of the Sherman Act.

*Second Cause of Action (Violation of Section 7A of the Clayton Act)*

31. Plaintiff realleges and incorporates the allegations in paragraphs 1 through 26 of this Complaint.

32. Flakeboard's acquisition of SierraPine's mills was subject to Section 7A's premerger notification and waiting-period requirements.

33. Flakeboard, after contracting to acquire SierraPine's assets under the APA, exercised operational control, and therefore obtained beneficial ownership, over SierraPine's business in violation of the HSR Act by:

(a) Coordinating with SierraPine to close the Springfield mill without regard to the HSR waiting period;

(b) Coordinating with SierraPine to move Springfield's customers to Flakeboard during the HSR waiting period, by, among other things:

(i) obtaining competitively sensitive information from SierraPine, including a customer list with the name, contact information, and types and volume of products purchased by each Springfield customer, and distributing this confidential information to Flakeboard sales employees;

(ii) delaying the Springfield closure announcement so that Flakeboard could better position its sales team to contact Springfield's customers;

(iii) directing SierraPine sales employees to inform Springfield customers that Flakeboard sought their business and would match SierraPine's prices; and

(iv) coordinating with SierraPine to offer assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct Springfield's customers to Flakeboard.

34. Through these actions, Flakeboard exercised operational control, and therefore obtained beneficial ownership, of SierraPine's business before the HSR waiting period expired.

35. The defendants were continuously in violation of Section 7A from on or about January 17, 2014, until the HSR waiting period expired on August 27, 2014. Thus, Inversiones Angelini, as Flakeboard's ultimate parent entity (together with Arauco and Flakeboard) and SierraPine are each liable to the United States for a maximum civil penalty of $16,000 per day.

## VII. Request for Relief

36. The United States requests that this Court:

(a) adjudge and decree that Flakeboard, Arauco, and SierraPine engaged in an agreement, combination, or conspiracy that was unlawful under Section 1 of the Sherman Act;

(b) award the United States such other relief, including equitable monetary relief, as the nature of this case may require and as is just and proper to prevent the recurrence of the alleged violation of Section 1 of the Sherman Act and to dissipate the anticompetitive effects of the violation;

(c) adjudge and decree that the defendants violated the HSR Act and were in violation of the HSR Act during the period beginning on or about January 17, 2014, and ending on August 27, 2014;

(d) order that Inversiones Angelini (together with Arauco and Flakeboard) and SierraPine each pay to the United States an appropriate civil penalty as provided under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18(a)(g)(1), and 16 CFR 1.98(a); and

(e) award the United States the costs of this action.

Dated: November 7, 2014

Respectfully Submitted,

For Plaintiff United States of America.

/s/William J. Baer
William J. Baer
*Assistant Attorney General for Antitrust*
Leslie C. Overton
*Deputy Assistant Attorney General*
David I. Gelfand
*Deputy Assistant Attorney General*
Patricia A. Brink
*Director of Civil Enforcement*
Mark W. Ryan
*Director of Litigation*
Peter J. Mucchetti
*Chief, Litigation I*
Ryan M. Kantor
*Assistant Chief, Litigation I*
/s/Amy R. Fitzpatrick
Amy R. Fitzpatrick*
David Altschuler
Bindi Bhagat
Barry Creech
Claudia H. Dulmage
Scott I. Fitzgerald
Kara Kuritz
John Lohrer
Jeffrey Vernon
*Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Phone: (202) 532–4558, Facsimile: (202) 307–5802, Email: amy.fitzpatrick@usdoj.gov*

*Attorneys for the United States*
** Attorney of Record*

**Certificate of Service**

I certify that on November 7, 2014, I electronically filed this Complaint with the Clerk of Court using the CM/ECF system. A copy has also been sent via email to:

Counsel for Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., and Inversiones Angelini y Compañía Limitada: Andrew M. Lacy, Simpson, Thacher & Bartlett LLP, 1155 F Street NW., Washington, DC 20004, Phone: (202) 636–5505, Email: *alacy@stblaw.com*

Counsel for SierraPine: Amanda P. Reeves, Latham & Watkins LLP, 555 Eleventh Street NW., Suite 1000, Washington, DC 20004, Phone: (202) 637–2183, Email: *amanda.reeves@lw.com*

/s/ Amy R. Fitzpatrick
Amy R. Fitzpatrick
*Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Phone: (202) 532–4558, Facsimile: (202) 307–5802, Email: amy.fitzpatrick@usdoj.gov*

Amy R. Fitzpatrick (D.C. Bar #458680)
David Altschuler (D.C. Bar #983023)
Bindi Bhagat (PA Bar #308788)
Scott I. Fitzgerald (WA Bar #39716)

*U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Phone: (202) 532–4558, Facsimile: (202) 307–5802, Email: amy.fitzpatrick@usdoj.gov*

Attorneys for Plaintiff United States of America

**United States District Court for the Northern District of California San Francisco Division**

United States of America, Plaintiff, v. Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., Inversiones Angelini y Compañía Limitada, and Sierrapine, Defendants.

Case No. 3:14–cv–4949

**Competitive Impact Statement**

The United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this antitrust proceeding, as required by Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h).

**I. Nature and Purpose of the Proceeding**

On November 7, 2014, the United States filed a two-count Complaint against Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución, S.A., and Inversiones Angelini y Compañía Limitada; and SierraPine for engaging in unlawful conduct while Flakeboard's proposed transaction with SierraPine was under antitrust review.

Flakeboard and SierraPine compete in the sale of particleboard, an unfinished wood product that is widely used in countertops, shelving, and other finished products. In January 2014, Flakeboard agreed to acquire three competing mills from SierraPine—two particleboard mills in Springfield, Oregon, and Martell, California, and a medium-density fiberboard (MDF) mill in Medford, Oregon. This transaction exceeded the thresholds established by Section 7A of the Clayton Act, 15 U.S.C. § 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976, as amended (''Section 7A'' or ''HSR Act''), and therefore required the defendants to notify the federal antitrust agencies of their proposed acquisition and observe a waiting period before Flakeboard could take control of SierraPine's business. This waiting period seeks to ensure that the parties to a proposed transaction are preserved as independent entities while the reviewing agency—here, the Department of Justice—investigates the transaction and determines whether to challenge it.

Instead of preserving SierraPine as an independent business, however, the Complaint alleges that Flakeboard, Arauco, and SierraPine coordinated during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard. The mill was permanently shut down on March 13, 2014, months before the HSR waiting period expired. On September 30, 2014, Flakeboard and SierraPine abandoned their proposed transaction in response to concerns expressed by the Department of Justice about the transaction's likely anticompetitive effects in the sale of MDF. The Complaint alleges that the defendants' conduct constituted a per se unlawful agreement between competitors to reduce output and allocate customers in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and a premature transfer of beneficial ownership to Flakeboard in violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a.

The United States and the defendants have reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment remedies the Sherman Act violation by enjoining Flakeboard, Arauco, and SierraPine from reaching similar anticompetitive agreements with competitors and requiring Flakeboard to disgorge $1.15 million of ill-gotten gains, the approximate amount of profits that Flakeboard illegally obtained by coordinating with SierraPine to close the Springfield mill and move the mill's customers to Flakeboard. To resolve the HSR Act violation, the proposed Final Judgment requires Inversiones Angelini (together with Flakeboard and Arauco) and SierraPine to each pay a civil penalty of $1.9 million, for a total of $3.8 million.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish any violations.

**II. Description of the Events Giving Rise to the Alleged Violation**

*A. The Defendants and the Proposed Acquisition*

Flakeboard America Limited is a Delaware corporation with its U.S. headquarters in Fort Mill, South Carolina. Flakeboard and its related entities own numerous mills in North America that produce particleboard and MDF, including a particleboard mill in Albany, Oregon, that competes against SierraPine.

Flakeboard's parent company is Celulosa Arauco y Constitución, S.A., a Chilean company headquartered in Santiago, Chile, that also produces particleboard and other products. Arauco oversees Flakeboard's operations in North America.

Inversiones Angelini y Compañía Limitada is a Chilean corporation headquartered in Santiago, Chile. Inversiones Angelini is a holding company and Flakeboard's ultimate parent entity, as defined by the Premerger Notification Rules, 16 CFR § 800 *et seq.* Inversiones Angelini is also the ultimate parent entity of Arauco.

SierraPine is a California limited partnership with its headquarters in Roseville, California. SierraPine owns an operating particleboard mill in Martell, California; the closed particleboard mill in Springfield, Oregon; a closed particleboard mill in Adel, Georgia; and an operating MDF mill in Medford, Oregon.

On January 13, 2014, Flakeboard and SierraPine entered into an asset purchase agreement (APA) in which Flakeboard agreed to acquire SierraPine's Medford, Martell, and Springfield mills for approximately $107 million, plus a variable amount for inventory. Before negotiating the APA, SierraPine had no plans to shut down the Springfield mill. During

negotiations, however, Flakeboard made clear that it did not intend to operate Springfield after the transaction closed and insisted that SierraPine close the mill before the transaction was consummated. Thus, as part of the APA, SierraPine agreed to ''take such actions as are reasonably necessary to shut down and close all business operations at its Springfield, Oregon facility'' before the transaction closed. When the defendants executed the APA, they anticipated that SierraPine would announce and implement the Springfield mill closure immediately after the HSR waiting period expired, but before the transaction was consummated.

*B. The Defendants' Unlawful Conduct*

Despite the defendants' intentions under the APA, they subsequently entered into a series of agreements and took other actions during the HSR waiting period to close SierraPine's Springfield mill and move the mill's customers to Flakeboard.

The Complaint alleges that on January 14, 2014, the day after executing the APA, the defendants announced the proposed transaction. At that time, SierraPine did not announce the Springfield closure because it intended to continue operating Springfield if the acquisition were not consummated and knew that employees and customers would start leaving the mill as soon as news of the planned closure became public.

Within two days of the transaction's announcement, however, a labor issue arose that SierraPine believed would likely require it to publicly announce the Springfield closure earlier than planned, while the transaction was still being reviewed by the Department of Justice. SierraPine immediately informed Flakeboard, notifying Flakeboard's president and an executive at Arauco on January 17, 2014, that ''we need to have a discussion about [the] Springfield announcement'' because the labor issue would force the companies to ''share the pending news on Springfield'' in early February ''before we have early determination on [the] HSR.'' The following week, SierraPine and Flakeboard discussed the Springfield closure announcement, its timing, and its ramifications. During these discussions, the companies considered the possibility that Flakeboard might waive the provision requiring SierraPine to close the mill, which they expected would avert the need to announce the Springfield closure during the HSR waiting period.

After consulting with Arauco, however, Flakeboard informed SierraPine that it would not waive the Springfield closure provision. The Complaint alleges that as a result, the companies understood that SierraPine would announce the Springfield closure during the HSR waiting period and that the mill would close within weeks of that announcement, without regard to whether the HSR waiting period had expired and regardless of whether the underlying transaction was ultimately consummated. Consistent with this understanding, at the end of January, Flakeboard and SierraPine agreed on the content and timing of a press release announcing that Springfield would be permanently closed. SierraPine issued the press release on February 4, 2014, and ceased production at Springfield on March 13, 2014, months before the HSR waiting period expired.

The Complaint further alleges that Flakeboard and SierraPine agreed to transition Springfield's customers to Flakeboard's competing mill in Albany, Oregon, in several ways. First, in the period leading up to the Springfield closure announcement, SierraPine gave Flakeboard competitively sensitive information about Springfield's customers—including the name, contact information, and types and volume of products purchased by each Springfield customer—and Flakeboard distributed this information to its sales employees.

Second, SierraPine agreed to Flakeboard's request to delay the issuance of the press release from February 3 to February 4 so that Flakeboard could better position its sales personnel to contact Springfield's customers.

Third, at Flakeboard's request, SierraPine instructed its own sales employees to inform Springfield customers following the Springfield closure announcement that Flakeboard wanted to serve their business and would match SierraPine's prices.

Fourth, also at Flakeboard's request, SierraPine relayed assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct SierraPine's Springfield customers to Flakeboard.

As a result of these actions, the Complaint alleges that Flakeboard successfully secured a substantial amount of Springfield's business, including a significant number of new customers that Flakeboard had not previously served. The increased sales volumes from SierraPine's Springfield customers significantly increased Flakeboard's profits.

Today, although Flakeboard and SierraPine abandoned their proposed transaction, the Springfield mill remains closed and virtually all of its employees have voluntarily left or been terminated. Furthermore, as the Complaint alleges, reopening the Springfield mill would be costly and time-consuming, and SierraPine has no plans to do so.

*C. The Defendants' Antitrust Violations*

1. Section 1 of the Sherman Act

Section 1 of the Sherman Act prohibits any ''contract, combination . . . or conspiracy . . . in restraint of trade.'' This prohibition remains in force during the premerger period: The pendency of a proposed transaction does not excuse transacting parties of their obligations to compete independently. Thus, until a transaction is consummated, a party that coordinates with its rival on price, output, or other competitively significant matters may violate Section 1.

Here, Flakeboard, Arauco, and SierraPine's coordination to close the Springfield mill and move the mill's customers to Flakeboard constituted an agreement between competitors that is per se unlawful. *See* National Collegiate Athletic Ass'n *v.* Board of Regents, 468 U.S. 85, 100 (1984) (holding that the per se rule ordinarily applies to agreements to reduce output); Palmer *v.* BRG of Georgia, Inc., 498 U.S. 46, 49 (1990) (affirming the per se rule for horizontal market allocations). The defendants' agreement eliminated the Springfield mill's output and allocated the mill's customers. This type of agreement, because of its ''pernicious effect on competition and lack of any redeeming virtue,'' is presumed to be unreasonable without an elaborate inquiry into its precise harm or potential business justification. Northern Pac. Ry. *v.* United States, 356 U.S. 1, 5 (1958).

Furthermore, no special circumstances justified the unlawful agreement or exempted it from per se treatment. This agreement was not reasonably necessary to achieve any procompetitive benefits of the transaction, and therefore does not qualify as an ancillary restraint. The agreement also was undertaken without any assurance that the transaction would be consummated.

2. The HSR Act (Section 7A of the Clayton Act)

The Complaint also alleges that Flakeboard exercised operational control over SierraPine's business during the HSR waiting period in violation of the HSR Act. Because the payment of civil penalties under the HSR Act is not subject to the Tunney

Act,[1] the civil-penalties component of the proposed Final Judgment is not open to public comment. Nevertheless, this Competitive Impact Statement explains the Antitrust Division's views regarding the defendants' violations of the HSR Act.

Before the HSR Act was enacted, the DOJ and the FTC were often forced to investigate anticompetitive mergers that had already been consummated without public notice. In those situations, the agencies' only recourse was to sue to unwind the parties' merger, and the merged firm often delayed the litigation so that years elapsed before adjudication and attempted relief. During this extended time, the loss of competition continued to harm consumers, and if the court ultimately found that the merger was illegal, effective relief was often impossible to achieve.

The HSR Act addressed these problems and strengthened antitrust enforcement by providing the antitrust agencies the ability to investigate certain large acquisitions before they are consummated. In particular, the HSR Act prohibits certain acquiring parties from undertaking their acquisition before a prescribed waiting period expires or is terminated. Throughout the waiting period, the parties must remain separate and preserve their status as independent economic actors. Indeed, the legislative history of the HSR Act underscores Congress's desire that competition existing before the merger should be maintained to the extent possible pending review by the antitrust agencies and the court.

Instead of preserving SierraPine as an independent entity, however, the Complaint alleges that Flakeboard exercised operational control over SierraPine's business during the HSR waiting period in several ways. First, Flakeboard coordinated with SierraPine to close the Springfield mill without regard to the HSR waiting period. Flakeboard then coordinated with SierraPine to move Springfield's customers to Flakeboard during the HSR waiting period. For example, as the Complaint alleges:

- Flakeboard obtained competitively sensitive information from SierraPine, including a customer list with the name, contact information, and types and volume of products purchased by each Springfield customer, and distributed that information to Flakeboard sales employees.
- Flakeboard had SierraPine delay the Springfield closure announcement so that Flakeboard could better position its sales team to contact Springfield's customers.
- Flakeboard directed SierraPine sales employees to inform Springfield customers that Flakeboard sought their business and would match SierraPine's prices.
- Flakeboard coordinated with SierraPine to offer assurances of future employment with Flakeboard to key SierraPine sales employees so that they would direct Springfield's customers to Flakeboard.

These actions undermined the purpose of the HSR Act, which is designed to allow the antitrust agencies to conduct an investigation before the parties have combined their operations or transferred significant assets.

## III. Explanation of the Proposed Final Judgment

The proposed Final Judgment remedies the Sherman Act violation by requiring disgorgement and injunctive relief and addresses the HSR Act violation by requiring monetary civil penalties. Section XII of the proposed Final Judgment states that these provisions will expire ten years after entry of the Final Judgment.

### *A. Disgorgement*

#### 1. Disgorgement Is an Appropriate Remedy

The proposed Final Judgment requires Flakeboard to disgorge the profits that it earned as a result of its unlawful agreement with SierraPine. Disgorgement is an equitable remedy that seeks to ''deprive a wrongdoer of unjust enrichment.'' SEC *v.* Platforms Wireless Intern. Corp., 617 F.3d 1072, 1096 (9th Cir. 2010) (citation omitted). Disgorgement also protects the public by deterring illegal conduct. *See, e.g.,* SEC *v.* First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998). The amount of disgorgement ''should include all gains flowing from the illegal activities,'' and ''need be only a reasonable approximation of profits causally connected to the violation.'' *Platforms Wireless,* 617 F.3d at 1096 (internal quotation marks and citations omitted).

In United States *v.* Keyspan Corp., 763 F. Supp. 2d 633, 638–41 (S.D.N.Y. 2011), the court held that the government may seek disgorgement in antitrust suits brought (like this one) under the Sherman Act. The court in *Keyspan* concluded that disgorgement under the Sherman Act was within a district court's inherent equitable powers and fully consistent with ''established principles of antitrust law.'' *Id.* at 639–40. In reaching this conclusion, the court observed that ''there appear[ed] to be little disagreement among commentators about the propriety of disgorgement as an antitrust remedy,'' citing to the leading antitrust law treatise's conclusion that ''equity relief may include, where appropriate, the disgorgement of improperly obtained gains.'' *Id.* at 640 (quoting Areeda & Hovenkamp, *Antitrust Law* ¶ 325a (3d ed. 2007)).

Furthermore, both the Ninth Circuit and this Court have affirmed the district court's authority to award disgorgement to governmental entities enforcing federal statutory provisions. *See, e.g., First Pac. Bancorp,* 142 F.3d at 1191–92 (authorizing disgorgement for violations of the securities laws); FTC *v.* Neovi, Inc., 604 F.3d 1150, 1159–60 (9th Cir. 2010) (authorizing disgorgement under the FTC Act); FTC *v.* Silueta Distribs., 1995 WL 215313, at *7–8 (N.D. Cal. Feb. 24, 1995) (same). And the Ninth Circuit has emphasized the need for ''broad equity powers to enforce the antitrust laws.'' United States *v.* Coca-Cola Bottling Co. of Los Angeles, 575 F.2d 222, 229 (9th Cir. 1978).

#### 2. Disgorgement Is Appropriate in This Case

Here, disgorgement is necessary to ensure that Flakeboard is not unjustly enriched by the profits that it earned by coordinating with SierraPine to close the Springfield mill and move the mill's customers to Flakeboard. As the Complaint alleges, Flakeboard secured a substantial amount of Springfield's business for its Albany mill, including new customers that Albany had not previously served and additional sales from customers that were previously purchasing from both mills. From this business, Flakeboard earned approximately $1.15 million in illegally obtained profits during the six-month period leading up to this settlement, which is equal to the disgorgement amount required by the proposed Final Judgment.

Disgorgement is also appropriate here because the injunctive relief that would most likely restore competition—requiring the mill to be reopened—is impractical. As alleged in the Complaint, the Springfield mill has been closed for several months and virtually all of its employees have either left the mill or been terminated. Furthermore, in this case, no other remedy would be as effective to fulfill the goal of the Sherman Act to ''prevent

[1] See, *e.g., United States* v. *Berkshire Hathaway Inc.,* 2014–2 Trade Cas. (CCH) ¶ 78,870 (D.D.C.) (entering a consent judgment for civil penalties under the HSR Act without employing Tunney Act procedures); *United States* v. *Barry Diller,* 2013–1 Trade Cas. (CCH) ¶ 78,446 (D.D.C.) (same); *United States* v. *MacAndrews & Forbes Holdings, Inc.,* 2013–1 Trade Cas. (CCH) ¶ 78,443 (D.D.C.) (same).

and restrain'' antitrust violations. 15 U.S.C. 4. Disgorgement will deter Flakeboard and others from participating in anticompetitive conduct in the context of a pending transaction, regardless of whether the transaction is subject to the HSR Act.

*B. Injunctive Provisions*

1. Prohibited Conduct

Section VII.A of the proposed Final Judgment is designed to prevent future Sherman Act violations during a pending transaction, regardless of whether the transaction is subject to the HSR Act. Under this provision, Flakeboard, Arauco, and SierraPine may not reach agreements while a transaction is pending that affect price or output for competing products in the United States or that allocate markets or customers. The prohibited agreements also include those involving disclosure of competitively sensitive information, except as allowed in Section VIII, or the closure of a production facility that produces a competing product without giving prior written notice to and obtaining written approval from the United States. Although an agreement to close a production facility before a transaction is consummated may be permissible under certain circumstances, this notice-and-approval provision ensures that, in light of the defendants' conduct, they will not take additional actions that reduce competition or interfere with a potential antitrust review.

*2. Permitted Conduct*

Section VIII of the proposed Final Judgment identifies conduct that is permitted by the Final Judgment. Sections VIII.A and VIII.B ensure that the decree will not be interpreted to forbid certain ''conduct of business'' covenants that are common in merger agreements. For example, Section VIII.A allows agreements requiring a seller to operate its business in the ordinary course of business. And Section VIII.B allows for ''material adverse change'' provisions, which give the acquiring firm certain rights to prevent a to-be-acquired firm from materially changing how it conducts its business. These common provisions are intended to protect a transaction's value and prevent a to-be-acquired firm from wasting assets.

Section VIII.C recognizes a narrow exception to Section VII.A.3's prohibition on exchanging competitively sensitive information. As a general rule, competitors should not obtain prospective, customer-specific price information before consummating a transaction because it could be used to harm competition if the transaction is abandoned. Nevertheless, a prospective acquirer may need information about pending contracts to properly value a business during the due-diligence process.

Section VIII.E clarifies that the proposed Final Judgment does not prohibit the defendants from entering into buyer-seller agreements that would have been lawful independent of the proposed transaction.

3. Compliance and Inspection

Sections IX and X of the proposed Final Judgment establish procedures to ensure that the defendants comply with the antitrust laws and the terms of the Final Judgment. Section IX requires Flakeboard and SierraPine to maintain an antitrust compliance program, which includes naming an antitrust compliance officer responsible for supervising compliance with the Final Judgment. The compliance officer must distribute a copy of the Final Judgment to the company's officers, directors, and any other employees responsible for mergers and acquisitions, and must provide a copy of the Final Judgment to any potential partners to a merger or acquisition. In addition, Arauco must distribute a copy of the Final Judgment to each of its officers, directors, and any other employees responsible for any business in the United States.

To further ensure that the defendants are complying with the Final Judgment, Section X grants the DOJ access, upon reasonable notice, to the defendants' records and documents relating to matters contained in the Final Judgment. The defendants must also make their personnel available for interviews or depositions regarding such matters. In addition, upon request, the defendants must prepare written reports relating to matters contained in the Final Judgment.

*C. Civil Penalties Under the HSR Act*

Under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the HSR Act is liable to the United States for a civil penalty of not more than $16,000 for each day that the person is in violation of the Act.[2] The Complaint alleges that the defendants were in violation of the HSR Act from on or about January 17, 2014, when Flakeboard, Arauco, and SierraPine began coordinating on the closure of the Springfield mill, until the expiration of the statutory waiting period on August 27, 2014—a period of 223 days.

Although the United States was prepared to seek the maximum civil penalty of $3.568 million for both Inversiones Angelini (together with Arauco and Flakeboard) and SierraPine at trial, other factors led to acceptance of $1.9 million each as an appropriate penalty for settlement purposes. In particular, a lower penalty is appropriate because Flakeboard and SierraPine cooperated with the United States during its investigation by voluntarily producing evidence of their unlawful premerger conduct and, despite the daily accruing fine, entering into a timing agreement that resulted in an orderly production of documents relating to their proposed acquisition.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA unless the United States has withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw

[2] *Id.; see also* Pub. L. 104–134 § 31001(s) (Debt Collection Improvement Act of 1996); 16 C.F.R. 1.98(a) (increasing maximum penalty to $16,000 per day).

its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied, however, that the proposed relief, including the disgorgement of profits and payment of civil penalties, is an appropriate remedy in this matter. The proposed relief should deter the defendants and others from engaging in similar conduct. Furthermore, given the facts of this case, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' United States *v.* Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also* United States *v.* U.S. Airways Group, Inc., No. 13–cv–1236 (CKK), 2014–1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *16–17 (D.D.C. Apr. 25, 2014) (same); *see generally* United States *v.* SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (describing the public-interest standard under the Tunney Act); United States *v.* InBev N.V./S.A., No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').[3]

As the D.C. Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States *v.* BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (quoting United States *v.* Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; United States *v.* Alcoa, Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of [e]nsuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); United States *v.* Archer-Daniels-Midland Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' United States *v.* Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted); *see also U.S. Airways,* 2014

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[4] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

U.S. Dist. LEXIS 57801, at *18 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); United States *v.* Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *18 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *20 (noting that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language captured Congress's intent when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[5] A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *21.

## VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

/s/ Amy R. Fitzpatrick

Amy R. Fitzpatrick

David Altschuler
Bindi Bhagat
Scott I. Fitzgerald

*Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.*

Dated: November 7, 2014.

## Certificate of Service

I certify that on November 7, 2014, I electronically filed this Competitive Impact Statement with the Clerk of Court using the CM/ECF system. A copy has also been sent via email to:

Counsel for Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., and Inversiones Angelini y Compañía Limitada: Andrew M. Lacy, Simpson, Thacher & Bartlett LLP, 1155 F Street NW., Washington, DC 20004, Phone: (202) 636–5505, Email: *alacy@stblaw.com*

Counsel for SierraPine: Amanda P. Reeves, Latham & Watkins LLP, 555 Eleventh Street NW., Suite 1000, Washington, DC 20004, Phone: (202) 637–2183, Email: *amanda.reeves@lw.com*

/s/ Amy R. Fitzpatrick

Amy R. Fitzpatrick
*Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Phone: (202) 532–4558, Facsimile: (202) 307–5802, Email: amy.fitzpatrick@usdoj.gov.*

## EXHIBIT A

## United States District Court for the Northern District of California San Francisco Division

*United States of America,* Plaintiff, v. *Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., Inversiones Angelini y CompaÑía Limitada,* and *Sierrapine,* Defendants.

Case No. 3:14–cv–4949

## [Proposed] Final Judgment

WHEREAS, Plaintiff, United States of America, filed its Complaint on November 7, 2014, alleging that Defendants violated Section 7A of the Clayton Act, 15 U.S.C. 18a, and that Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., and SierraPine violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants, without admitting any wrongdoing, agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

## I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against Flakeboard, Arauco, and

[5] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should. . .carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

SierraPine under Section 1 of the Sherman Act, 15 U.S.C. § 1, and against all Defendants under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

**II. Definitions**

A. ''Arauco'' means Defendant Celulosa Arauco y Constitución, S.A., a Chilean company; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Agreement'' means any contract, agreement, or understanding, formal or informal, written or unwritten.

C. ''Competing Product'' means any product that any Defendant offers for sale in the United States that is primarily used for the same purpose as any product that any other party to a proposed Transaction with any Defendant offers for sale in the United States.

D. ''Defendants'' mean Flakeboard America Limited, Celulosa Arauco y Constitución, S.A., the Ultimate Parent Entity, and SierraPine.

E. ''Flakeboard'' means Defendant Flakeboard America Limited, a Delaware corporation with its headquarters in Fort Mill, South Carolina; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''SierraPine'' means Defendant SierraPine, a California limited partnership with its headquarters in Roseville, California; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Negotiation and Interim Period'' means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned.

H. ''Person'' means any individual, partnership, firm, corporation, association, or other legal or business entity.

I. ''Production Facility'' means any mill, plant, or other asset that manufactures products.

J. ''Transaction'' means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any person offering a Competing Product.

K. ''Ultimate Parent Entity'' means Defendant Inversiones Angelini y Compañía Limitada, a holding company with its headquarters in Santiago, Chile, and its successors and assigns.

**III. Applicability**

This Final Judgment applies to Flakeboard, Arauco, the Ultimate Parent Entity, and SierraPine as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. This Court orders the relief in Section IV of this Final Judgment under Section 7A of the Clayton Act, 15 U.S.C. 18a. All other relief in this Final Judgment is to remedy the violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

**IV. Civil Penalty Under Section 7A of the Clayton Act**

Within 30 days of the entry of this Final Judgment, Flakeboard, Arauco, and the Ultimate Parent Entity must pay $1.9 million to the United States, and within 60 days of the entry of this Final Judgment, SierraPine must pay $1.9 million to the United States, for a total of $3.8 million.

**V. Disgorgement To Remedy the Violation of Section 1 of the Sherman Act**

Within 30 days of the entry of this Final Judgment, Flakeboard must pay $1.15 million in disgorgement to the United States.

**VI. Payment of Civil Penalty and Disgorgement**

A. The payments specified in this Final Judgment must be made by wire transfer. Before making any transfers a Defendant must contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group, at (202) 514–2481, for wire-transfer instructions.

B. In the event of a default in payment, interest at the rate of 18 percent per annum will accrue thereon from the date of default to the date of payment.

**VII. Prohibited Conduct**

A. Flakeboard, Arauco, and SierraPine may not enter into, maintain, or enforce any Agreement with an acquiring or to-be-acquired Person that, during the Negotiation and Interim Period of a Transaction:

1. fixes, raises, sets, stabilizes, or otherwise establishes price or output for any Competing Product;

2. moves, migrates, or otherwise allocates customers for any Competing Product;

3. discloses or seeks the disclosure of information about customers, prices, or output for any Competing Product, except as such disclosures may be permitted in subsection VIII.C or to the extent that such information is publicly available at the time disclosure occurs; or

4. closes a Production Facility that produces a Competing Product without prior written notice to and written approval from the United States.

**VIII. Permitted Conduct**

Nothing in this Final Judgment prohibits Defendants from:

A. entering into an Agreement that a party to a Transaction must continue operating in the ordinary course of business;

B. entering into an Agreement that a party to a Transaction forego conduct that would cause a material adverse change in the value of to-be-acquired assets;

C. before closing or abandoning a Transaction, conducting or participating in reasonable and customary due diligence, though no disclosure covered by this section is permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs under a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of the information to any employee of the Person receiving the information who is directly responsible for the marketing, pricing, or sales of the Competing Products;

D. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions; or

E. entering into an Agreement where either one of the Defendants and the other party to the Transaction are or would be in a buyer/seller relationship and the Agreement would be lawful in the absence of the planned acquisition.

**IX. Antitrust Compliance Program**

A. Flakeboard and SierraPine must each maintain an antitrust compliance program that designates, within 30 days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer must, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Antitrust Compliance Officer must also do the following:

1. Distribute within 45 days of entry of this Final Judgment, a copy of this Final Judgment to each current officer

and director, all sales managers and supervisors, and each employee, agent, or other person who, in each case, has responsibility for or authority over mergers and acquisitions; and for Flakeboard's Antitrust Compliance Officer, a copy of this Final Judgment to each current officer and director of Arauco;

2. distribute in a timely manner a copy of this Final Judgment to any officer, director, employee, or agent who succeeds to a position described in Section IX.A.1;

3. obtain within 60 days from the entry of this Final Judgment, and annually thereafter, and retain for the duration of this Final Judgment, a written certification from each person designated in Sections IX.A.1 & 2 that he or she (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

4. provide a copy of this Final Judgment to each potential partner to a merger or acquisition before the initial exchange of a letter of intent, definitive agreement, or other agreement of merger.

B. Within 60 days of entry Flakeboard and SierraPine must each certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (2) distributed the Final Judgment in accordance with Section IX.A.1.

C. For the term of this Final Judgment, on or before its anniversary date, Flakeboard and SierraPine must each file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VII and IX.

D. Within 45 days of entry of this Final Judgment, Arauco must distribute a copy of this Final Judgment to each current officer and director, sales manager and supervisor, and employee, agent, or other person who, in each case, has responsibility for any business in the United States.

E. If any director, officer, or Antitrust Compliance Officer of any of the Defendants learns of a violation of this Final Judgment, that Defendant must within three business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and must notify the Plaintiff of the violation within 10 business days.

**X. Right to Inspection**

A. For the purpose of determining or securing compliance with this Final Judgment, any related orders, or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy or at Plaintiff's option, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews are subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section may be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time a Defendant furnishes information or documents to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give 10 calendar days' notice before divulging that material in any legal proceeding (other than a grand jury proceeding) to which the Defendant is not a party.

**XI. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

**XII. Expiration of Final Judgment**

Unless extended by this Court, this Final Judgment expires ten years from the date of its entry.

**XIII. Costs**

Each party must bear its own costs of this action.

**XIV. Public–Interest Determination**

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any public comments thereon and Plaintiff's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:_____

United States District Judge

[FR Doc. 2014–27985 Filed 11–25–14; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust,'' to the Office of Management and Budget

(OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before December 26, 2014.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201405-1235-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the information collection requirements codified in regulations 29 CFR 547.1(b) and 549.1(b) related to bona fide thrift or savings plans and bona fide profit-sharing plans or trusts. The information collection requirements apply to employers claiming the overtime exemption available under Fair Labor Standards Act section 7(e)(3)(b), 29 U.S.C. 207(e)(3)(b). Specifically, in calculating an employee's regular rate of pay, an employer need not include contributions made to a bona fide thrift or savings plan or a bona fide profit-sharing plan or trust—as defined in regulations 29 CFR parts 547 and 549. An employer is required to communicate, or to make available to its employees, the terms of the bona fide thrift, savings, or profit-sharing plan or trust and to retain certain records. Fair Labor Standards Act sections 7(e)(3)(b) and 11(c) authorize this information collection. *See* 29 U.S.C. 207(e)(3)(b) and 211(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0013.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 9, 2014 (79 FR 33003).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0013. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–WHD.

*Title of Collection:* Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust.

*OMB Control Number:* 1235–0013.

*Affected Public:* Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

*Total Estimated Number of Responses:* 523,500.

*Total Estimated Annual Time Burden:* 291 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: November 20, 2014.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2014–27994 Filed 11–25–14; 8:45 am]

**BILLING CODE 4510–27–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Labor Standards for the Registration of Apprenticeship Programs, Extension With Minor Definition Addition

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data in

accordance with Title 20 CFR part 29, the Labor Standards for Apprenticeship Programs Registration, currently expiring April 30, 2015.

**DATES:** Submit written comments to the office listed in the addresses section below on or before January 26, 2015.

**ADDRESSES:** Send written comments to Michael Qualter, Chief, Division of Program Administration and Management Services, Office of Apprenticeship, Room N–5311, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202- 693–3812 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3799. Email: *qualter.michael@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person listed above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Apprenticeship Act of 1937, Section 50 (29 U.S.C. 50), authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with Section 17 of Title 20.'' Section 50a of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees . . .'' (29 U.S.C. 50a). The form approved by the Office of Management and Budget used to collect labor standards information is ETA 617, Program Registration, Section I, and Apprentice Registration, Section II. Both sections of ETA 671 are available electronically to facilitate the registration of programs and apprentices. ETA is requesting a regular three-year extension with a minor change to the current information collection. The proposed change to ETA 671 is under Program Definitions and/or Instructions, Part A, 7b. In the instructions, the definition of Direct Entry has been modified to include pre-apprenticeship training programs that meet the requirements outlined in Training and Employment Notice 13–12: ''Defining a Quality Pre-Apprenticeship Program.''

**II. Review Focus**

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension with minor addition to definition section.

*Title:* Labor Standards for the Registration of Apprenticeship Programs.

*OMB Number:* 1205–0223.

*Affected Public:* individuals/households, state/local/tribal governments, Federal government, private sector (businesses or other for-profits, and, not-for-profit institutions)

*Estimated Total Annual Respondents:* 141,779.

*Estimated Total Annual Responses:* 141,779.

*Estimated Total Annual Burden Hours:* 14,775.

*Total Estimated Annual Other Costs Burden:* 0.

We will summarize and include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2014–27971 Filed 11–25–14; 8:45 am]

**BILLING CODE 4510–FR–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request Information Collection for OMB 1205–0164, ETA 204, Experience Rating Report; Extension Without Revision

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the proposed extension, without change, of the Experience Rating Report, Form ETA 204.

**DATES:** Submit written comments to the office listed in the addressee section below on or before January 26, 2015.

**ADDRESSES:** Send written comments to Edward M. Dullaghan, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–2927 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *dullaghan.edward@dol.gov.* To obtain a copy of the proposed information collection request (ICR), please contact the person above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The data submitted annually on the ETA 204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance (UI) program on a state-by-state basis and to measure the variations in assigned contribution rates which

result from different experience rating systems. Used in conjunction with other data, the ETA 204 assists in determining the effects of certain factors (*e.g.,* stabilization, expansion, or contraction in employment, etc.) on the unemployment experience of various groups of employers. The data also provide an early signal for potential solvency problems and are useful in analyzing factors which give rise to these potential problems and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. The report collects annual information about the taxation efforts in states relative to both taxable and total wages and allows comparison between states. Further, the data are key components to the Significant Tax Measures Report. The Significant Tax Measures Report provides the information necessary to evaluate and compare state UI tax systems.

**II. Review Focus**

The Department is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension without change.

*Title:* Experience Rating Report.

*OMB Number:* 1205–0164.

*Affected Public:* State Workforce Agencies.

*Estimated Total Annual Respondents:* 53.

*Estimated Total Annual Responses:* 30 minutes.

*Estimated Total Annual Burden Hours:* 13 Hours.

*Total Estimated Annual Other Cost Burden:* $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training Administration.*

[FR Doc. 2014–28033 Filed 11–25–14; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for O*NET Data Collection Program, Extension of Currently Approved Collection With Minor Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the O*NET (Occupational Information Network) Data Collection Program (expires June 30, 2015). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: http://www.onetcenter.org/ombclearance.html

**DATES:** Submit written comments to the office listed in the addresses section below on or before January 26, 2015.

**ADDRESSES:** Send written comments to Lauren Fairley Wright, Division of National Programs, Tools and Technical Assistance, Room C4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3731 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3015. Email: *wright.lauren@dol.gov.* To obtain a copy of the proposed information collection request (ICR), you may email the person listed above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The O*NET Data Collection Program is an ongoing effort to collect and maintain current information on the detailed characteristics of occupations and skills for more than 900 occupations. The resulting database provides the most comprehensive standardized source of occupational and skills information in the nation. O*NET information is used by a wide range of audiences, including individuals making career decisions, public agencies and schools providing career exploration services or education and training programs, and businesses making staffing and training decisions. The O*NET system provides a common language, framework and database to meet the administrative needs of various federal programs, including workforce investment and training programs supported by funding from the Departments of Labor, Education, and Health and Human Services.

Section 308 of the Workforce Innovation and Opportunity Act requires the Secretary of Labor to oversee the ''development, maintenance, and continuous improvement of a nationwide workforce and labor market information system'' which shall include, among other components, ''skill trends by occupation and industry.'' The O*NET database provides:

- Detailed information for more than 900 occupations.
- Descriptive information using standardized descriptors for skills, abilities, interests, knowledge, work values, education, training, work context, and work activities.
- Occupational coding based on the 2010 Standard Occupational Classification (SOC) system.

Several minor questionnaire changes for the Knowledge Questionnaire and the Background Questionnaire are pending in this submission. These changes are described in detail in Appendix A of the proposed Information Collection Request. These changes do not represent an increase in respondent burden.

The O*NET electronic database and related O*NET products and tools have

been incorporated into numerous public and private sector products and resources, summarized at *http://www.onetcenter.org/paw.html.* These products in turn serve millions of customers.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension with minor revisions.

*Title:* O*NET Data Collection Program.

*OMB Number:* 1205–0421.

*Affected Public:* private sector (for-profit businesses and not-for-profit organizations); state, local and tribal governments; federal government; individuals.

*Estimated Total Annual Respondents:* 28,866.

*Estimated Total Annual Responses:* 28,866.

*Estimated Total Annual Burden Hours:* 14,537.

*Total Estimated Annual Other Costs Burden:* 0.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2014–27970 Filed 11–25–14; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations, 30 CFR part 44, govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before December 26, 2014.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

**II. Petitions for Modification**

*Docket Numbers:* M–2014–037–C.

*Petitioner:* Jesse Creek Mining, LLC, 1615 Kent Dairy Road, Alabaster, Alabama 35007.

*Mine:* Clark No. 1 Mine, MSHA I.D. No. 01–03422, located in Shelby County, Alabama.

*Regulation Affected:* 30 CFR 75.364(b)(2) (Weekly examinations).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of having a certified person take air quantity and quality measurements at evaluation points EP–1, EP–2 and EP–3. The petitioner states that:

(1) Multiple roof falls have blocked travel in the Main West Area left side return at survey spads 40 and 41 for approximately three crosscuts, making it unsafe for mine examiners to travel and the roof falls are impractical to rehabilitate.

(2) Three evaluation points (EP–1, EP–2 and EP–3) will allow effective evaluation of airflow through the air split used to ventilate the Main West Area left side return air courses at the inaccessible roof falls. Evaluation points EP–2 and EP–3 will be established to monitor the air inby the roof fall. Evaluation point EP–1 will monitor the air outby the roof fall.

(3) Signs will be posted in an adjacent travel entry showing the safe travel route to each evaluation point. The evaluation points and routes of travel to the evaluation points will be kept free of water accumulations. Prior to October 14, 2014, a water pump was being used to maintain the water level in the West Mains Area. The power has been removed from the pump and all water from this area will gravity drain to a location that will be safe for a fire boss to examine. The water being gravity drained will be done in a manner so that no water accumulations prevent safe travel in any area traveled by persons or equipment.

(4) A certified person will conduct weekly evaluations at each of the evaluation points. The evaluations will include the quantity and quality of the air entering or exiting the evaluation points. The evaluation will also include a determination of any airflow from adjacent entries. The measurements will be made using MSHA-approved and calibrated hand-held multi-gas detectors to check the methane and oxygen gas concentrations, and appropriate calibrated anemometers to check airflow volume.

(5) A diagram showing the normal direction of the airflow will be posted at the evaluation points. The diagram will be maintained in legible condition and any change in airflow will be reported to the mine foreman for immediate investigation.

(6) At each evaluation point, a date board will be provided with the date, time, and examiner's initials recorded along with the measured quantity and quality of air. The results of the examinations including the condition of the accessible permanent ventilation controls creating the air course will be recorded in a book kept on the surface and made accessible to all interested parties.

(7) Evaluation points and approaches to the evaluation points will be maintained in safe condition at all times. The roof will be adequately supported by roof bolts or other suitable means to prevent deterioration of the roof in the vicinity of the evaluation points.

(8) Methane gas or other harmful, noxious, or poisonous gases will not be permitted to accumulate in excess of legal limits for return air. An increase of 0.5 percent methane above the last previous methane reading or a 10 percent change in airflow quantity will cause an immediate investigation of the affected area. The results of the investigation will be reported immediately to the mine foreman.

(9) The initial airflow from adjacent air courses will be determined during the first evaluation following implementation of this modification. Airflow from adjacent air courses will be defined as the difference between the air quantity entering and exiting the petitioned area, as measured at the evaluation points. When there is a 10 percent change from the initial airflows in the air course, an immediate examination and evaluation will be conducted to determine the cause. Appropriate corrective action will then be taken. Following corrective action, a new ''initial airflow'' will be determined and serve as the basis for subsequent examinations.

(10) The evaluation point locations will be shown on the annually submitted mine ventilation map. The locations will not be moved to other locations without prior approval by the District Manager as part of the Ventilation Plan for the mine.

(11) Prior to implementing this modification, all mine personnel will be instructed that except along designated routes, no travel will be permitted into the affected area and all approaches will be fenced off or barricaded with ''DO NOT ENTER'' warning signs. Entrance into the affected area will be permitted only to conduct investigations and to correct problems with airflow detected through the monitoring process. All such work will be done under supervision of an authorized person. All persons who work in the area will be instructed in the emergency evacuation procedures and all provisions of 30 CFR 75.1502.

(12) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the PDO. All personnel will receive training of plan content prior to implementing the plan.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M–2014–038–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 49.2(b) (Availability of mine rescue teams).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the reduction of two mine rescue teams with five members and one alternate each to two mine rescue teams of three members with one alternate of either team. The petitioner states that:

(1) The underground mine is a small mine with hardly enough physical room to accommodate more than three or four miners in the working places. An attempt to utilize five or more rescue team members in the mines confined working places will result in a diminution of safety to the miners at the mine and the members of the rescue team.

(2) Records of Mine Emergency responses over the last 20 years indicate that rescue and recovery operations conducted by Anthracite Underground Rescue, Inc., (AUGR) have never utilized more than one team. In addition, when one rescue team was utilized there were no more than three members traveling to a working place simultaneously.

(3) The electric power does not reach beyond the bottom of the slope. Therefore, all coal haulage is done by hand trammed cars or battery electric motor and car at very slow rates of speed. These facts considerably reduce the risk of a disaster and the need for as many mine rescue team members as required by the regulations.

(4) The employment in the underground anthracite mines has decreased substantially and the ratio of mine rescue teams to underground miners has correspondingly been reduced. The loss of the underground work force dramatically reduces the pool of qualified people available to fill mine rescue positions.

(5) Pennsylvania Deep Mine Safety presently has four deep mine inspectors that have deep mine rescue training and are pledged to assist if required in an emergency. In addition, the surrounding small mines have always provided assistance during mine emergencies.

(6) As a result of poor market conditions and a significant number of underground mines now conducting final pillar recovery, the downward trends are expected to continue.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–039–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electric equipment conductors; permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of nonpermissible electric equipment within 150 feet of the pillar line to include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation with one of the gas test results to be recorded in the on-shift examination record. The petitioner proposes to:

(1) Suspend equipment operation anytime methane concentration at the equipment reaches 0.5 percent methane

either during operation or when found during a pre-shift examination.

(2) The equipment will be operated in only the working section's intake entry (gangway) which is regularly traveled and examined.

(3) The use of drags on less than moderate pitching veins (less than 20 degrees pitch) is the only practical system of mining in use.

(4) Permissible drags are not commercially available, and due in part to their small size, permissible locomotives are not commercially available either.

(5) As a result of low daily production rates and full timbering support, in-rushes of methane due to massive pillar falls are unlikely to occur.

(6) Recovery of the pillars above the first miner heading is usually accomplished on the advance within 150 feet of the section intake (gangway) and the remaining minable pillars recovered from the deepest point of penetration outby.

(7) The 5,000 cfm of required intake airflow is measured just outby the nonpermissible equipment with the ventilating air passing over the equipment to ventilate the pillar being mined.

(8) The electrical equipment is attended during operation, and either power to the unit is deenergized at the intersection of the working gangway and intake slope, or the equipment is moved to that area potential from the pillar recovery area.

(9) Where more than one active line of pillar breast recovery exists, the locomotive may travel to a point just outby the deepest active chute/breast (room) workings or the last open crosscut in a developing set of entries.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–040–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.340 (Underground electrical installations).

*Modification Request:* The petitioner requests a modification of the existing standard to permit batteries to be charged on the mine's locomotive during idle periods when all miners have been removed from the mine and to allow the intake air used to ventilate the charging station, located at the No. 1 chute of the active gangway level, to continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner states that:

(1) The mine utilizes a full timber roof support system double hardwood stopping construction, and wooden chutes throughout the gangway, making fireproof construction impossible.

(2) Anthracite mining utilizes a single intake (gangway) and single return (monkey) with connecting crosscuts (chutes).

(3) The battery locomotive must remain on the track in the gangway, which would require ventilating air to be totally short-circuited, removing ventilation from the gangway inby the charger.

(4) The only viable alternative would require removal of the batteries and transporting them in the slope's gunboat to the surface for charging.

(5) Due to the pitch of the vein, mining either or both the top and bottom rock would be required to install a side track weakening timber anchorage.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–041–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.1200(d) and (i) (Mine map).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the substitution of cross-sections in lieu of contour lines through the intake slope at locations of rock tunnel connections between veins and at 1,000 feet intervals of advance from the intake slope and to limit the required mapping of mine workings above and below to those present within 100 feet of the vein(s) being mined unless these veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner states that:

(1) Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible.

(2) Use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about spacing between veins and proximity to other mine workings which fluctuate considerably.

(3) The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining/mine operators or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

(4) All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings.

(5) When no rock tunnel connections are found, mine workings that exist beyond 100 feet from the mine, are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation.

(6) The mine workings above and below are usually inactive and abandoned and not subject to changes during the life of the mine.

(7) Where evidence indicates prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken through as required in 30 CFR 75.388, which addresses drilling boreholes in advance of mining, where possible.

(8) Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–042–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.1202–1(a) (Temporary notations, revisions and supplements).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required. The petitioner proposes to continue to update the mine map by hand notations on a daily basis and conduct subsequent surveys prior to commencing retreat mining, and whenever either a drilling program is required by 30 CFR 75.388 or a plan for mining into inaccessible areas is

required by 30 CFR 75.389. The petitioner states that:

(1) The low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. In most cases annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development.

(2) The vast majority of small anthracite mines use non-mechanized, hand-loading mining methods.

(3) Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways.

(4) The available engineering/surveyor resources are limited in the anthracite coal fields. Surveying on an annual basis is difficult to achieve with four individual contractors currently available.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–043–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.1400(c) (Hoisting equipment; general).

*Modification Request:* The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without safety catches or other no less effective devices because to date, no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of Anthracite mines, that range in length from 30 to 4200 feet and vary in pitch from 12 degrees and 75 degrees. The petitioner states that:

(1) A functional safety catch has not been developed. Makeshift devices, if installed, would be activated on knuckles and curves when no emergency exist causing a tumbling effect on the conveyance which would increase rather than decrease the hazard to miners.

(2) As an alternative, the petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device and use hoisting ropes having a factor of safety in excess of the 4 to 8 to 1 as suggested in the American Standards Specifications for Use of Wire Ropes for Mines.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

*Docket Number:* M–2014–044–C.

*Petitioner:* Eric Snyder Coal, LLC, 337 East Shamokin Street, Trevorton, Pennsylvania 17881.

*Mine:* Rattling Run Slope, MSHA I.D. No. 36–10092, located in Schuylkill County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.311(b)(2) and (b)(3) (Main mine fan operation).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the electrical circuits entering the underground mine to remain energized to the mine's pumps while the main fan has been intentionally shut down during idle shifts when no miners are working underground. The petitioner states that:

(1) The mine requires pumping of water from the sump area of the intake haulage slope below the active gangway level workings intermittently and at varying levels of time duration on a daily basis. During the wet seasons from late winter to early summer the pumps are often required to operate for extended periods of time to keep the mine from flooding.

(2) Most anthracite mines work only one shift per day, 5–6 days per week during the colder months when coal sales are greatest, and may only work 2–3 days per week during the warmer months because of poor coal sales.

(3) The vast majorities of underground anthracite mines are small, employ 5 or less miners underground, have very low daily coal production of less than 25 tons, and never encountered a measurable quantity of methane during the life of the mine.

(4) Methane liberation in the few underground mines with a history of liberation occurs only when coal is shot from the solid and is dissipated by face ventilation shortly thereafter.

(5) Underground anthracite miners are significantly affected by natural ventilation that continues after the mine fan has been intentionally stopped during idle periods.

(6) Accumulations of methane, in those underground mines with a history of liberation, are historically found in chutes and breasts (entries driven up the pitch) and are not yet connected to the adjacent return entry. These entries are not affected by the natural ventilation air currents.

(7) The primary method of face ventilation utilized in underground anthracite mines is compressed air movers with approved tubing in the working place. They are shut off prior the miners exiting the mine at the end of the shift and prior to the stoppage of the main fan for the idle shifts. Potential accumulations of methane in the working face, is therefore unlikely to be affected by natural ventilation currents.

(8) The mine's pumping system typically consists of a submersible pump located below the water level in the sump and a centrifugal pump located in the intake haulage slope above the active gangway level. The pumps are started and shut off by a set of switches of electrodes located in the sump. The switch/electrode located at the highest elevation in the sump will start the pumps when the water level depth increase to that pre-determined level to protect the active gangway level from flooding. The pumps will continue to operate until the water level depth is decreased to the elevation of the lower switch/electrode.

(9) Compliance with 30 CFR 75.311 through the continuous operation of the main mine fan when pumps are energized would result in a diminution of safety to the miners. During the colder months, the wet conditions present in the intake haulage slope will result in freezing and accumulations of ice creating a hazard to the miners riding the slope conveyance and to those miners who must manually chip away the ice in the pitching slope thereby increasing a fall hazard. The mount of ice accumulations during a single shift of production is usually minimal and can be melted during the idle shifts, with the main fan off, as the natural ventilating air current is warmed by the higher underground temperatures and carried through slope.

(10) The mine operator proposes to initiate the following alternatives to ensure the safety of the miners:

(a) The examiner will determine whether the pumps are operating and if the natural ventilation air current is moving in the proper direction prior to energizing the main mine fan and before starting the required pre-shift examination.

(b) In the cases where the pumps are not operating when the examiner arrives, the examiner will deenergize the pump circuits before starting the main mine fan and will allow the fan to operate for 30 minutes prior to entering the mine to conduct the pre-shift examination.

(c) During the pre-shift examination, when no accumulation of methane is found in the vicinity of the pumps, the pump circuits may be energized before the miners travel underground.

(d) In those cases where the pumps are found to be already in operation because of high water levels and when the natural ventilating currents are moving in the proper direction, the main mine fan will be started and running for 30 minutes before entering the mine to conduct a pre-shift examination. Examination of the mine pump installation will be completed prior to entering the active gangway level working and continuing the pre-shift examination.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Dated: November 21, 2014.

**Sheila McConnell,**

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. 2014–28031 Filed 11–25–14; 8:45 am]

**BILLING CODE 4510–43–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting Notice

**DATE AND TIME:** The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on December 2, 2014. The meeting will commence at 4:30 p.m., Eastern Time, and will continue until the conclusion of the Committee's agenda.

**LOCATION:** John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

**CALL-IN DIRECTIONS FOR OPEN SESSIONS:**

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348.
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

**STATUS OF MEETINGS:** Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public for briefings on the donor report and on meetings with prospective funders, and to discuss prospective members for the proposed LSC Leaders Council. A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Approval of agenda
2. Discussion of 40th anniversary conference financial report
3. Discussion of proposed LSC Leaders Council
4. Update on development activities
5. Public comment
6. Consider and act on other business

**Closed Session**

1. Briefing on donor report
2. Briefing on meetings with prospective funders
3. Discussion of prospective members for proposed LSC Leaders Council
4. Consider and act on adjournment of meeting

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

**ACCESSIBILITY:** LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: November 24, 2014.

**Atitaya C. Rok,**

*Assistant General Counsel.*

[FR Doc. 2014–28095 Filed 11–24–14; 4:15 pm]

**BILLING CODE 7050–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 14–124]**

### NASA Advisory Council; Meeting Postponement

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of postponement of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, NASA announces a postponement of the previously announced meeting of the NASA Advisory Council (NAC). The meeting had been scheduled to be held on December 8 and 9, 2014. The meeting is being postponed by NASA due to exceptional circumstances and schedule conflicts of the NASA top leadership in connection with post-launch programmatic requirements of the Orion Exploration Flight Test-1 (EFT–1) on December 4, 2014, at NASA Kennedy Space Center in Florida.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148, or *marla.k.king@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting was originally announced as NASA Notice 14–118 in the **Federal Register** on November 18, 2014, at 79 FR 68727. The meeting had been scheduled to be held on Monday, December 8, 2014, 1 p.m.–5 p.m.; and Tuesday, December 9, 2014, 9 a.m.–5 p.m., Local Time, at NASA Stennis Space Center, MS 39529.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2014–28060 Filed 11–25–14; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 14–125]**

### NASA Advisory Council; Human Exploration and Operations Committee; Meeting Postponement

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of postponement of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, NASA announces a postponement of the

previously announced meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). The meeting had been scheduled to be held on December 2 and 3, 2014. The meeting is being postponed by NASA due to exceptional circumstances and schedule conflicts of the NASA top leadership. The latter's attendance is required during this period for the NASA Senior Management Council meeting and final countdown preparations for launch of the Orion Exploration Flight Test-1 (EFT–1) on December 4, 2014, at NASA Kennedy Space Center in Florida.

**FOR FURTHER INFORMATION CONTACT:** Dr. Bette Siegel, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting was originally announced as NASA Notice 14–113 in the **Federal Register** on November 13, 2014, at 79 FR 67468. The meeting had been scheduled to be held on Tuesday, December 2, 2014, 10 a.m.–6 p.m.; and Wednesday, December 3, 2014, 8 a.m. to 4:30 p.m.; Local Time, at NASA Headquarters, 300 E Street SW., Washington, DC 20546.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2014–28061 Filed 11–25–14; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 14–123]**

### NASA Advisory Council; Science Committee; Meeting Postponement

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of postponement of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, NASA announces a postponement of the previously announced meeting of the Science Committee of the NASA Advisory Council (NAC). The meeting was originally announced in the **Federal Register** on November 14, 2014. The meeting had been scheduled to be held December 1–3, 2014. The meeting is being postponed by NASA due to exceptional circumstances and schedule conflicts of the NASA top leadership. The latter's attendance is required during this period for the NASA Senior Management Council meeting and final countdown preparations for launch of the Orion Exploration Flight Test-1 (EFT–1) on December 4, 2014, at NASA Kennedy Space Center in Florida.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, or *ann.b.delo@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting was originally announced as NASA Notice 14–115 in the **Federal Register** on Friday, November 14, 2014 at 79 FR 68304. The meeting had been scheduled to be held on Monday, December 1, 2014, 8 a.m.–5 p.m.; Tuesday, December 2, 2014, 8 a.m.–6 p.m.; and Wednesday, December 3, 2014, 8 a.m. to 12:30 p.m.; Local Time, at NASA Headquarters, 300 E Street SW., Washington, DC 20546.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2014–28059 Filed 11–25–14; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0254]**

### Advanced Light-Water Reactor Probabilistic Risk Assessment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft interim staff guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing this notice for use of and requesting public comment on its draft Interim Staff Guidance (ISG) DC/COL–ISG–028, ''Assessing the Technical Adequacy of the Advanced Light-Water Reactor Probabilistic Risk Assessment for the Design Certification Application and Combined License Application.'' The purpose of this ISG would be to provide guidance for assessing the technical adequacy of the probabilistic risk assessment (PRA) needed for advanced light-water reactor (ALWR) design certification (DC) and combined license (COL) applications. This guidance would only address the typical conditions for the DC and COL application.

**DATES:** Submit comments by January 26, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0254. 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–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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:** Tanya Hood, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387, email: *Tanya.Hood@nrc.gov*

**SUPPLEMENTARY INFORMATION:**

#### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2014–0254 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0254.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. The proposed DC/

COL–ISG–028 is available electronically under ADAMS Accession No. ML14230A111.

• *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–2014–0254 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

## II. Background

The NRC staff issues DC/COL–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for DCs and COLs by the Office of New Reactors. The NRC staff intends to incorporate the final approved DC/COL–ISG–28 into the next revision of Regulatory Guide (RG) 1.200, Revision 2, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities'' (ADAMS Accession No. ML090410014), RG 1.206, ''Combined License Applications for Nuclear Power Plants'' (ADAMS Accession No. ML070720184), and NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants,'' SRP Section 19.0 ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors'' (ADAMS Accession No. ML12132A481), as appropriate.

An early version of this ISG was made publicly available to support the September 9, 2014, meeting of the Working Group on Advanced Light Water Reactors for the American Society of Mechanical Engineers/American Nuclear Society Joint Standards Committee on Nuclear Risk Management (ADAMS Accession No. ML14248A683). The public should not provide comments to the early version of the ISG.

The NRC posts all final ISGs on the NRC's public Web page at *http://www.nrc.gov/reading-rm/doc-collections/isg/,* which is where the public may easily obtain access to DC/COL–ISG–28.

## Backfitting and Issue Finality

The NRC is proposing to issue interim guidance for the NRC staff for assessing the technical adequacy of probabilistic risk assessments submitted as part of advanced light-water reactor design certification applications and combined license applications. Issuance of the draft ISG, if finalized, would not constitute backfitting as defined section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The draft ISG positions, if finalized, do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.*

The ISG provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit), NRC regulatory approval (*e.g.,* a design certification rule), or both, with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the draft ISG (if finalized) in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft ISG (if finalized) in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *The staff has no intention to impose the draft ISG on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the draft ISG to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the draft ISG—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the draft ISG (if finalized) on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described in the applicable issue finality provision, as applicable.

## Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not yet determined whether it is a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 18th day of November, 2014.

For the Nuclear Regulatory Commission.

**Joseph Colaccino,**

*Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactor and Rulemaking, Office of New Reactors.*

[FR Doc. 2014–28047 Filed 11–25–14; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactor; Notice of Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactor (ABWR) will hold a meeting on December 3, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

**Wednesday, December 3, 2014—1:30 p.m. Until 5:00 p.m.**

The Subcommittee will review the implementation of Fukushima Lessons Learned Recommendation 4.2 on Mitigating Strategies and other issues associated with the combined license application for the South Texas Project, Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with the applicant, Nuclear Innovation North America (NINA), the NRC staff and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR 59307–59308).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: November 19, 2014.

**Kathy D. Weaver,**

*Acting Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2014–28057 Filed 11–25–14; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2015–7; Order No. 2255]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning transfer of First Class Mail Parcels to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 17 2014. *Reply comments are due:* January 7, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Introduction

On November 14, 2014, the Postal Service filed a notice with the Commission pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* requesting that the First-Class Mail Parcels product be removed from the market dominant list and that an identical service be added as a price category of the existing First-Class Package Service product, which appears on the competitive product list.[1] In support of its Request, the Postal Service filed the following documents:

- Attachment A—Resolution of the Governors of the United States Postal Service, November 13, 2014 (Resolution No. 14–10);
- Attachment B—Statement of Supporting Justification; and
- Attachment C—Draft Mail Classification Schedule (MCS) Language.

The Postal Service asserts that the new First-Class Parcels category fulfills all of the criteria for competitive products under section 3642. Request at 2. The Postal Service states that the new category will maintain the existing service standards and pricing structure of the First-Class Mail Parcels product.[2] It also states that after transfer, the new category will maintain the sealed against inspection feature, and with a price adjustment (increase), avoid the application of the Private Express Statutes for packages that might contain letters. Request, Attachment B at 2.

The Postal Service notes that the First-Class Package Service product currently has a cost coverage of 119 percent. *Id.* It asserts that with the addition of the First-Class Parcels category to this product, the product will continue to cover costs and contribute at least 5.5 percent towards the competitive product's share of total institutional costs. See 39 U.S.C. 3633(a)(3), 39 CFR 3015.7.

### II. Commission Action

The Commission establishes Docket No. MC2015–7 to consider the Postal Service's proposals described in its Request. Interested persons may submit comments on whether the Request is consistent with the policies of 39 U.S.C. 404(a)(c), 3642, 3632, 3633, and 39 CFR 3020.30 *et seq.* Comments are due by

[1] Request of the United States Postal Service to Transfer First-Class Mail Parcels to the Competitive Product List, November 14, 2014 (Request).

[2] *Id.* As a market dominant product, the First-Class Mail Parcels product is subject to the service performance reporting requirements of 39 CFR 3055, *et seq.*

December 17, 2014. Reply comments are due by January 7, 2015.

The Request and related filings are available on the Commission's Web site (*http://www.prc.gov*). The Commission encourages interested persons to review the Request for further details.

The Commission appoints Kenneth E. Richardson to serve as Public Representative in this proceeding.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. MC2015–7 to consider matters raised by the Request.

2. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by December 17, 2014.

4. Reply comments are due by January 7, 2015.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2014–27968 Filed 11–25–14; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31342; File No. 812–14159]**

## Advanced Series Trust, et al.; Notice of Application

November 20, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

**SUMMARY:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Non-Affiliated Sub-Advisors (as defined below) and Wholly-Owned Sub-Advisors (as defined below) without shareholder approval and would grant relief from certain disclosure requirements. The requested order would supersede a prior order that granted exemptive relief from section 15(a) of the Act and rule 18f–2 under the Act solely with respect to Non-Affiliated Sub-Advisors (''Prior Order'').[1]

*Applicants:* Advanced Series Trust; Prudential's Gibraltar Fund, Inc.; The Prudential Series Fund (collectively, the ''Insurance Funds''); Prudential Global Total Return Fund, Inc.; Prudential Investment Portfolios 2; Prudential Investment Portfolios 3; Prudential Investment Portfolios 4; Prudential Investment Portfolios 5; Prudential Investment Portfolios 6; Prudential Investment Portfolios 7; Prudential Investment Portfolios 8; Prudential Investment Portfolios 9; Prudential Investment Portfolios 12; Prudential Investment Portfolios 16; Prudential Investment Portfolios 18; Prudential Investment Portfolios, Inc.; Prudential Investment Portfolios, Inc. 10; Prudential Investment Portfolios, Inc. 14; Prudential Investment Portfolios, Inc. 15; Prudential Investment Portfolios, Inc. 17; Prudential Jennison Blend Fund, Inc.; Prudential Jennison Mid-Cap Growth Fund, Inc.; Prudential Jennison Natural Resources Fund, Inc.; Prudential Jennison Small Company Fund, Inc.; Prudential Money Mart Assets, Inc.; Prudential National Muni Fund, Inc.; Prudential Sector Funds, Inc.; Prudential Short-Term Corporate Bond Fund, Inc.; Prudential World Fund, Inc.; The Prudential Variable Contract Account–2; The Prudential Variable Contract Account–10; The Prudential Variable Contract Account–11; The Target Portfolio Trust (collectively, the ''Retail Funds'' and together with the Insurance Funds, the ''Prudential Investment Companies''); Prudential Investments LLC (''PI''); and AST Investment Services, Inc. (''ASTIS'').

**DATES:** The application was filed on May 24, 2013, and amended on October 4, 2013, February 21, 2014, October 3, 2014 and November 18, 2014.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Prudential Investments LLC, 100 Mulberry Street, Gateway Center Three, 14th Floor, Newark, New Jersey 07102.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Applicants' Representations**

1. Each Prudential Investment Company is organized as a either a Massachusetts business trust, a Delaware trust, a Maryland corporation or a New Jersey insurance company separate account, and is registered with the Commission as an open-end management investment company under the Act. Each Prudential Investment Company (other than Prudential's Gibraltar Fund, Inc., The Prudential Variable Contract Account–2, The Prudential Variable Contract Account–10, and The Prudential Variable Contract Account–11) may offer shares of one or more series (each, a ''Series'' and collectively, the ''Series'') with its own distinct investment objectives, policies and restrictions.[2] PI is a New York limited liability company and ASTIS is a Connecticut corporation, and each is registered as an investment adviser

[1] The Target Portfolio Trust and Prudential Mutual Fund Management, Inc., Investment Company Act Release Nos. 22139 (Aug. 13, 1996) (notice) and 22215 (Sep. 11, 1996) (order).

[2] The term ''Series'' includes the Prudential Investment Companies that do not offer multiple series. A Prudential Investment Company or Subadvised Series (as defined below) may in the future be organized as a master fund (each, a ''Master Fund'') in a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. Certain Series, including any other investment company or series thereof that is advised by an Advisor (as defined below), may invest substantially all of their assets in a Master Fund pursuant to section 12(d)(1)(E) of the Act (each a ''Feeder Fund''). No Feeder Fund will engage any investment adviser or sub-advisors other than through approving the engagement of the applicable Master Fund's investment adviser and any sub-advisors.

under the Investment Advisers Act of 1940 (''Advisers Act''). PI and ASTIS are indirect wholly-owned subsidiaries of Prudential Financial, Inc., a financial services organization.

2. Applicants request an order to permit the Advisor,[3] subject to the approval of the board of directors or trustees of the applicable Series (each a ''Board''),[4] including a majority of the directors or trustees who are not ''interested persons'' of the Series or the Advisor as defined in section 2(a)(19) of the Act (the ''Independent Board Members''), to, without obtaining shareholder approval: (i) Select Sub-Advisors [5] to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisors; and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisors.[6] Applicants request that the relief apply to the named applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Advisor, uses the multi-manager structure described in the application (''Multi-Manager Structure''), and complies with the terms and conditions set forth in the application (each, a ''Subadvised Series'').[7] The requested relief will not extend to any sub-advisor, other than a Wholly-Owned Sub-Advisor, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series, of any Feeder Fund, or of the Advisor, other than by reason of serving as a sub-advisor to one or more of the Subadvised Series (''Affiliated Sub-Advisor'').

3. PI serves as the investment adviser to each Prudential Investment Company pursuant to an investment advisory agreement with the applicable Prudential Investment Company, and ASTIS serves as co-investment adviser to certain Series of Advanced Series Trust pursuant to an investment advisory agreement with PI and Advanced Series Trust (each, an ''Investment Management Agreement'' and together the ''Investment Management Agreements''). The Investment Management Agreement for each existing Series was approved by the applicable Board, including a majority the Independent Board Members, and by the shareholders of that Series in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of these Investment Management Agreements comply with section 15(a) of the Act. Each other Investment Management Agreement will comply with section 15(a) of the Act and will be similarly approved.

4. Under the terms of each Investment Management Agreement, the Advisor, subject to the supervision of the Board, provides continuous investment management of the assets of each Series. The Advisor periodically reviews a Series' investment policies and strategies and, based on the need of a particular Series, may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the applicable Investment Management Agreement, the Advisor receives an investment management fee from the Series based on the average net assets of that Series.

5. Consistent with the terms of each Investment Management Agreement, the Advisor may, subject to the approval of the applicable Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisors. The Advisor continues to have overall responsibility for the management and investment of the assets of each Subadvised Series, and the Advisor's responsibilities include, for example, recommending the removal or replacement of Sub-Advisors and determining the portion of that Subadvised Series' assets to be managed by any given Sub-Advisor and reallocating those assets as necessary from time to time.

6. The Advisor has entered into sub-advisory agreements with various Sub-Advisors (''Sub-Advisory Agreements'') on behalf of the Subadvised Series. The Advisor may also, in the future, enter into Sub-Advisory Agreements on behalf of other Series. Each current Sub-Advisor is, and any future Sub-Advisor will be, an ''investment adviser'' as defined in section 2(a)(20)(B) of the Act and registered as an investment adviser under the Advisers Act or not subject to such registration. The Sub-Advisory Agreements were approved by the applicable Board, including a majority of the Independent Board Members, and to the extent that the Prior Order did not apply, the shareholders of the applicable Subadvised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. In addition, the terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act. The Sub-Advisors, subject to the supervision of the Advisor and oversight of the applicable Board, determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Series' portfolio or a portion thereof, and place orders with brokers or dealers that they select. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the relevant Investment Management Agreement.

7. Each Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Subadvised Series, that Subadvised Series will send its shareholders [8] either

[3] The term ''Advisor'' means PI, ASTIS, or any entity controlling, controlled by or under common control with, PI, ASTIS, or successors to either of them. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Each Advisor is, or will be, registered with the Commission as an investment adviser under the Advisers Act.

[4] The term ''Board'' includes the board of directors or trustees of any future Subadvised Series.

[5] A ''Sub-Advisor'' for a Series is (a) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Series, (b) a sister company of the Advisor for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Advisor (each of (a) and (b), a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (c) an investment sub-advisor for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series, any Feeder Fund invested in a Series that is a Master Fund, the applicable Prudential Investment Company, or the Advisor, except to the extent that an affiliation arises solely because the sub-advisor serves as a sub-advisor to a Series (each, a ''Non-Affiliated Sub-Advisor'').

[6] Shareholder approval will continue to be required for any other sub-advisor changes (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing Sub-Advisory Agreement (as defined below) with any sub-advisor other than a Non-Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor (all such changes referred to as ''Ineligible Sub-Advisor Changes'').

[7] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. All Series that currently are, or that currently intend to be, Subadvised Series are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Advisor, the trademark or trade name that is owned by or publicly used to identify the Advisor that serves as the primary adviser to the Subadvised Series will precede the name of the Sub-Advisor.

[8] If the Subadvised Series is a Master Fund, for purposes of the Modified Notice and Access Procedures, ''shareholders'' include both the

Continued

a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [9] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants state that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants also state that the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

8. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisors; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Subavised Series to include only the Aggregate Fee Disclosure. All other items required by Sections 6–07(2)(a), (b), and (c) of Regulation S–X will be disclosed.

**Applicants' Legal Analysis**

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Form N–3 is the registration statement used by separate accounts offering variable annuity contracts. Item 21(a)(iii) of Form N–3 requires the separate account to disclose the method of computing the ''advisory fee payable'' by the separate account, including the total dollar amounts ''paid to the adviser by the [r]egistrant or its [i]nsurance [c]ompany under the investment advisory contract for the last three fiscal years.''

4. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

6. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the applicable Board, to select the Sub-Advisors who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisors is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Advisor to perform the duties for which the shareholders of the Subadvised Series are paying the Advisor—the selection, supervision and evaluation of the Sub-Advisors—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

8. Applicants assert that disclosure of the individual fees that the Advisor would pay to the Sub-Advisors of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisors are to inform

shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor (except as modified to permit Aggregate Fee Disclosure (as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Advisor will be fully disclosed and therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will also encourage Sub-Advisors to negotiate lower sub-advisory fees with the Advisor if the lower fees are not required to be made public.

9. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. Applicants assert that conditions 6, 7, 10, and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions: [10]

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisors, will be, or has been, approved by a majority of the/Subadvised Series' outstanding voting securities as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act (or, in the case on an insurance-related Subadvised Series, pursuant to the voting instructions provided by contract owners with assets allocated to any registered separate account for which the Subadvised Series serves as a funding medium), or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series, and in the case of a Master Fund relying on the requested relief, the prospectus for each Feeder Fund investing in such Master Fund, will disclose the existence, substance and effect of any order granted pursuant to the application. Each Subadvised Series (and any such Feeder Fund) will hold itself out to the public as employing the Multi-Manager Structure described in the application. Each prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by the applicable Board, to oversee the Sub-Advisors and recommend their hiring, termination, and replacement.

3. The Advisor will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the applicable Board, the Advisor will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisors to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisors comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the applicable Board, the Advisor will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among Sub-Advisors; and (b) monitor and evaluate the performance of Sub-Advisors.

4. A Subadvised Series will not make any Ineligible Sub-Advisor Changes without the approval of the shareholders of the applicable Subadvised Series, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act.

5. A Subadvised Series will inform shareholders, and if the Subadvised Series is a Master Fund, shareholders of any Feeder Funds, of the hiring of a new Sub-Advisor within 90 days after the hiring of the new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the applicable Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Advisor will provide the applicable Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-advisor during the applicable quarter.

9. Whenever a sub-advisor is hired or terminated, the Advisor will provide the applicable Board with information showing the expected impact on the profitability of the Advisor.

10. Whenever a sub-advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor, the applicable Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and if the Subadvised Series is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor derives an inappropriate advantage.

11. No Board member or officer of a Prudential Investment Company, a Subadvised Series, or a Feeder Fund that invests in a Subadvised Series that is a Master Fund, or director, manager or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle

[10] A Subadvised Series relying on the order granted hereunder will comply with conditions 8, 9, and 12 only if it relies on the relief that would allow it to provide Aggregate Fee Disclosure.

that is not controlled by such person) any interest in a Sub-Advisor except for (a) ownership of interests in the Advisor or any entity, other than a Wholly-Owned Sub-Advisor, that controls, is controlled by, or is under common control with the Advisor, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by, or is under common control with, a Sub-Advisor.

12. Each Subadvised Series and any Feeder Fund that invests in a Subadvised Series that is a Master Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

14. Any new Sub-Advisory Agreement or any amendment to a Subadvised Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Series will be submitted to the Subadvised Series' shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27981 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31341; File No. 813–366]**

## BlackRock, Inc., et al.; Notice of Application

November 20, 2014.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, and the rules and regulations thereunder, except sections 9, 17, 30, 36 through 53 and the rules and regulations under those sections. With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e) and (h) of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, applicants request a limited exemption as set forth in the application.

**SUMMARY:** Applicants request an order to exempt certain investment vehicles formed for the benefit of eligible employees of BlackRock, Inc. and its affiliates (''Partnerships'') from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. *Applicants:* BlackRock, Inc. (''BlackRock''), BlackRock Energy Opportunity (Employees) Fund, L.P. (the ''Energy Fund''), Vesey Street Employee Fund IV, L.P. (the ''Vesey Street Fund''), BlackRock Energy Opportunity Fund GP, LLC (the ''Energy Fund GP''), BlackRock DivPEP IV, LLC (the ''Vesey Street Fund GP''), BlackRock Capital Management, Inc. (''BCM''), and BlackRock Investment Management, LLC (''BIM'').

**DATES:** The application was filed on April 23, 2007, and amended on June 29, 2010, January 15, 2013, May 17, 2013, October 17, 2013, April 3, 2014, and November 19, 2014.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 40 East 52nd Street, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company's name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. BlackRock, a Delaware corporation, and its affiliates provide investment management, risk management and advisory services to institutional and retail clients around the world.

2. The Partnerships have been or will be established primarily for the benefit of key employees of BlackRock or of any affiliate within the meaning of rule 12b–2 under the Securities Exchange Act of 1934 (the ''1934 Act'') of BlackRock (all such affiliates are subsidiaries of BlackRock, and together with BlackRock are referred to collectively as the ''BlackRock Group'' and individually as a ''BlackRock Group entity'') as part of a program designed to create capital building opportunities that are competitive with those at other financial services firms and to facilitate the BlackRock Group's recruitment of high caliber professionals. Each of the Partnerships will be structured as a limited liability company, limited partnership, corporation, business trust or other entity organized under the laws of the state of Delaware or another U.S. or non-U.S. jurisdiction or any other ''issuer'' (as defined in section 2(a)(22) of the Act). Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act and will operate as a diversified or non-diversified closed-end management investment company.

3. The Energy Fund was formed on April 9, 2007 as a Delaware limited partnership. The Energy Fund GP acts as General Partner (as defined below) to the Energy Fund. The Energy Fund invests concurrently with BlackRock Energy Opportunity Master Fund, L.P., a BlackRock Third Party Fund (as defined below), which seeks to achieve long term capital appreciation through various types of non-control investments in companies primarily engaged in the energy and natural resource industries. The Energy Fund is no longer accepting additional investors. BCM, an indirect wholly-owned subsidiary of BlackRock, serves as Investment Adviser (as defined below) for the Energy Fund and provides portfolio management, research and administrative services for the Energy Fund. The Vesey Street Fund was formed on November 3, 2008 as a Delaware limited partnership. The Vesey Street Fund GP acts as General Partner to the Vesey Street Fund. The Vesey Street Fund invests concurrently with Vesey Street Fund IV, L.P., a BlackRock Third Party Fund, and other

associated BlackRock Group entities to give investors globally diversified exposure to the private equity asset class. The Vesey Street Fund is no longer accepting additional investors. BIM, an indirect, wholly-owned subsidiary of BlackRock, serves as Investment Adviser of the Vesey Street Fund and provides portfolio management, research and administrative services for the Vesey Street Fund.

4. The BlackRock Group will control the Partnerships within the meaning of section 2(a)(9) of the Act. The General Partner of each Partnership is or will be a BlackRock Group entity.[1] Each BlackRock Group entity acting as an investment adviser to a Partnership, including, if applicable, the General Partner (each, an ''Investment Adviser'') will be registered as an investment adviser under the Investment Advisers Act of 1940, if required under applicable law. The General Partner will manage, operate and control each of the Partnerships and will be authorized to delegate investment management responsibility with respect to the acquisition, management and disposition of the investments of a Partnership (''Portfolio Investments'') only to a BlackRock Group entity or to a committee of BlackRock Group employees (''Investment Committee'').

5. All partners or members of, or other investors in (''Partners''), the Partnerships other than the applicable general partner (the ''Limited Partners'') will be informed that (i) interests in the Partnerships will be sold in transactions exempt under section 4(2) of the Securities Act of 1933 (the ''1933 Act''), or Regulation D under the 1933 Act and thus offered without registration under, and without the protections afforded by the 1933 Act, and (ii) the Partnerships will be exempt from most provisions of the Act and from the protections afforded thereby. With the exception of Plan Interest Holders (as defined below), Limited Partner interests, membership interests or similar ownership interests in Partnerships (''Interests'') will be sold only (i) to Eligible Employees (as defined below), (ii) at the request of Eligible Employees and in the discretion of the General Partner, to Qualified Participants (as defined below) of such Eligible Employees and (iii) to BlackRock Group entities. Prior to offering Interests to an Eligible Employee or Qualified Participant, the General Partner must reasonably believe that each Eligible Employee who participates, or requests that a related Qualified Participant be permitted to participate, in a Partnership will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. In the case of a Consultant (as defined below) that is an entity, the General Partner will make this determination with respect to the persons who make the investment decision on behalf of the Consultant. Participation in a Partnership will be voluntary on the part of Eligible Employees and Qualified Participants.

6. An ''Eligible Employee'' is either (a) an individual who (i) is a current or former employee, officer or director[2] or current Consultant of any member of the BlackRock Group and (ii) except for a limited number of Sophisticated Employees[3] (as defined below) and certain individuals who meet the definition of ''knowledgeable employee'' in rule 3c–5(a)(4) under the Act as if the Partnerships were ''Covered Companies'' within the meaning of the rule (''Managing Employees''), meets the standards of an ''accredited investor'' under rule 501(a) of Regulation D or (b) an entity that (i) is a current Consultant of the BlackRock Group and (ii) meets the standards of an ''accredited investor'' under rule 501(a) of Regulation D.

7. In the discretion of the General Partner and at the request of an Eligible Employee, Interests may be assigned by such Eligible Employee, or sold directly by the Partnership, to a Qualified Participant of an Eligible Employee. In order to qualify as a ''Qualified Participant,'' an individual or entity must (i) be an Eligible Family Member or Qualified Investment Vehicle (in each case as defined below) and (ii) if purchasing an Interest from a Partnership, come within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of a child, brother, sister or grandchild of an Eligible Employee, including step and adoptive relationships. A ''Qualified Investment Vehicle'' is (i) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee, (ii) a partnership, corporation or other entity controlled by an Eligible Employee, or (iii) a trust or other entity established solely for the benefit of an Eligible Employee and/or one or more Eligible Family Members of an Eligible Employee.

8. Certain employees of the BlackRock Group who do not qualify as Eligible Employees may receive Interests as part of an employee benefit plan without payment in order to reward and retain these employees (''Plan Interest Holders''). The Partnerships will not register Interests awarded to Plan Interest Holders under the 1933 Act in reliance on an opinion of counsel that the awards of Interests are not sales within the meaning of section 2(a)(3) of the 1933 Act. No relief from the provisions of the 1933 Act is requested by the BlackRock Group with respect to the award of Interests to Plan Interest Holders. Plan Interest Holders will not be required to meet the sophistication and salary requirements to which Eligible Employees are subject.

9. It is anticipated that, at the discretion of the General Partner, consultants or business or legal advisors of the BlackRock Group (''Consultants'') may be offered the opportunity to participate in the Partnerships, either directly or through a Qualified Participant of such consultant or advisor. In order to participate in the Partnerships, Consultants must be currently engaged by the BlackRock Group and will be required to be sophisticated investors who qualify as ''accredited investors'' under rule 501(a) of Regulation D. If a Consultant is an entity (such as, for example, a law firm or consulting firm), and the Consultant proposes to invest in the Partnership through a partnership, corporation or other entity that is controlled by the Consultant, the individual participants in such partnership, corporation or other entity will be limited to senior level employees, members or partners of the Consultant who are responsible for the activities of the Consultant or the activities of the Consultant in relation to

[1] The term ''General Partner'' refers to any BlackRock Group entity that acts as the general partner, manager or the equivalent of a Partnership.

[2] In order for a current or former officer or director of any member of the BlackRock Group to be an ''Eligible Employee,'' such current or former officer or director must be an employee or former employee of a BlackRock Group entity.

[3] A ''Sophisticated Employee'' is an employee that (a) has a graduate degree in business, law or accounting, (b) has a minimum of five years of consulting, investment banking or similar business experience, and (c) has had reportable income from all sources of at least $100,000 in each of the two most recent years and a reasonable expectation of income from all sources of at least $140,000 in each year in which such person will be committed to make investments in a Partnership. In addition, a Sophisticated Employee will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in such Partnership and in all other Partnerships in which he or she has previously invested. With respect to any Partnership, up to 35 employees may be permitted to invest in the Partnership if, at the time of the employee's investment in the Partnership, he or she is a Managing Employee or a Sophisticated Employee; provided, however, that if a Managing Employees meets the standards of an ''accredited investor'' under rule 501(a) of Regulation D, such Managing Employee will not be counted toward this 35 employee limit.

the BlackRock Group and will be required to qualify as ''accredited investors'' under rule 501(a) of Regulation D.

10. Once a Consultant's engagement with the BlackRock Group is terminated, or once an Eligible Family Member of an Eligible Employee ceases to be an Eligible Family Member, as of the date of such termination or cessation, such Consultant and its Qualified Participants, if any, or such Eligible Family Member, will not be permitted to contribute any additional capital to a Partnership and the existing Interests of such Consultant and its Qualified Participants, if any, or such Eligible Family Member, will (i) to the extent the governing documents of a Partnership provide for periodic redemptions in the ordinary course, be redeemed as of the next regularly scheduled redemption date and (ii) to the extent the governing documents of a Partnership do not provide for such periodic redemptions (*e.g.,* as a result of the vehicle primarily investing in illiquid investments), be retained.

11. If the General Partner elects to recommend that a Partnership enter into any side-by-side investment with an unaffiliated entity, the General Partner will be permitted to engage as a sub-investment adviser the unaffiliated entity (an ''Unaffiliated Subadviser''), which will be responsible for the management of such side-by-side investment. If an Unaffiliated Subadviser is entitled to receive a carried interest, it may also act as an additional General Partner of a Partnership solely in order to address certain tax issues relating to such carried interest. In all such instances, however, a BlackRock Group entity will also be a General Partner of the Partnership and will have exclusive responsibility for making the determinations required to be made by the General Partner. No Unaffiliated Subadviser will beneficially own any outstanding securities of any Partnership.

12. The terms of a Partnership will be fully disclosed to each Eligible Employee or Qualified Participant (or person making the investment decision on behalf of the Qualified Participant) at the time the Eligible Employee or Qualified Participant is invited to participate in the Partnership, or to a Plan Interest Holder at the time he or she receives an Interest. Each Eligible Employee, Qualified Participant (or person making the investment decision on behalf of the Qualified Participant) or Plan Interest Holder will be furnished with a copy of the partnership agreement or other organizational document (''Partnership Agreement''). The Partnership Agreement will set forth whether a Limited Partner's Interests are subject to forfeiture upon termination of the relationship of the Limited Partner (or relevant Eligible Employee) to the BlackRock Group or the employment of the Limited Partner (or relevant Eligible Employee) by a competitor to the BlackRock Group or otherwise and, if such forfeiture provisions exist, the terms of the repurchase or cancellation of the Limited Partner's Interests. Upon any repurchase, cancellation or forfeiture of a former Limited Partner's Interest, the Limited Partner will at a minimum be paid the lesser of (i) the amount actually paid by or (subject to any vesting requirements) on behalf of the Limited Partner to acquire the Interest (plus interest, as reasonably determined by the General Partner) less any amounts paid to the Limited Partner as distributions, and (ii) the fair value, determined at the time of repurchase in good faith by the General Partner, of such Interest.

13. Each Partnership will send its Partners annual financial statements within 120 days after the end of the fiscal year of the Partnership or as soon as practicable thereafter or, in the case of a Partnership that is a fund of funds,[4] within 180 days after the end of the fiscal year of the Partnership. The financial statements of each Partnership will be audited by independent certified public accountants,[5] except in the case of Partnerships formed to make a single Portfolio Investment.[6] In addition, to enable Limited Partners to determine the U.S. federal income tax consequences of their investments, as soon as practicable after end of each tax year of a Partnership, a report will be transmitted to each Partner showing such Partner's share of income, gains, losses, credits, deductions, and other tax items for U.S. federal income tax purposes, resulting from the Partnership's operations during that year.

14. Interests in the Partnerships will be non-transferable except with the prior written consent of the General Partner, and, in any event, no person or entity will be admitted into a Partnership as a Partner or allowed to continue to hold an Interest unless such person is (i) an Eligible Employee, (ii) a Plan Interest Holder, (iii) a Qualified Participant of an Eligible Employee or (iv) a BlackRock Group entity. The Interests in the Partnerships will be sold without a sales load.

15. It is possible that an investment program may be structured in which a Partnership will co-invest in a portfolio company (or a pooled investment vehicle) with the BlackRock Group or with an investment fund or separate account,[7] organized primarily for the benefit of investors that are not affiliated with the BlackRock Group (''Third Party Investors'') and over which a BlackRock Group entity exercises investment discretion or which is sponsored by a BlackRock Group entity (a ''BlackRock Third Party Fund''). Co-investments with a BlackRock Third Party Fund or with a BlackRock Group entity in a transaction in which the BlackRock Group's investment was made pursuant to a contractual obligation to a BlackRock Third Party Fund will not be subject to condition 3 below. All other side-by-side investments held by BlackRock Group entities will be subject to the restrictions contained in condition 3.

16. Subject to the terms of the applicable Partnership Agreement and the application, a Partnership will be permitted to enter into transactions involving (i) a BlackRock Group entity, (ii) a portfolio company, (iii) any Partner or person or entity affiliated with a Partner, (iv) a BlackRock Third Party Fund, or (v) any Third Party Investor. With regard to any such transactions that are Section 17 Transactions (as defined below), the General Partner must make the findings and comply with the recordkeeping requirements of condition 1.

17. Applicants state that a Partnership's investments may be made on a side-by-side basis with BlackRock Group entities or indirectly through pooled investment vehicles (including private funds relying on sections 3(c)(1) and 3(c)(7) of the Act and funds relying on section 3(c)(5) of the Act)[8] and/or registered investment companies

[4] A fund of funds is a pooled investment vehicle that invests 10 percent or more of its total assets in other pooled investment vehicles that are not, and are not advised by, a related person (as defined in Form ADV) of the pool, its general partner, or its adviser.

[5] For purposes of this requirement, ''audit'' shall have the meaning defined in rule 1–02(d) of Regulation S–X.

[6] In such cases, audited financial statements will be prepared for either the Partnership or the entity that is the subject of the Portfolio Investment.

[7] A separate account refers to an account of an affiliated insurance company, trust company or similar entity where under applicable state or other law such separate account provides special rights or other special treatment for separate account holders that are distinguishable from the rights of the entity's general account.

[8] Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern a Partnership's eligibility to invest in a Portfolio Investment relying on section 3(c)(1) or 3(c)(7) of the Act or the Portfolio Investment's status under the Act.

sponsored by the BlackRock Group or by third parties. One Partnership may invest in another Partnership in a ''master-feeder'' or similar structure. A Partnership will not acquire any security issued by a registered investment company if, immediately after the acquisition, such Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act if and to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) of the Act provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, and the rules and regulations thereunder, except sections 9, 17, 30, 36 through 53 and the rules and regulations under those sections. With respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e) and (h) of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, applicants request a limited exemption as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the investment company. Applicants request an exemption from section 17(a) to the extent necessary to permit a BlackRock Group entity or a BlackRock Third Party Fund (or any affiliated person of such entity or BlackRock Third Party Fund), or any affiliated person of a Partnership (or affiliated persons of such persons), acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership. Applicants state that the relief is requested to permit each Partnership the flexibility to deal with its Portfolio Investments in the manner the General Partner deems most advantageous to all Limited Partners in the Partnership, including borrowing funds from a BlackRock Group entity, restructuring its Portfolio Investments, having its Portfolio Investments redeemed, tendering such Partnership's securities or negotiating options or implementing exit strategies with respect to its Portfolio Investments. Applicants state the requested exemption is sought to ensure that a BlackRock Third Party Fund or a Third Party Investor will not directly or indirectly become subject to a burden, restriction, or other adverse effect by virtue of a Partnership's participation in an investment opportunity.

4. Applicants submit that an exemption from section 17(a) is consistent with the policy of each Partnership and the protection of investors and is necessary to promote the basic purpose of such Partnership. Applicants state that the Limited Partners in each Partnership will be fully informed of the possible extent of Partnership's dealings with the BlackRock Group and of the potential conflicts of interest that may exist. As professionals employed in the investment management and securities businesses, the Limited Partners will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Limited Partners in each Partnership and the BlackRock Group is the best insurance against any risk of abuse. Applicants acknowledge that the requested relief will not extend to any transactions between a Partnership and an Unaffiliated Subadviser or an affiliated person of the Unaffiliated Subadviser, or between a Partnership and any person who is not an employee, officer or director of the BlackRock Group or is an entity outside of the BlackRock Group and is an affiliated person of the Partnership as defined in section 2(a)(3)(E) of the Act (''Advisory Person'') or any affiliated person of such person. In addition, applicants on behalf of the Partnerships represent that any transactions otherwise subject to section 17(a) of the Act, for which exemptive relief has not been requested, would require approval of the Commission.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Partnership or affiliated persons of such persons to participate in, or effect any transaction in connection with, any joint enterprise or joint arrangement or profit-sharing plan in which such Partnership or a company controlled by the Partnership is a participant. Applicants acknowledge that the requested relief will not extend to any transaction in which an Unaffiliated Subadviser or an Advisory Person or an affiliated person of either has an interest.

6. Applicants assert that compliance with section 17(d) would cause a Partnership to forego investment opportunities simply because a Limited Partner or any other affiliated person of such Partnership (or any affiliated person of such a person) also had, or contemplated making, a similar investment. Applicants further assert that attractive investment opportunities of the types considered by a Partnership often require each participant in the transaction to make funds available in an amount that may be substantially greater than those the Partnership would be able to provide on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Co-investments with a BlackRock Third Party Fund, or with a BlackRock Group entity in a transaction in which the BlackRock Group's investment was made pursuant to a contractual obligation to a BlackRock Third Party Fund, will not be subject to condition 3 below. All other side-by-side

investments held by BlackRock Group entities will be subject to condition 3. Applicants assert that in structuring a BlackRock Third Party Fund, it is common for the unaffiliated investors of such fund to require that the BlackRock Group invests its own capital in BlackRock Third Party Funds' investments, and that such BlackRock Group investments be subject to similar terms as those applicable to the BlackRock Third Party Fund's investments. Applicants state that it is important that the interests of the BlackRock Third Party Fund take priority over the interests of the Partnerships, and that the activities of the BlackRock Third Party Fund not be burdened or otherwise affected by activities of the Partnerships.

8. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a BlackRock Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, brokerage fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed ''usual and customary.'' Applicants state that for purposes of the application, fees or other compensation that are charged or received by a BlackRock Group entity will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities alongside other unaffiliated third parties, including BlackRock Third Party Funds or Third Party Investors, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, BlackRock Third Party Funds or Third Party Investors, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, BlackRock Third Party Funds or Third Party Investors. Applicants assert that, because the BlackRock Group does not wish to appear to be favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a BlackRock Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

9. Rule 17e–1(b) under the Act requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Rule 17e–1(c) under the Act requires each investment company relying on the rule to satisfy the fund governance standards defined in rule 0–1(a)(7) under the Act. Applicants request an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the Partnership who are not interested persons take actions and make determinations as set forth in paragraph (b) of the rule, and without having to satisfy the standards set forth in paragraph (c) of the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1. Applicants state that each Partnership will comply with rule 17e–1 by having a majority of the directors of the Partnership or the General Partner take actions and make approvals as set forth in the rule. Applicants state that each Partnership will otherwise comply with rule 17e–1.

10. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange or the company itself in accordance with Commission rules. Rule 17f–1 under the Act specifies the requirements that must be satisfied for a registered management investment company to maintain custody of its securities and similar investments with a company that is a member of a national securities exchange. Applicants request relief from section 17(f) and subsections (a), (b) (to the extent such subsection refers to contractual requirements), (c) and (d) of rule 17f–1 under the Act to permit a BlackRock Group entity to act as custodian for a Partnership's assets without a written contract and to permit ratification of that arrangement by members of the governing body of the General Partner or Investment Adviser, if applicable, of the Partnership in lieu of ratification by the governing body of the Partnership. In addition, an exemption is requested from the terms of rule 17f–1(b)(4) that an independent accountant periodically verify the Partnership's assets held by the custodian, and from the terms of rule 17f–1(c) that requires the Partnership to transmit to the Commission a copy of any contract pursuant to rule 17f–1. Applicants state that, because of the community of interest between the Partnerships and the BlackRock Group, applicants do not believe these requirements are warranted. Applicants will comply with rule 17f–1(d) provided that ratification by the General Partner or Investment Adviser, if applicable, of a Partnership will be deemed to be ratification by a majority of the governing body of the Partnership. Except as set forth above, each Partnership will otherwise comply with all the provisions of rule 17f–1.

11. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Partnership's investments may be kept in the locked files of the General Partner or the Investment Adviser for purposes of paragraph (b) of the rule; (b) for purposes of paragraph (d) of the rule, (i) employees of the BlackRock Group will be deemed to be employees of the Partnerships, (ii) officers or managers of the General Partner of a Partnership will be deemed to be officers of the Partnership, and (iii) the General Partner or its board of directors will be deemed to be the board of directors of the Partnership; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the General Partner who are also employees of the BlackRock Group responsible for the administrative, legal and/or compliance functions for funds managed or sponsored by the BlackRock Group and who have specific knowledge of custody requirements, policies and procedures of the Partnerships. With respect to certain Partnerships, applicants expect that many of their investments may be evidenced only by partnership agreements, participation agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that, for such a Partnership, these instruments are most suitably kept in the files of the General Partner or its Investment Adviser, where they can be referred to as necessary. Applicants will comply with all other provisions of rule 17f–2.

12. Section 17(g) of the Act and rule 17(g)–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds.

Rule 17g–1 requires that a majority of the directors who are not ''interested persons'' of a registered investment company take certain actions and give certain approvals relating to the fidelity bonding. Rule 17g–1(g) sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Rule 17g–1(h) provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Rule 17g–1(j) exempts a joint insured bond provided and maintained by an investment company and one or more parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7). Because all the directors of the General Partner or other governing body of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17g–1. Applicants request an exemption from rule 17g–1 to the extent necessary to permit each Partnership to comply with rule 17g–1 by having the General Partner of the Partnership take such actions and make such approvals as are set forth in rule 17g–1. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). The General Partner of the Partnership will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and all such material will be subject to examination by the Commission and its staff. The General Partner of the Partnership will designate a person to maintain the records otherwise required to be filed with the Commission under rule 17g–1(g). Applicants state that the fidelity bond of the Partnerships will cover all employees of the BlackRock Group who have access to the securities or funds of the Partnerships. Each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessary and burdensome as applied to the Partnerships. The relief requested will extend only to entities within the BlackRock Group and is not requested with respect to any Unaffiliated Subadviser or Advisory Person.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners of the Partnership. Applicants request relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt (i) the General Partner and Investment Adviser of each Partnership, (ii) directors, officers, or any affiliated persons of the General Partner and Investment Adviser, (iii) the members of any Investment Committee or board of managers or directors of a Partnership, (iv) any other persons who may be deemed to be members of an advisory board of a Partnership, and (v) any BlackRock Group entity or other Limited Partner who may be deemed to be a beneficial owner of 10% or greater of the outstanding securities of a Partnership, from filing Forms 3, 4, and 5 under section 16(a) of the 1934 Act with respect to their ownership of Interests. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

15. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities laws and to appoint a chief compliance officer. Each Partnership will comply will rule 38a–1(a), (c) and (d), except that (a) because the Partnership does not have a board of directors, the board of directors of the General Partner will fulfill the responsibilities assigned to the Partnership's board of directors under the rule, (b) because the board of directors or other governing body of the General Partner does not have any disinterested members, approval by a majority of the disinterested board members required by rule 38a–1 will not be obtained, and (c) because the board of directors or other governing body of the General Partner does not have any independent members, the Partnerships will comply with the requirement in rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of directors or other governing body of the General Partner as constituted.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that:

(a) the terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Partnership and the Partners and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and

(b) the Section 17 Transaction is consistent with the interests of the Partnership and the Partners, such Partnership's organizational documents and such Partnership's reports to its Partners.

In addition, the General Partner will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based and the basis for such findings. All such records will be maintained for the life of the Partnership and at least six years thereafter, and will be subject to examination by the Commission and its staff. Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

2. The General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any

affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter or principal underwriter.

3. The General Partner will not cause the funds of any Partnership to be invested in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and a Co-Investor are participants, unless prior to such investment any such Co-Investor agrees, prior to disposing of all or part of its investment, to: (a) Give the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrain from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and on a pro rata basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) An ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a BlackRock Third Party Fund); (b) the BlackRock Group (except when a BlackRock Group entity co-invests with a Partnership and a BlackRock Third Party Fund pursuant to a contractual obligation to the BlackRock Third Party Fund); (c) an officer or director of a BlackRock Group entity; (d) an entity (other than a BlackRock Third Party Fund) in which the BlackRock Group acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor, including step or adoptive relationships, or a trust or other investment vehicle established for any Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the 1934 Act; (ii) NMS stocks, pursuant to section 11A(a)(2) of the 1934 Act and rule 600(b) of Regulation NMS thereunder; (iii) government securities as defined in section 2(a)(16) of the Act; (iv) ''Eligible Securities'' as defined in rule 2a–7 under the Act, or (v) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of such Partnership and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in such Partnership, and each annual report of such Partnership required to be sent to such Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff. Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

5. Within 120 days after the end of the fiscal year of the Partnership or as soon as practicable thereafter or, in the case of a Partnership that is a fund of funds, within 180 days after the end of the fiscal year of the Partnership, the General Partner of each Partnership will send to each Limited Partner in such Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants, except in the case of a Partnership formed to make a single Portfolio Investment. In such cases, financial statements will be unaudited, but each Limited Partner will receive financial statements of the single Portfolio Investment audited by such entity's independent accountants. At the end of each fiscal year and at other times as necessary in accordance with customary practice, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end. In addition, as soon as practicable after the end of each tax year of a Partnership, the General Partner of such Partnership will send a report to each person who was a Limited Partner in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his, her or its U.S. federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. If a Partnership makes purchases or sales from or to an entity affiliated with the Partnership by reason of an officer, director or employee of the BlackRock Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27980 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 31343; 812–14318]**

## Lattice Strategies, LLC, et al.; Notice of Application

November 20, 2014.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**SUMMARY:** Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**APPLICANTS:** Lattice Strategies, LLC (''Initial Adviser''), Lattice Strategies

Trust (the ''Trust'') and ALPs Distributors, Inc. (''Distributor'').

**DATES:** The application was filed on May 30, 2014, and amended on September 12, 2014, November 12, 2014 and November 18, 2014.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 15, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Lattice Strategies, LLC c/o Albert Lee, One Embarcadero Center, Suite 2350, San Francisco, CA 94111.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

## Applicants' Representations

1. The Trust is a Delaware statutory trust and will register under the Act as an open-end management investment company with multiple series. Each series will operate as an exchange traded fund (''ETF'').

2. The Initial Adviser will be the investment adviser to the initial series of the Trust (''Initial Funds''). The Initial Adviser is, and any other Adviser (as defined below) will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust's Distributor is a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter for the Initial Funds. The Distributor for the Initial Funds, as well as any Distributor to Future Funds (''Future Distributor''), will not be affiliated with any Exchange (defined below) on which Shares are listed.

4. Applicants request that the order apply to the Initial Funds and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Funds ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes that will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts[3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each day that a Fund, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. In addition to the existing protections under the Act and the Advisers Act, Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an effective additional mechanism for addressing any such potential conflicts of interest.

12. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Securities Exchange Act of 1934 (''Exchange Act'') or the rules thereunder, of material non-public information by the Current Adviser or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit [10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C of Part 2

[5] Under accounting procedures followed by each 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 Funds 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.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[8] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[11]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[15] will be excluded from the Deposit Instruments and the Redemption Instruments;[16](d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''),

[11] *See, e.g.,* VTL Associates, LLC, *et al.,* Investment Company Act Release Nos. 30815 (Dec. 2, 2013) (notice) and 30849 (Dec. 30, 2013) (order).

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order for any reason.

18. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund may impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

**Sections 5(a)(1) and 2(a)(32) of the Act**

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

**Section 22(d) of the Act and Rule 22c–1 Under the Act**

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

**Section 22(e)**

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[22]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

[22] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

**Section 12(d)(1)**

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Investing Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund's Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an ''Investing Fund's Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a

fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither an Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over a Fund.[23] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting an Investing Fund's Adviser or Sponsor, any person controlling, controlled by, or under common control with an Investing Fund's Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by an Investing Fund's Adviser or Sponsor, or any person controlling, controlled by, or under common control with an Investing Fund's Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund's Sub-Adviser, any person controlling, controlled by or under common control with the Investing Fund's Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund's Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund's Sub-Adviser (''Investing Fund's Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund's Adviser, Investing Fund's Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund's Adviser or Investing Fund's Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., an Investing Fund's Adviser, or an Investing Fund's trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund's Adviser, trustee or Sponsor or an affiliated person of the Investing Fund's Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund's Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[24]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure an Investing Fund is aware of the terms and conditions of the requested order, the Investing Fund will enter into an agreement with the Fund (''Investing Fund Participation Agreement''). The Investing Fund Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by an Investing Fund in excess of the limits of section 12(d)(1)(A) by declining to enter into an Investing Fund Participation Agreement with the Investing Fund.

**Sections 17(a)(1) and (2) of the Act**

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or

[23] An ''Investing Fund Affiliate'' is an Investing Fund's Adviser, Investing Fund's Sub-Adviser, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

[24] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund to sell its Shares to and redeem its Shares from an Investing Fund, and to engage in the accompanying in-kind transactions with the Investing Fund.[25] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[26] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Investing Fund. The purchase of Creation Units by an Investing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Investing Fund and will be consistent with the investment policies set forth in the Investing Fund' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*A. ETF Relief*

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

*B. Section 12(d)(1) Relief*

1. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a

[25] Although applicants believe that most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, an Investing Fund might seek to transact in Creation Units directly with a Fund that is an affiliated person of an Investing Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Investing Fund because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Investing Fund.

[26] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by Section 17(e)(1) of the Act. The Investing Fund Participation Agreement also will include this acknowledgment.

decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund's Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund's Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund's Adviser and Investing Fund's Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund's Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Investing Fund's Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Investing Fund's Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Investing Fund's Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund's Sub-Adviser will waive fees otherwise payable to the Investing Fund's Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund's Sub-Adviser, or an affiliated person of the Investing Fund's Sub-Adviser, other than any advisory fees paid to the Investing Fund's Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund's Sub-Adviser. In the event that the Investing Fund's Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), an Investing Fund and the Trust will execute an Investing Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Investing Fund Participation Agreement, and the list with any updated information for the

duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27982 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73658; File No. SR–NYSEArca–2014–125]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting a Change in The Investment Objective of the Treesdale Rising Rates ETF and Change in Its Creation and Redemption Procedures

November 20, 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 November 10, 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. 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 reflect a change in the investment objective of the Treesdale Rising Rates ETF and changes in its creation and redemption procedures. 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 the 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 Commission has approved listing and trading on the Exchange of shares (''Shares'') of the Treesdale Rising Rates ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] Shares of the Fund have not commenced trading on the Exchange.

The Fund is a series of the AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Securities and Exchange Commission (the ''Commission'') as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investment, LLC (''Adviser''). Foreside Fund Services, LLC (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (the ''Administrator'') serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

In this proposed rule change, the Exchange proposes to reflect a change in the investment objective of the Fund and changes in its creation and redemption procedures, as described below.[6]

Investment Objective

The Prior Release stated that the Fund would seek to generate current income while providing protection for investors against loss of principal in a rising interest rate environment. The Adviser wishes to revise the description to state that the Fund will seek total return while providing protection for investors against loss of principal in a rising interest rate environment.

Creation and Redemption of Shares

As stated in the Prior Release, the Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'') in aggregated lots which shall initially be of 25,000 Shares (each, a ''Creation Unit'').

As stated in the Prior Release, all orders to create or redeem Creation Units must be received by the Distributor no later than 3:00 p.m., Eastern Time in order for the creation or redemption of Creation Units to be

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 73082 (September 11, 2014), 79 FR 55845 (September 17, 2014) (SR–NYSEArca–2014–71) (order approving listing and trading on the Exchange of the Treesdale Rising Rates ETF under NYSE Arca Equities Rule 8.600) (''Prior Order''). *See also* Securities Exchange Act Release No. 72679 (July 28, 2014), 79 FR 44878 (August 1, 2014) (SR–NYSEArca–2014–71) (''Prior Notice,'' and together with the Prior Order, the ''Prior Release'').

[5] The Trust is registered under the 1940 Act. On September 4, 2013, 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) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) and on September 29, 2014, the Trust filed with the Commission definitive materials on Form 497 (File No. 333–157876) (''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. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] The changes described herein have been filed with the Commission in definitive materials on Form 497. *See* note 5, *supra.* The Adviser represents that it will manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative. Shares of the Fund have not commenced trading on the Exchange.

effected based on the NAV of Shares of the Fund as next determined on such date.

The Prior Release stated that the consideration for purchase of a Creation Unit generally would consist of an in-kind deposit of a designated portfolio of securities—the ''Deposit Securities''—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash—the ''Cash Component.'' Together, the Deposit Securities and the Cash Component would constitute the ''Fund Deposit,'' which would represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Prior Release stated that the Cash Component would be an amount equal to the difference between the NAV of the Shares of the Fund (per Creation Unit) and the market value of the Deposit Securities. The Prior Release also stated that the Trust reserved the right to permit or require the substitution of an amount of cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by an authorized participant or the investor for which it is acting. Finally, the Prior Release stated that the Trust reserves the right to offer an ''all cash'' option for creations and redemptions of Creation Units for the Fund.[7]

The Advisor wishes to revise the description of the consideration for purchase of a Creation Unit to state that Creation Units of the Fund generally will be sold for cash (''Cash Purchase Amount''). The Advisor wishes to revise the description to state that Creation Units will be sold at the NAV next computed, plus a transaction fee, and all purchases of the Fund will be effected through a transfer of cash directly through the Depository Trust Company (''DTC''). The Advisor further wishes to revise the description to state that the Trust reserves the right to offer an in-kind option for creations of Creation Units for the Fund [8] and that the Trust reserves the absolute right to reject a creation order if (a) the order is not in proper form; (b) the investor(s), upon obtaining the shares ordered, would own 80% or more of the currently outstanding shares of the Fund; (c) acceptance of the Cash Purchase Amount would, in the opinion of counsel, be unlawful; or (d) in the event that circumstances outside the control of the Trust, the Distributor and the Advisor make it for all practical purposes impossible to process creation orders.

As stated in the Prior Release, Shares generally may be redeemed in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares of the Fund in amounts less than Creation Units.

The Prior Release stated that unless cash redemptions are available or specified, the redemption proceeds for a Creation Unit generally would consist of ''the Fund Securities''—as announced by the Administrator 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 a request in proper form, and the value of the Fund Securities, less a redemption transaction fee. The Prior Release stated that the Administrator, through the National Securities Clearing Corporation (''NSCC''), would make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Fund Securities that will be applicable to redemption requests received in proper form on that day as well as the estimated Cash Component.

The Prior Release stated that if it is not possible to effect deliveries of the Fund Securities, for example if the investor is not able to accept delivery, the Trust could in its discretion exercise its option to redeem Shares of the Fund in cash, and the redeeming beneficial owner would be required to receive its redemption proceeds in cash. In addition, the Prior Release stated that an investor could request a redemption in cash which the Fund could, in its sole discretion, permit.[9] The Prior Release stated that in either case, the investor would receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, as described in the Registration Statement). The Prior Release stated the Fund could also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the applicable Fund Securities but does not differ in NAV.

The Prior Release stated that the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. The Prior Release stated that an authorized participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash.

The Advisor wishes to revise the description of redemption to state that redemption proceeds for a Creation Unit of the Fund generally will consist of cash in an amount equal to the NAV of the shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee. The Trust reserves the right to offer an in-kind option for redemptions of Creation Units for the Fund.[10]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [11] 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, and is designed to

[7] The Adviser represents that, to the extent the Trust effects the creation of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

[8] The Adviser represents that, to the extent the Trust effects the creation of Shares in kind, such transactions will be effected in the same manner for all authorized participants.

[9] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

[10] The Adviser represents that, to the extent the Trust effects the redemption of Shares in kind, such transactions will be effected in the same manner for all authorized participants.

[11] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade and to protect investors and the public interest, in that the change in the statement of investment objective will specify that the Fund will seek to generate total return while providing protection for investors against loss of principal in a rising interest rate environment, thereby providing notice to investors regarding the change in the investment objective of the Fund before Shares of the Fund commence trading on the Exchange. The Adviser believes such change will enable investors to better understand the Fund's expected investment activities and determine if and/or to what extent an investment in the Fund is appropriate for their portfolios. The Adviser represents that there are no changes to the Fund's statements regarding how at least 80% of its net assets will be invested in normal circumstances, how it may invest remaining assets, how it will calculate NAV, or what information will be publicly available regarding the Shares and the portfolio holdings of the Fund.

The Exchange also believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the proposed rule change would provide notice to investors of the proposed changes in the creation and redemption procedures of the Fund, including notice that Creation Units of the Fund generally will be sold for the Cash Purchase Amount, that Creation Units will be sold at the NAV next computed, plus a transaction fee, and purchases of the Fund generally will be effected through a transfer of cash directly through the DTC. In addition, the proposed rule change would provide notice that the redemption proceeds for a Creation Unit of the Fund generally will consist of cash in an amount equal to the NAV of the shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee. The proposed rule change would also provide notice that the Trust reserves the right to offer in-kind options for creations and redemptions of Creation Units for the Fund, and that to the extent such in-kind creations and/or redemptions are effected, such transactions will be effected in the same manner for all authorized participants.

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 the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing requirements in NYSE Arca Equities Rule 8.600. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change 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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] 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 is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In support of its request, the Exchange states that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest in that the proposed changes 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[17]

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 change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–125 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–2014–125. 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

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 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).

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–NYSEArca–2014–125, and should be submitted on or before December 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27976 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73662; File No. SR–NASDAQ–2014–106]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Interest Reports

November 20, 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 November 12, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') 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 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 change the model of pricing for Short Interest Reports under the category of Historical Research and Administrative Reports under NASDAQ Rule 7022. Specifically, NASDAQ proposes to replace the current subscriber-based model with a fee based on internal or external distribution of the reports. Although the proposed rule is effective upon filing, NASDAQ plans to implement the fee on January 1, 2015.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**7022. Historical Research and Administrative Reports**

(a) No Change.

(b) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security that wishes to obtain a license to redistribute the information contained in the report to subscribers shall be determined in accordance with the following schedule:

NUMBER OF SUBSCRIBERS

| | 1–500 | 501–999 | 1,000–4,999 | 5,000–9,999 | 10,000+ |
|---|---|---|---|---|---|
| A. Market Summary Statistics: | | | | | |
| More often than once a month | $250 | $350 | $450 | $550 | $750 |
| Once a month, quarter, or year | 125 | 175 | 225 | 275 | 375 |
| B. Reserved. | | | | | |
| C. Nasdaq Issues Summary Statistics: | | | | | |
| More often than once a month | [500 | 600 | 700 | 800 | 1,000] |
| Internal Distribution | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| External Distribution | 2,500 | 2,500 | 2,500 | 2,500 | 2,500 |
| Once a month, quarter, or year | 250 | 300 | 350 | 400 | 500 |
| Aggregation of data on an annual basis | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 |
| D. Intra-Day Quote and Intra-Day Time and Sales Data: | | | | | |
| For a security and/or a market participant for a day | 200 | 300 | 400 | 500 | 700 |
| For all market participants for a day or for all securities for a day | 1,000 | 1,500 | 2,500 | 3,500 | 5,000 |

(c) No change.

(d) No change.

* * * * *

### 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

NASDAQ proposes to modify the pricing model for historical research and administrative reports categorized as Nasdaq Issues Summary Statistics under subsection C of NASDAQ Rule 7022(b). The current pricing schedule for Nasdaq Issues Summary Statistics

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

reports currently includes only short interest information.[3] The fee schedule is currently divided into two tranches depending upon whether the report is distributed once per month or less, or more than once monthly. Within each tranche, the fee depends upon how many subscribers receive the report from a given Distributor. This proposal affects only the tranches of reports that are distributed more than once per month, meaning it will apply only to Short Interest Reports.

For this category only, NASDAQ has determined to replace the subscriber-based tiers with a fee based on internal versus external distribution, a model already utilized by NASDAQ for multiple products. Internal distribution is defined as distribution of NASDAQ data by a given firm or other entity that receives data from NASDAQ only to recipients within that firm or entity. Conversely, external distribution is defined as distribution of NASDAQ data by a given firm or other entity that receives data from NASDAQ to recipients either outside of the entity or both within and outside of that firm or entity. Replacing the per-subscriber fee with a Distributor fee will reduce the administrative burden on firms by eliminating the requirement to control and/or count the number of recipients of the report. In addition, external distributors will continue to be permitted to use the Information internally without additional charges.

NASDAQ has determined to assess a monthly per Distributor fee of $1,000 for internal distribution and $2,500 for external distribution. NASDAQ determined to assess higher fees for external Distributors based on historical experience that external distributors offer wider distribution than internal Distributors, and they therefore derive higher value than internal Distributors while typically maintaining a lower fee per unit.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all self-regulatory organization (''SRO'') rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoalition*, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

For the reasons stated above, NASDAQ believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

NASDAQ believes that the $1,000 and $2,500 Distributor fees for the short interest report are fair and equitable and not unreasonably discriminatory. The Internal Distributor Fee represents an increase of no more than $500 per month, with many Distributors paying a smaller increase or no increase at all. The higher External Distributor Fee is fair and equitable because External Distributors derive higher value from the report and, therefore, should bear a higher burden than internal Distributors. In addition, all Distributors benefit from the reduced administrative burden of counting subscribers. NASDAQ further believes that the distinction between internal and external distribution is fair and

[3] In 2013, NASDAQ moved the Daily List and Fundamental Data formerly covered by this rule into new NASDAQ Rule 7022(d). *See* Exchange Act Release No. 68636 (Jan. 11, 2013). In the future, this category may include other information that properly falls within the category of Nasdaq Issues Summary Statistics.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

equitable and not unreasonably discriminatory because external distributors have the potential to, and generally do, distribute to a larger number of subscribers. As noted earlier, NASDAQ and other exchanges have utilize this pricing model for many years.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and NASDAQ is not required to make data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ 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, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary

data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, NYSE Arca LLC, and BATS Exchange, Inc. (''BATS'').

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The vigor of competition for information is significant. NASDAQ has made a determination to adjust the fees associated with this product in order to reflect more accurately the value of its products and the investments made to enhance them, as well as to keep pace with changes in the industry and evolving customer needs. This product is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–NASDAQ–2014–106 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–106. This file number should be included on the subject line if email is used. To help the Commission process and review your

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

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 offices 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–2014–106, and should be submitted on or before December 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O' Neill,**

*Deputy Secretary.*

[FR Doc. 2014–28026 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73661; File No. SR–NASDAQ–2014–107]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Rule 7018(a) With Respect to Execution and Routing of Orders in Securities Priced at $1 or More Per Share

November 20, 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 November 12, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') 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 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 make a minor clarifying change Rule 7018(a) with respect to execution and routing of orders in securities priced at $1 or more per share.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 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 the proposed rule change is to make a minor clarifying change to the definition of the term ''Consolidated Volume'' provided in Rule 7018(a). Consolidated Volume is currently defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot.[3] Consolidated Volume is used as a measure in determining member firm liability for certain charges, and eligibility for certain credits, for participation in NASDAQ. The Exchange compares a member firm's equity transactions in NASDAQ to Consolidated Volume to determine how impactful its particular order activity in NASDAQ is in relation to overall equity market volume. The Exchange notes that the definition of Consolidated Volume does not expressly state that it encompasses equity securities only. Accordingly, the Exchange is proposing to add language to the definition to clarify that the definition of Consolidated Volume under Rule 7018(a) applies only to equity securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed change furthers these objectives because it clarifies the rule and helps avoid potential investor confusion on how the credits and charges that use the definition are applied. The Exchange notes that it is not changing how the rule is applied, and therefore the fees and credits continue to be reasonable and equitably allocated among member firms.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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, as amended. Specifically, the change does not alter the meaning or application of the fees and credits provided under Rule 7018(a), and therefore does not affect competition in any respect.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also excludes from both total Consolidated Volume and the member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. 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)(ii) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period to allow the Exchange to immediately implement a change in rule language that will serve to enhance the clarity and application of fees assessed and credits provided under the rule. The Commission believes that the proposed rule change will enhance clarity and avoid possible misinterpretation of the rule. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[9]

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.[10]

**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–2014–107 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–107. 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–2014–107 and should be submitted on or before December 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27979 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73660; File No. SR–Phlx–2014–74]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Exchange's Pricing Schedule Under Section VIII With Respect to Execution and Routing of Orders in Securities Priced at $1 or More Per Share

November 20, 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 November 12, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 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 make a minor clarifying change to Section VIII of the Pricing Schedule entitled ''NASDAQ OMX PSX Fees,'' with respect to execution and routing of orders in securities priced at $1 or more per share.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the proposed rule change is to make a minor clarifying change to the Pricing Schedule applicable to shares executed on the NASDAQ OMX PSX System (''PSX''). Specifically, the Exchange proposes to clarify the definition of Consolidated Volume under Section VIII(a) of the Pricing Schedule. The Exchange recently adopted [3] the definition of Consolidated Volume, which is used as a measure in determining market participant eligibility for certain credits for participation in PSX. Consolidated Volume is currently defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot. The Exchange compares a participant's equity transactions in PSX to Consolidated Volume to determine how impactful its particular order activity in PSX is in relation to overall equity market volume. The Exchange notes that the definition of Consolidated Volume does not expressly state that it encompasses equity securities only. Accordingly, the Exchange is proposing to add language to the definition to clarify that the definition under Section VIII(a) applies only to equity securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposed change furthers these objectives because it clarifies the rule and helps avoid potential investor confusion on how the credits that use the definition are applied. The Exchange notes that it is not changing how the rule is applied, and therefore the credits provided continue to be reasonable and equitably allocated among market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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, as amended. Specifically, the change does not alter the meaning or application of the Exchange's Pricing Schedule, and therefore does not affect competition in any respect.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. 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)(ii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission to waive the 30-day operative delay period to allow the Exchange to immediately implement a change in rule language that will serve to enhance the clarity and consistency of the Exchange's Pricing Schedule. The Commission believes that the proposed rule change will enhance clarity and avoid possible misinterpretation of the rule. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby designates the proposed rule change to be operative upon filing.[10]

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.

**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–Phlx–2014–74 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–74. 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

[3] *See* SR–Phlx–2014–70, filed with the Commission on October 24, 2014 (awaiting publication in the **Federal Register**).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2014–74 and should be submitted on or before December 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27978 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73659; File No. SR–NYSEArca–2014–114]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of the iShares Interest Rate Hedged 0–5 Year High Yield Bond ETF, iShares Interest Rate Hedged 10+ Year Credit Bond ETF, and the iShares Interest Rate Hedged Emerging Markets Bond ETF Under NYSE Arca Equities Rule 8.600

November 20, 2014.

On September 29, 2014, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares Interest Rate Hedged 0–5 Year High Yield Bond ETF; iShares Interest Rate Hedged 10+ Year Credit Bond ETF; and the iShares Interest Rate Hedged Emerging Markets Bond ETF. The proposed rule change was published for comment in the **Federal Register** on October 17, 2014.[3] The Commission received one comment on the proposal, and, on November 18, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded its proposal as originally filed.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 1, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates January 15, 2014, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2014–114)

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27977 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73668; File No. SR–NYSEArca–2014–110]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Rule 6.2A To Authorize the Exchange To Share Any User-Designated Risk Settings in Exchange Systems With the Clearing Member That Clears Transactions on Behalf of the User

November 21, 2014.

On September 19, 2014, NYSE Arca, Inc., (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 6.2A to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member [3] that clears transactions on behalf of the User.[4] The proposed rule change was published for comment in the **Federal Register** on October 7, 2014.[5] On November 19, 2014, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73342 (Oct. 10, 2014), 79 FR 62492.

[4] In Amendment No. 1, the Exchange clarified certain aspects of the original filing. All comments on the proposed rule change, including Amendment No. 1, are available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2014-114/nysearca2014114.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 6.1(b)(3) defining ''Clearing Member'' as ''an Exchange OTP Firm or OTP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.''

[4] *See* Exchange Rule 6.1A(a)(19) defining ''User'' as ''any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to Rule 6.2A.''

[5] *See* Securities Exchange Act Release No. 73281 (October 1, 2014), 79 FR 60552.

[6] 15 U.S.C. 78s(b)(2).

is November 21, 2014.[7] The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. The proposed rule change, if approved, would authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates January 5, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2014–110).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–28081 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–73657; File No. SR–NYSE–2014–62]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Bylaws of Its Wholly-Owned Subsidiary NYSE Regulation, Inc. To Provide That Non-Affiliated Directors Would Not Be Removed for Cause if They Are Acting in Good Faith in Exercising Their Responsibilities as Directors Related to NYSE Regulation's Functions and Responsibilities Delegated to It Under the Delegation Agreement Between the Exchange, NYSE Regulation and NYSE Market, Inc.

November 20, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. (''NYSE Regulation'') to provide that non-affiliated directors (as that term is defined in those bylaws) would not be removed for cause if they are acting in good faith in exercising their responsibilities as directors related to NYSE Regulation's functions and responsibilities delegated to it under the Delegation Agreement between the Exchange, NYSE Regulation and NYSE Market (DE), Inc. 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, on the Commission's Web site at *http://www.sec.gov,* 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 is proposing to amend Article III, Section 4 of NYSE Regulation's Sixth Amended and Restated Bylaws (the ''Bylaws'') to provide that ''non-affiliated directors'' [3] would not be removed for cause if they are acting in good faith in exercising their responsibilities as directors related to NYSE Regulation's functions and responsibilities delegated to it under the delegation agreement between the Exchange, NYSE Regulation and NYSE Market (DE), Inc. (the ''Delegation Agreement''),[4] and to make conforming changes.

Currently, Article III, Section 4 of the Bylaws provides that the Exchange may only remove non-affiliated directors for ''cause.'' The Exchange proposes to amend Article III, Section 4 to provide that ''cause'' would not encompass ''decisions or actions taken in good faith by a Non-Affiliated Director in his or her capacity as a Director of [NYSE Regulation] and related'' to NYSE Regulation's delegated regulatory functions and responsibilities under the Delegation Agreement. A copy of the proposed Seventh Amended and Restated Bylaws is attached as Exhibit 5.[5]

The proposed amendment to the Bylaws makes explicit that conduct consistent with a non-affiliated director's duties and responsibilities related to NYSE Regulation's delegated functions and responsibilities does not constitute grounds for removal. The Exchange believes that approval of the proposed change would confirm to non-affiliated directors that they would not be removed for decisions or actions taken in the exercise of their fiduciary duties to NYSE Regulation and, accordingly, contribute to a more efficient and orderly decision-making process at the board level.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [6] in general, and with Section 6(b)(1) [7] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons

[7] On November 19, 2014, the Exchange consented to an extension of this time period until November 29, 2014. *See* 15 U.S.C. 78s(b)(2)(A)(ii)(II).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Bylaws define ''non-affiliated directors'' as U.S. Persons who are not members of the board of directors of Intercontinental Exchange, Inc. (''ICE'') and qualify as independent under NYSE Regulation's director independence policy. *See* Bylaw [sic] of NYSE Regulation, Inc., Article III, Section 1(A); *see also* Securities [sic] Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR–NYSE–2012–17) (approving NYSE Regulation's director independence policy). The Bylaws require that a majority of NYSE Regulation's Board consist of non-affiliated directors. The remaining directors are NYSE Regulation's Chief Executive Officer (''CEO'') and members of the ICE board of directors that qualify as independent under NYSE Regulation's director independence policy. The Bylaws do not require any affiliated directors other than the NYSE Regulation CEO.

[4] *See* Securities [sic] Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving NYSE's business combination with Archipelago Holdings, Inc.).

[5] The Commission notes the Exhibit 5 is attached to the filing submitted by the Exchange, but is not attached to the published notice of this filing.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed amendment to the Bylaws would make explicit that a non-affiliated director cannot be removed for cause for decisions or actions taken in good faith related to the regulatory functions and responsibilities delegated to NYSE Regulation by the Exchange. The proposed amendment would therefore provide non-affiliated directors with reasonable assurances that actions or decisions consistent with their fiduciary duty and believed, in good faith, to be the proper exercise of NYSE Regulation's delegated functions and responsibilities could not be used as a basis to remove those directors from office. Accordingly, the Exchange believes that the proposed amendment would contribute to the orderly operation of the NYSE Regulation board of directors and its decision-making process, and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act. The Exchange therefore believes that approval of the amendment to the Bylaws is consistent with Section 6(b)(1).

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act [8] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that the proposed amendment would remove potential uncertainty among non-affiliated directors that certain decisions or actions taken in good faith related to the delegated functions and responsibilities could result in their removal from NYSE Regulation's board of directors for cause and thereby would contribute to improved effectiveness in the board decision-making process. The proposed amendment is therefore consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The orderly and efficient operation of NYSE Regulation and its board of directors is also designed to protect investors as well as the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the NYSE Regulation board of directors.

*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 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–NYSE–2014–62 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–2014–62. 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 offices 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–2014–62, and should be submitted on or beforeDecember 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–27975 Filed 11–25–14; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 8954]**

### 30-Day Notice of Proposed Information Collection: Foreign Diplomatic Services Applications (FDSA)

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this

collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to December 26, 2014.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Allyson King at 3507 International Place NW., Washington, DC 20008, who may be reached on (202) 647–3417 or at *kingae@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Foreign Diplomatic Services Applications (FDSA).
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* M/OFM.
- *Form Number:* DS–99, DS–98, DS–100, DS–101, DS–102, DS–104, DS–1504, DS–1972, DS–2003, DS–2004, DS–2005, DS–2006, DS–2007, DS–2008, DS–2003 E, DS–1972 E, DS–4138, DS–4139, DS–4140, DS–4155, DS–7675, DS–1972 D, DS–1972 T, DS–4284, DS–4285.
- *Respondents:* Foreign Mission Community.
- *Estimated Number of Respondents:* 1108.
- *Estimated Number of Responses:* 76,274 annually.
- *Average Time per Response:* 12 minutes.
- *Total Estimated Burden Time:* 12051.7 hours annually.
- *Frequency:* On occasion; annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* Collection information instruments dealing with information collection from the foreign mission community, to include the electronic data compilation (e-Gov), have been combined under one information collection request, collectively referred to as the ''Foreign Diplomatic Services Applications''. These information collection instruments provide M/OFM with the information necessary to provide and administer an effective and efficient benefits, privileges, and immunities program by which foreign missions and eligible applicants may apply for entitled benefits from the U.S. Department of State.

*Methodology:* Information may be received via mail, fax, or electronic submission.

Dated: November 21, 2014.

**Clifton C. Seagroves,**

*Director, Acting, Office of Foreign Missions, Department of State.*

[FR Doc. 2014–28050 Filed 11–25–14; 8:45 am]

**BILLING CODE 4710–35–P**

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Monday, December 8, 2014 at 1:00 p.m. The meeting will be held at the Judicial Council of California. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2015, and other business. All portions of this meeting are open to the public.

**ADDRESSES:** Judicial Council of California, Executive Office, Executive Office Conference Room, 5th Floor, 455 Golden Gate Ave., San Francisco, California.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2014–27993 Filed 11–25–14; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. DOT–MARAD 2014–0146]**

### Agency Requests for Renewal of a Previously Approved Information Collection(s): Ship-Building Orderbook and Shipyard Employment

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Notice and request for comments.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected is necessary in order for MARAD to perform and carry out its duties required by Sections 210 and 211 of the Merchant Marine Act of 1936. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

**DATES:** Written comments should be submitted by January 26, 2015.

**ADDRESSES:** You may submit comments identified by Docket No. DOT–MARAD–2014–0146 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gearhardt, 202–366–1867, Office of Shipyards and Marine Engineering, Maritime Administration 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2133–0029.

*Title:* Shipbuilding Orderbook and Shipyard Employment.

*Form Numbers:* MA–832.

*Type of Review:* Renewal of an information collection.

*Background:* In compliance with 46 U.S.C. 50102 (2007), the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine, if an adequate mobilization base exists for national defense and for use in a national emergency.

*Respondents:* Owners of U.S. shipyards who agree to complete the requested information.

*Number of Respondents:* 200.

*Number of Responses:* 800.

*Total Annual Burden:* 400.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: November 20, 2014.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2014–27990 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. DOT–MARAD 2014–0147]**

### Agency Requests for Renewal of a Previously Approved Information Collection(s): Seamen's Claims, Administrative Action and Litigation

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Notice and request for comments.

**SUMMARY:** The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information in this collection is required to evaluate injury claims made by seamen working aboard government-owned vessels. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

**DATES:** Written comments should be submitted by January 26, 2015.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT–MARAD–2014–0147] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael Yarrington, (202) 366–1915, Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2133–0522.

*Title:* Seamen's Claims, Administrative Action and Litigation.

*Form Numbers:* N/A.

*Type of Review:* Renewal of an information collection.

*Background:* The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The filing of a claim is a jurisdictional requirement for MARAD liability for such claims. MARAD reviews the information and makes a determination regarding agency liability and payments.

*Respondents:* Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of the officers or crew members.

*Number of Respondents:* 15.

*Frequency:* Annually.

*Number of Responses:* 15.

*Total Annual Burden:* 188 Hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*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 (Volume 65, Number 70; Pages 19477–78) or you may visit *www.regulations.gov.*

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: November 20, 2014.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2014–27991 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Meeting: RTCA Program Management Committee

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

**ACTION:** Notice of RTCA Program Management Committee Meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee.

**DATES:** The meeting will be held December 16th 2014 from 8:30 a.m.–1:30 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Program Management Committee meeting. The agenda will include the following:

**December 17th**

- WELCOME AND INTRODUCTIONS
- REVIEW/APPROVE Meeting Summary
  - September 23, 2014, RTCA Paper No. 243–14/PMC–1262

- PUBLICATION CONSIDERATION/ APPROVAL
  - Final Draft, New Document, *User Guide—Supplement to DO–160G,* RTCA Paper No. 226–14/PMC–1257, prepared by SC–135
  - Final Draft, Change 1 to DO–160G, *Environmental Conditions and Test Procedures for Airborne Equipment,* RTCA Paper No. 234–14/PMC–1258, prepared by SC–135
- INTEGRATION and COORDINATION COMMITTEE (ICC)
  - ICC Recommendations on ATC Winds—Status—Special Committees 186, 206, 214 and 227
- ACTION ITEM REVIEW
  - PMC Ad Hoc—Standards Overlap and Alignment—Discussion—Workshop Status
  - PMC Survey—Meeting Alternatives—Discussion
- DISCUSSION
  - Addressing Human Factors/Pilot Interface Issues for Avionics—Discussion—Finalize Terms of Reference for New Special Committee
  - SC–135—Environmental Testing—Discussion—Revised Terms of Reference
  - SC–159—Global Positioning System—Discussion—Revised Terms of Reference
  - SC–186—ADS–B—Discussion—Revised Terms of Reference
  - SC–206—Aeronautical Information Services Data Link—Discussion—Revised Terms of Reference
  - SC–216—Aeronautical Systems Security—Discussion—Revised Terms of Reference
  - SC–222—Aeronautical Mobile-Satellite (R)S (AMS(R)S)–Discussion—Revised Terms of Reference
  - SC–224—Airport Security Access Control Systems—Discussion—Revised Terms of Reference—Development of Operational Guidelines
  - SC–227—Standards of Navigation Performance—Discussion—Revised Terms of Reference
  - SC–231- Terrain Awareness Warning Systems (TAWS)—Discussion—Revised Terms of Reference.
  - Design Assurance Guidance for Airborne Electronic Hardware—Discussion—Possible New Special Committee to Update RTCA DO–254
  - Portable Electronic Devices—Discussion—Possible New Special Committee
  - Wake Vortex Tiger Team—Discussion—White Paper—Progress Status
  - NAC—Status Update
  - FAA Actions Taken on Previously Published Documents—Report
  - Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review
  - European/EUROCAE Coordination—Status Update
- OTHER BUSINESS
- SCHEDULE for COMMITTEE DELIVERABLES and NEXT MEETING DATE

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 18, 2014.

**Mohannad Dawoud,**

*Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.*

[FR Doc. 2014–28042 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Rescission of Finding of No Significant Impact

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Rescind Finding of No Significant Impact (FONSI).

**SUMMARY:** The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that it has rescinded the Finding of No Significant Impact (FONSI), which was issued on May 18, 2010, and published on December 19, 2011 in the **Federal Register** (**Federal Register**/Vol. 76, No. 243/Monday, December 19, 2011/Notices, [48940]) for a proposed highway project on U.S. Route 101 in Humboldt County. The FONSI was also revalidated on January 24, 2014, and notice of that action was published on February 26, 2014 in the **Federal Register** (**Federal Register**/ Vol.79, No. 38/Wednesday, February 26, 2014/Notices [108701]).

**FOR FURTHER INFORMATION CONTACT:** Sandra Rosas, Caltrans Office Chief, North Region Environmental Service (North), P.O. Box 3700, Eureka, CA 95502, 8:00 a.m. to 5:00 p.m., (707) 441–5730; *sandra.rosas@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has rescinded the FONSI for the following highway project in the State of California: Richardson Grove Operational Improvement Project.

On May 18, 2010, Caltrans advised the public that it had prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for the Richardson Grove Operational Improvement Project to provide Surface Transportation Assistance Act (STAA) access on US Route 101, in compliance with the National Environmental Policy Act (NEPA). Project limit is from 1.1 mile north of the Mendocino County line to 2.2 miles north of the Mendocino County line and would include minor curve realignments, drainage improvements, shoulder widening, cuts and fills, and a retaining wall. After issuing a Supplement to the EA, Caltrans revalidated the FONSI on January 24, 2014. Caltrans withdrew the FONSI on November 17, 2014, due to issuance of the Writ of Mandate by the Humboldt County Superior Court, on October 21, 2014, in the CEQA litigation at Case No. CV110002, directing Caltrans to set aside approval of the project, and requiring additional environmental analysis on the project. A new NEPA finding and any other necessary Federal environmental determinations will be issued consistent with this additional analysis.

Issued on: November 19, 2014.

**Gary Sweeten,**

*North Team Leader, Project Delivery, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2014–28027 Filed 11–25–14; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. DOT–MARAD 2014–0145]**

### Request for Comments of a Previously Approved Information Collection: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 26, 2014 (**Federal Register** 50980, Vol. 79, No. 165) and comments were due by October 27, 2014. No comments were received.

**DATES:** Comments must be submitted on or before December 26, 2014.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, 202–366–0760, Office of Cargo and Commercial Sealift, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Email: *Michael.Hokana@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Waiver of the coastwise Trade Laws for Small Passenger vessels.

*OMB Control Number:* 2133–0529.

*Type of Request:* Renewal of a Previously Approved Information Collection.

*Abstract:* Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

*Affected Public:* Small passenger vessel owners who desire to operate in the coastwise trade.

*Estimated Number of Respondents:* 95.

*Estimated Number of Responses:* 95.

*Annual Estimated Total Annual Burden Hours:* 95.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

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.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: November 20, 2014.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2014–27989 Filed 11–25–14; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 290 (Sub-No. 350X)]**

### Norfolk Southern Railway Company—Abandonment and Discontinuance of Service Exemption—in Essex County, N.J.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuance of Service* for NSR to abandon and discontinue service over approximately 2.0 miles of rail line as follows: NSR will abandon 0.71 miles of rail line between milepost 8.50 OJ and milepost 8.616 OJ and between milepost 9.905 OJ and milepost 10.50 OJ; and NSR will discontinue service over a 1.29-mile operating easement over a New Jersey Transit (NJT) line from milepost 8.616 OJ to milepost 9.905.OJ, all located in Essex County, N.J. (the Line).[1] The Line traverses United States Postal Service Zip Codes 07003, 07109, 07104 and 07107.

NSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint has been filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line, and no such complaint is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 27, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 8, 2014. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 16, 2014, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.[4]

A copy of any petition filed with the Board should be sent to NSR's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by December 2, 2014. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be

[1] NSR states that NJT has title to the segment proposed for discontinuance of NSR service.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[4] NSR states that it may not have fee title to the entire right-of-way for the Line segment proposed for abandonment, which could affect any requests for public use.

filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by November 26, 2015, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 20, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Brendetta S. Jones,**

*Clearance Clerk.*

[FR Doc. 2014–27996 Filed 11–25–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from RSI Logistics (WB609–2—11/12/14) for permission to use certain data from the Board's 2013 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Alexander Dusenberry, (202) 245–0319.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2014–28017 Filed 11–25–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from RSI Logistics (WB604–12—11/12/14) for permission to use certain data from the Board's 2013 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Alexander Dusenberry, (202) 245–0319.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2014–28038 Filed 11–25–14; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 21, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before December 26, 2014 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0119.

*Type of Review:* Revision of a currently approved collection.

*Title:* Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

*Form:* Form 1099–R.

*Abstract:* Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

*Affected Public:* Businesses or other for-profits.

*Estimated Annual Burden Hours:* 37,519,860.

*OMB Number:* 1545–1921.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Form 12114—Continuation Sheet for Item #16 (Additional Information) OF–306, Declaration for Federal Employment.

*Form:* Form 12114.

*Abstract:* Form 12114 is used as a continuation to Optional Form 306 (OF–306), Declaration for Federal Employment, to provide space for capturing additional information to item #16.

*Affected Public:* Individuals or households.

*Estimated Annual Burden Hours:* 6,203.

**Brenda Simms,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2014–28040 Filed 11–25–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 20, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before December 26, 2014 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be

obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–2252.

*Type of Review:* New Collection.

*Title:* REG–132455–11—Reporting of Minimum Essential Coverage (TD 9660—Final)

*Abstract:* The IRS developed Form 1094–B and Form 1095–B under the authority of IRC section 6055, added by Public Law 111–148, Patient Protection and Affordable Care Act (ACA), section 1502(a). Section 6055(a) requires every health insurance issuer, sponsor of a self-insured health plan, government agency that administers government-sponsored health insurance programs and other entity that provides minimum essential coverage to file annual returns reporting information for each individual for whom minimum essential coverage is provided. Form 1094–B, serves as a transmittal for Form 1095–B, Health Coverage. The burden for the collection of information contained in these final regulations (TD 9660) is reflected in the burden on Form 1094–B and 1095–B.

Transmittal of Health Coverage Information Returns (''aggregator'' filing for insurance companies)—1094–B: Filing Form 1094–B is voluntary for tax year 2015 and the number of voluntary issuers is uncertain, but it is estimated that there will be 430 issuers. The average time per issuer of 10 minutes reflects the fact that this is a cover page, there are very few lines to complete, and the information takes minimal effort to obtain.

Health Coverage—1095–B: Filing Form 1095–B is voluntary for tax year 2015 and the number of voluntary filers is uncertain, but the estimated number of issuers is 430. The total number of Form 1095–B (one per insured ''unit'') approaches 4,600,000. The per-document average is slightly higher than Form 1095–A, because the complexity of the required recordkeeping and reporting for Form 1095–B is beyond what is required in standard business practice. On the other hand, the average time per document is on the low side because the information needed to meet the recordkeeping and reporting requirements is maintained for other business reasons. Also, insurance companies are more likely to be large and, therefore, to have lower document-production costs as a result of the scale.

| FY 2015 | 1094–B | 1095–B |
|---|---|---|
| Total Number of Issuers | 430 | 430 |
| Total Documents Issued | 430 | 4,600,000 |
| Average Documents per Issuer | 1 | 10,698 |
| Average Time per Issuer (Hours) | 0.17 | 200 |
| Average Time per Document (Minutes) | 10 | 1 |
| Total Time—All Issuers (Hours) | 72 | 86,000 |

*Estimated Total Burden Hours:* 86,072.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2014–27928 Filed 11–25–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 21, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before December 26, 2014 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–2251.

*Type of Review:* New Collection.

*Title:* Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (TD 9661—Final)

*Abstract:* This collection effort contains documents providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code (Code), enacted by the Affordable Care Act (generally employers with at least 50 full-time employees, including full-time equivalent employees). Section 6056 requires those employers to report to the IRS information about the health care coverage, if any, they offered to full-time employees, in order to administer the employer shared responsibility provisions of section 4980H of the Code.

Section 6056 also requires employers to furnish related statements to their employees. These statements to employees may be used to determine whether, for each month of the calendar year, the employee may claim on their individual tax returns a premium tax credit under section 36B (premium tax credit). The regulations provide for a general reporting method and alternative reporting methods designed to simplify and reduce the cost of reporting for employers subject to the information reporting requirements under section 6056.

IRC § 6055 states beginning in January 2015, Health Insurance Marketplaces will be required to provide end of year information reporting in the form of information returns. IRC § 6056 states all insurance providers issuing Minimal Essential Coverage and Applicable Large Employers will have the option to begin voluntarily transmitting information returns to meet ACA information reporting requirements in 2015; however, these requirements will become mandatory in January 2016, for the 2015 Tax Year. Section 6011(e)(2)(A) of the Internal Revenue Code provides that any person, including a corporation, partnership, individual, estate, or trust, who is required to file

250 or more information returns, must file such returns electronically.

For the voluntary year of reporting, the burden estimates for each form are listed below.

| Form | Number of responses | Time per response | Total hours |
|---|---|---|---|
| 4423 | 6 | 20 min. | 2 |
| 1094–B | 15,000 | 4 hrs. | 60,000 |
| 1095–C | 3,850,000 | 12 min. | 750,000 |
| Total | | | 810,002 |

*Estimated Total Burden Hours:* 86,072.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2014–28039 Filed 11–25–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Sanctions Action Pursuant to Executive Order 13448

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order 13448 of October 18, 2007, ''Blocking Property and Prohibiting Certain Transactions Related to Burma'' (E.O. 13448) and the Burmese Sanctions Regulations, 31 CFR part 537 (BSR).

**DATES:** The action described in this notice was effective on October 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), 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*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

**Notice of OFAC Action**

On October 30, 2014, OFAC blocked the property and interests in property of the following individual pursuant to E.O. 13448 and the BSR: THAUNG, Aung, No. 1099, PuBa Thiri Township, Ottara (South) Ward, Nay Pyi Taw, Burma; DOB 01 Dec 1940; POB Kyauk Kaw Village, Thaung Tha Township, Burma; Gender Male; National ID No. 13/KaLaNa (Naing) 011849 (Burma); Lower House Member of Parliament (individual) [BURMA].

Dated: November 18, 2014.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2014–27952 Filed 11–25–14; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0621]**

### Proposed Information Collection (National Practioner Data Bank (NPDB) Regulations) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed for Veterans, Veteran Representatives and health care providers to request reimbursement from the federal government for emergency services at a private institution.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 26, 2015.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Audrey Revere, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900–0621'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Audrey Revere at (202) 461–5694.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* National Practioner Data Bank.

*OMB Control Number:* 2900–0621.

*Type of Review:* Revision.

*Abstract:* Under the provisions of the Health Care Quality Improvement Act of 1986, which established the National Practitioner Data Bank (NPDB), and a Memorandum of Understanding (MOU) between the Department of Veterans Affairs (VA) and the Department of

Health and Human Services (HHS), VA medical treatment facilities are required to query the NPDB at the time of initial appointment for all licensed, registered, and certified health care professionals which is followed with the enrollment in the NPDB Continuous Query (CQ) process with annual renewal of all licensed independent practitioners appointed to a VA medical treatment facility. In accordance with 38 CFR, Chapter 1, Part 46, information is collected so that VA can consider if malpractice payments were made related to substandard care, professional incompetence, or professional misconduct on the part of a licensed health care practitioner or if any adjudicated adverse action was taken against the licensure or clinical privileges of a these health care practitioner.

Additionally, complete and thorough credentialing is required to assure that only qualified healthcare professionals provide care to our Nation's veterans. The term credentialing refers to the systematic process of screening and evaluating qualifications and other credentials, including licensure, required education, relevant training and experience, current competence and health status.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 2,500 burden hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* s500.

Dated: November 21, 2014.

By direction of the Secretary.

**Crystal Rennie,**

*Department Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2014–27849 Filed 11–25–14; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Publication of Technology Task Force Review of Scheduling System and Software of the Department of Veterans Affairs

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Access, Choice, and Accountability Act of 2014 directs the Department of Veterans Affairs (VA) to publish a report of the Northern Virginia Technology Council's review of VA's health care scheduling system and software. This **Federal Register** Notice announces VA's publication of the Council's report.

**ADDRESSES:** The Council's entire report on VA's health care scheduling system and software is available at *http://www.va.gov/opa/choiceact/.*

**FOR FURTHER INFORMATION CONTACT:** James A. Tuchschmidt, MD, Acting Principal Deputy Under Secretary for Health (10A), 810 Vermont Avenue NW., Washington, DC 20420, Telephone: 202–461–7008 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 203 of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146, ''the Act'') directs the Department of Veterans Affairs (VA), through the use of a technology task force, to conduct a review of VA's needs with respect to its scheduling system and scheduling software used to schedule appointments for veterans for hospital care, medical services, and other health care. The Act requires that the task force provide VA and Congress with a report on its review within 45 days of enactment, and that the report include:

- Proposals for specific actions to be taken by VA to improve its health care scheduling system and scheduling software; and
- A determination as to whether one or more existing off-the-shelf systems would meet VA's needs to schedule health care appointments for veterans and improve the access of veterans to such care.

On September 11, 2014, VA signed a Memorandum of Agreement with the Northern Virginia Technology Council to conduct the review. On October 29, 2014, the Council completed its review and provided VA with a report titled, ''Opportunities to Improve the Scheduling of Medical Exams for America's Veterans: A Report Based on a Review of VA's Scheduling Practices by the Northern Virginia Technology Council (NVTC).''

This **Federal Register** Notice announces the Council's report on its review of VA's scheduling system and software. The Executive Summary of the report is as follows:

#### Executive Summary

This section provides a brief summary of this Report by answering three fundamental questions:

- Why was this review performed for the VA?
- What were the findings that informed the NVTC's recommendations to VA?
- What recommendations were rendered by NVTC?

#### Why NVTC Conducted This Review

The impetus for NVTC's review is found in Section 203 of the [Veterans Access, Choice, and Accountability Act of 2014] [1]. Section 203 called for a Technology Task Force to perform a review of VA's scheduling system and software.

Following the law's enactment, NVTC [2] began working with VA to develop a plan for a team of NVTC member companies to evaluate VA's scheduling processes and systems, for the purpose of recommending scheduling improvements. In a Memorandum of Agreement (MoA) signed by both parties on September 11, 2014, VA accepted NVTC as the Technology Task Force required by Section 203 of the [Act]. In a Scope of Work statement, attached to the MoA, the agreed latitude of NVTC's Review was outlined—*i.e.,* for NVTC to examine and propose improvements to:

- The scheduling of a new patient for his or her first visit. This would start with VA's attempt to arrange exam appointments, and include the activities required to schedule, communicate, and confirm each appointment with the Veteran, concluding with the exam itself and the delivery of requested exam results.
- The scheduling of a specialty consult visit from initial request from a primary care physician through the appointment being scheduled,

[1] Public Law 113–146. Signed into law by President Obama on August 7, 2014; the statute's full title is, ''To improve the access of Veterans to medical services from the Department of Veterans Affairs, and for other purposes.'' Besides Section 203, another key provision of this law (Section 101) is relevant to portions of this report because it requires hospital care and medical services to be furnished to Veterans through agreements with specified non-VA facilities if Veterans: (a) Have been unable to schedule an appointment at a VA medical facility within the Veterans Health Administration's (VHA's) wait-time goals for hospital care or medical services and such Veterans opt for non-VA care or services; (b) reside more than 40 miles from a VA medical facility; (c) reside in a state without a VA medical facility that provides hospital care, emergency medical services, and surgical care and such Veterans reside more than 20 miles from such a facility; or (d) reside within 40 miles of a VA medical facility but are required to travel by air, boat, or ferry to reach such facility or such Veterans face an unusual or excessive geographical burden in accessing the facility. Section 101 also provides for such care through agreements with any healthcare provider participating in the Medicare program, any federally-qualified health center, the Department of Defense (DoD), and the Indian Health Service (IHS).

[2] In June 2014, Senator Mark Warner sent a letter to President Obama offering pro bono private sector assistance to address the VA's exam scheduling and workflow challenges. (*The pro bono offer to help VA leveraged a template established in 2010–11, when NVTC, at the request of Senator Warner, partnered with the U.S. Army to help address the serious technology and business process challenges being encountered at Arlington National Cemetery.)*

communicated, and confirmed with the veteran (also concluding with the exam and effective delivery of its results).

In examining these two foundational processes, NVTC agreed to an approach that is segmented into an analysis of four domains: People, process, technology, and performance measurement. The purpose of NVTC's review was to identify improvement opportunities and recommend actions that will enable VA leaders to restore America's confidence in the enduring integrity of VA while servicing the health care needs of those who have selflessly served our country. The NVTC Team's approach to this assignment has been to discover root causes of VA's scheduling challenges in an effort to identify ways to help VA overcome them. The NVTC Team [3] conducted a six-week effort (September 15 to October 29, 2014) to review VA's current scheduling ''systems,'' which include people, processes, technologies, and performance measures. The findings and recommendations identified in this report were greatly informed by on-site observations at two VA medical centers.[4] During these visits, the NVTC Team met with VA staff to not just solicit information from them about the issues and challenges they encounter on the job, but also to listen to their ideas on how veterans might be better served by making changes to current scheduling processes, procedures, and practices.

During the two site visits the NVTC Team was able to make, it met with many dedicated leaders, health care providers, schedulers and other specialists, all of whom were remarkably cooperative, clearly dedicated to providing high-quality services to veterans, and quite generous in terms of the amount of time and information they readily shared with NVTC Team members. The NVTC team also observed a number of practices that had been put in place in the last six months to improve the timeliness of patient appointments. Additional opportunities for improvement still exist, however. In addition to the two day-long site visits, NVTC team members also examined a library of scheduling related information [5]—provided by VA—to gather additional insight on the challenges and issues addressed in this report.

While this report is based on site visits and data from only two VA medical centers, we are reasonably confident that the findings are generalizable to many other VA medical facilities. We make this assertion because the findings of this Report are very similar to the findings of an older but more comprehensive Wait Times study done by Booz Allen Hamilton in 2008. That study was much larger and included longer site visits to 25 VA medical centers and many of their community-based outpatient clinics. The recommendations of this Report echo those of the earlier Wait Times report and suggest that the issues identified are representative and enduring. We feel that this significantly enhances the power of the NVTC Report and the recommendations that have been made.[6]

It is the consensus of the NVTC Team that the recommendations in this report will take a significant amount of time to be fully implemented, assuming they are accepted. Indeed, incremental but sustained improvements, based on a comprehensive plan of action will be needed—subject to persistent monitoring and periodic assessments—to ensure that initial gains in accountability and performance quality actually lead to results that consistently satisfy the health care access and delivery needs of America's veterans.

NVTC is pleased to present this document with its findings and recommendations for improving the scheduling of medical exams for America's veterans.

**What NVTC Found**

Through its on-site observations and analyses of current business processes, available technologies, and a review of industry and government best practices, the NVTC Team identified a number of findings and recommendations designed to help VA leaders address their most critical challenges. During that review period, a common theme emerged from the Team's analyses that can be summarized as follows: VA's exam-scheduling processes are insufficiently enabled by state of-the-art technologies or (consistently applied) standard operating procedures. This situation has resulted in a counterproductive and error-prone working environment that has frustrated staff members for years, thus fueling a persistent staff-retention problem, the net effect of which has contributed in no small part, it appears, to the gradual erosion of public confidence in the Department's ability to provide veterans with timely access to needed health care services.

NVTC's Team confirmed what VA already acknowledges—that the current scheduling processes do not adequately meet the needs of veterans, health care providers, or scheduling staff members.[7] Clinic grids are inflexible, productivity cannot be accurately measured, not enough scheduling resources (staff, rooms, equipment, etc.) are available, and linkages among scheduled appointments and ancillary appointments (*e.g.,* lab and radiology) are not established. In the latter instance, the absence of such links results in appointment cancellations and rebookings, additional travel costs, and higher levels of veterans' dissatisfaction.

Though the findings of the NVTC Team may not be all that different from those already documented in VA, it is hoped that, with the recommendations that follow, VA leaders will better understand how issues in one deficiency area (*e.g.,* staff retention) actually cause (or exacerbate) persistent issues in other areas (*e.g.,* the non-standard usage of scheduling processes and procedures). Other examples of this cause-and-effect relationship is the impact of inflexible clinic grids on the tendency to over-book scheduled appointments, or the impact of a scheduler's inability to simultaneously view the schedules of multiple providers (a technical resource issue) on the ability of a scheduler to appropriately sequence ancillary appointments (often perceived as a human performance issue). Yet another is the impact of placing too much managerial emphasis on metrics that do not have the effect of driving desired scheduling behaviors.

NVTC Team members also hope that the insights derived from their analyses of VA's longstanding scheduling issues will shed a different light on the relative weight of individual issues, in terms of their respective impacts on scheduling activities, end-to-end. Also, some of NVTC's key recommendations may prove to be somewhat more innovative

[3] NVTC selected Booz Allen Hamilton (BAH), HP, IBM, MITRE, and SAIC to serve as the core team for coordinating with other member companies (MAXIMUS, Qlarion, and Providge Consulting) to conduct this Review.

[4] The two site visits by the NVTC Team were graciously hosted by the VAMC Directors at the VA's Medical Centers in Richmond and Hampton, Virginia.

[5] From the ''vendor library,'' available on the Federal Business Opportunities (FedBizOps, to support VA's solicitation to procure a new medical appointment scheduling solution: *https://www.fbo.gov/index?s=opportunity&mode=form&id=6672c05c6f046cf98d178d8981884d94&tab=core&tabmode=list&.*

[6] Final Report on the Patient Scheduling and Waiting Times Measurement Improvement Study, Booz Allen Hamilton, July 11, 2008 (hereinafter referred to as the 2008 Booz Allen Hamilton Wait times report).

[7] Business Blueprint for VHA Medical Appointment Scheduling Solution, Department of Veterans Affairs, May 2014.

than others received by VA leaders in the past.

At a minimum, the NVTC recommendations should provide a useful framework for tackling near term challenges and issues, while at the same time motivating VA leaders to work with maximum urgency, to significantly enhance the experiences of veterans served by the Department, which will lead to a steady rebuilding of public trust in both the timeliness and quality of healthcare being provided to America's most deserving heroes.

**What NVTC Recommends** [8]

As a result of its analysis of VA's scheduling processes, technologies, people, performance measures, and industry best practices, the NVTC team derived a total of 39 recommendations from its multi-dimensional review of VA's current medical exam scheduling operations. These 39 key recommendations—each of which is identified in the body of this Report—are associated with the following 13 groups of identified, key issues:

- Appointment Scheduling (Process)
- Appointment Metrics (Process)
- Patient Capacity (Process)
- Communications (Process)
- System Usability (Technology)
- Systems/Data Integration (Technology)
- IT Infrastructure Support (Technology)
- Recruitment/Hiring (People)
- Training/Development (People)
- Staff Retention (People)
- Staff Management (People)
- Patient Wait Times (Performance)
- Management Data Usage (Performance)

More than half (*i.e.,* 20) of the Team's 39 recommendations were derived from the four People-related groups of key issues: Recruitment/Hiring, Training/Development, Staff Retention, and Staff Management.

The other 19 recommendations were fairly evenly distributed among the Process, Technology, and Performance dimensions of NVTC's Review. The fact that 51.3 percent of the Team's recommendations align with ''people'' issues should not be misinterpreted by readers of this Report. More to the point, it must not be seen as an adverse reflection on the schedulers, health care providers, and other VA staff members currently engaged in scheduling activities at VA's medical facilities, who work quite hard—indeed, much harder than should ever be necessary—in their creative efforts to compensate for all the issues driving the 19 other process-, technology-, and performance-related recommendations made by the NVTC Team.

Furthermore, when it comes to cross-cutting issues discovered as a result of this Review, the evidence suggests that virtually all of the 19 issues driving the process-, technology-, or performance-related recommendations (in Section 4 of this Report) demonstrably impact, either directly or indirectly, at least one of the people-related issues/recommendations.

Consider, for just one example, the issue identified as ''Additional Exam Rooms'' under the Patient Capacity group (in subsection 4.1 of the full Report):

- The NVTC Team found that at least two exam rooms per provider are needed to allow rooming a patient while providing other team members (or providers) co-visiting opportunities. And, larger rooms would more readily permit efficient engagement of multiple team members in real time. Yet, it appears that only one exam room is provided in many situations observed at the medical centers visited by the NVTC Team during the course of this Review. This process-related issue, which resulted in a recommendation that additional exam rooms be provided, has a direct impact on one of the People-related issues identified (in subsection 4.3 of the full Report), having to do with schedulers and providers working together as a team (for the benefit of Veterans). It also impacts the productivity of health care providers at most VA medical facilities. More significantly, a search of related VA documents provided to the NVTC Team revealed that a short supply of exam space is a critical infrastructure challenge for many facilities. Many sites indicate that primary care and specialty providers almost never have two exam rooms during clinic sessions, and site leadership commonly noted that one of the most significant interventions they can make to improve the timeliness of care is to increase available exam space.

Following a thorough analysis of all 39 of its key recommendations, to discover the cross-dimensional (or cross-cutting) implications of each of them, NVTC rendered the following set of 11 synthesized recommendations to VA:

Recommendation #1—VA should aggressively redesign the human resources and recruitment process. From General Schedule (GS)-5 clerks to senior clinicians, the hiring of needed staff proceeds too slowly. The causes are complex, but much of the delay can be traced to redundant, inconsistent, and inefficient hiring processes. There should be a system-wide focus on improving these processes as soon as possible. Measures that capture performance from the customer perspective should be carefully monitored. Such measures may include the time from a request for a position to be filled to the time the hired candidate actually begins work.

Recommendation #2—VA should prioritize efforts to recruit, retain, and train clerical and support staff. In many cases, clerical and support staff should be hired in anticipation of need rather than after vacancies are realized. Job stress, which contributes to turnover, should be reduced through careful study of workflow processes; for example, separating the call function from the frontline clerk function appears to be a prudent strategy. In many instances, ''role creep'' results in clerks performing functions that may be beyond their job descriptions and GS levels. An inventory of functions should be carefully mapped to appropriate GS levels so that individuals are properly positioned—and compensated. Better retention will improve the impact of training, which should be another area of focus. Training should be based on a more standardized and frequently updated curriculum, and placed within a more clearly defined management infrastructure to support professional growth. A multi-modality approach to training should include case-based distance learning that leverages a learning management system and permits monitoring both at the facility and individual level. Overall, these measures will help to ensure that each physician has adequate support from clerical staff, which will help to maximize provider productivity.

Recommendation #3—VA should develop a comprehensive human capital strategy that, based on projected needs, addresses impending health care provider shortages. In addition to the current shortage of nurses, shortages of nurse practitioners, primary care providers, and specialty physicians are projected or already realized. VA needs to undertake an aggressive strategy that includes increasing provider efficiency (*e.g.,* more support staff and exam rooms), using alternate types of providers (*e.g.,* family practitioners, doctors of nursing practice, care coordinators, coaches), and developing its own aggressive recruitment pipeline (*e.g.,* starting the recruitment process in high school, providing aggressive tuition forgiveness). Mid-level practitioners, especially nurse practitioners, have proven particularly

[8] Consistent with findings and Recommendations of 2008 Booz Allen Hamilton Wait times report.

valuable in providing or augmenting scarce specialty resources. There should be an immediate focus on recruiting, training, and retaining mid-level practitioners. Finally, there should be a deliberative effort within this human capital strategy to support team medicine, further enabling non-physicians to partner with physicians to directly accommodate patient needs.

Recommendation #4—VA should create a stronger financial incentive structure. This is especially critical for a location like Hampton, VA, where VA must compete head-on with the Department of Defense (DoD) in the health care provider marketplace. VA should explore the use of more aggressive incentive structures in compensation packages, especially for providers. VA should develop supply and demand projection models so that future staff needs—particularly for specialty physicians—can be anticipated. Recruitment cycles for physicians are often very long. Waiting until demand has exceeded supply will inevitably lead to chronic delays in care. Staffing needs, especially for specialty physicians, should be anticipated based on an understanding of how much supply is required to meet changing patient demand, and appropriate supply models should be created and used across the enterprise.

Recommendation #5—VA should accelerate steps to improve the agility, usability, and flexibility of scheduling-enabling technologies that also facilitate performance measurement and reporting functions.[9] Another example of the cross-cutting effect of multidimensional issues is provided by IT, which—when optimally designed and deployed—is a critical enabler of human processes. However, IT that is not well-aligned to scheduling processes (as suggested by the System Usability group of key issues detailed in the body of this Report) causes costly, stressful human workarounds, and undermines system efficiency. The current scheduling software, which was first created in the time of paper records, has a non-intuitive ''roll and scroll'' interface that can be described as cumbersome, at best, to use. From a scheduling perspective, it is outdated; from a measurement perspective, it is inadequate—it was never intended to perform measurement functions. Nonetheless, VA currently must rely on this tool to schedule tens of millions of veterans' appointments each year.

Recommendation #6—VA should take aggressive steps to use fixed infrastructure more efficiently. Facilities should use projection models to anticipate needs for increased exam space and plan more strategically regarding building and/or leasing additional space. Facilities should use demand projection models to anticipate changing outpatient demand and should plan to increase space as necessary. Failure to use such approaches results in chronic undersupplies of space and human resources.

Recommendation #7—VA should evaluate the efficiency and patient support gained by centralizing the phone calling functions in facility-based call centers with extended hours of operation. While it is recognized that the best place for a patient to make a follow-on appointment is when leaving a clinic, a majority of the appointments made in VA are by patients calling for an appointment or receiving a call from VA to schedule an appointment. Because the location of in- and out-bound patient scheduling calls differs among VAMCs, this evaluation would determine the most beneficial placement of the call center function and allow for sharing of lessons learned from individual VA medical centers VA-wide. Removing the in- and out-bound call requirement from the clinic scheduler's responsibility, if appropriate for the individual clinic's needs, will increase efficiency of communication with veterans and reduce stress on frontline clerks in clinics.

Recommendation #8—VA should invest in more current and usable telephone systems and provide adequate space for call center functions. Although most facilities have call systems that can track hold times, call abandonment, and other key measures, a number of questions were raised about these systems. Given the importance of efficient phone communications, a standard for functionality should be established and all facilities should be required to meet that standard. Centralized call centers improve the efficiency of communications significantly. In addition to enhanced technology, call centers should be provided adequate space and resources. Robust multi-modal communications infrastructures are important to support the frequency of contact essential to the Patient Aligned Care Team (PACT) concept of continuous healing relationships.

Recommendation #9—VA should take aggressive measures to alleviate parking congestion because it appears to have some impact on the timeliness of care. While less important than exam space, parking space was found to be in short supply at many VA facilities. Obstacles to parking may discourage veterans from keeping their appointments and cause veterans to be late for their appointments. Late arrivals can disrupt clinic flow for the rest of the session.

Recommendation #10—VA should engage frontline staff in the process of change. Successful process redesign requires behavior change. To sustain such change, those who do the work must be engaged in redesigning the processes that influence their work and behaviors. This is the critical, and often weakest, link between people and processes, and if it is not made, process improvement will not be optimized or sustained. A culture of innovation must be created in which everyone sees improving his or her job, and the processes associated with it, as part of his or her job. Success requires a critical nexus between leadership, culture, process redesign techniques, and employee engagement.

Recommendation #11—VA must embrace a system-wide approach to process redesign because this is the means by which many other recommendations may be successfully executed. Processes, the intermediate steps by which goals are achieved, often determine whether goals are achieved efficiently, or at all. To be successful in improving the many complex and interrelated processes that influence the timeliness of care, sound systematic approaches must be used. An integral dimension of success will be to engage Veterans in process redesign. Even when conducted in a rigorous fashion, process redesign is not always successful. The most common sources of failure are related to poor staff acceptance, failure to actually change behaviors, and inadequate leadership. VA faces unique challenges in scaling change across an enterprise of its size, which stands alone in U.S. health care. As mentioned earlier, one of the key elements of success will be engaging frontline staff in the redesign and change process, which will increase the probability that processes will be properly redesigned and the likelihood that frontline staff will modify their behaviors.

**Conclusion**

Improving the timeliness of veterans' care depends upon the readiness, willingness, and organizational and personal commitments to improve multiple dimensions of a complex, system-of-systems challenge. All aspects of the VA enterprise must be

[9] There are a number of COTS scheduling packages on the marketplace that might help meet VA's scheduling needs either by themselves or in concert (see, *e.g., http://www.capterra.com/medical-scheduling-software/*); VA would need to evaluate them to determine whether they satisfy the intent of NVTC's Recommendation #5.

considered, and proven approaches to ''systems'' engineering and redesign must be implemented and scaled across the entire Department. This will require strong leadership and engagement of staff who have been empowered to affect real and lasting change.

However, improving the timeliness of care may be viewed in a broader context that extends beyond examination of VA's scheduling operations. Indeed, it goes to the intent of the Department's attempts to institutionalize, since 2010, a different relationship with the patient–with the launching of an initiative to transform the primary care system into a team-based care model (PACT). The PACT system of care shares many features with patient-centered medical homes (PCMH). In addition to improving chronic disease management, the VA initiative aims to increase veterans' accessibility to their primary care providers, improve continuity with the primary care team, intensify preventive health services, integrate mental and behavioral health into primary care, and enhance coordination of care as veterans transition between primary and specialty care providers, hospital and ambulatory settings, and VA and private health care systems. The PACT model is meant to be proactive, personalized, and veteran-driven, focusing not just on the management of disease but also more holistically on the veteran's physical, psychological, social, and spiritual well-being. The model requires effective communication and coordination among team members for acute, preventive, chronic, and end-of-life care to achieve improved continuity and efficiency—an aspirational goal in itself that remains unfilled across parts of the enterprise.

Such intensely veteran-focused care would be delivered in many forms—not just through face-to-face visits. In this paradigm, the health care system would be responsive 24 hours per day, every day, whether by phone, email, e-consults, telemedicine, expanded use of personal health records, or other means. This vision is expected to include individual and group visits, as well as an expanded role for team medicine that includes the coordinated efforts of physicians, mid-level practitioners, care coordinators, and care coaches. Assessments of access in this paradigm would not be limited to traditional VA measures of wait times and drive times.

While this model is still somewhat aspirational, it is an aspiration that VA is uniquely positioned to achieve. Yet, full accomplishment of this objective is what will be needed, at a minimum, to restore America's trust in VA's ability to serve the health care needs of its veterans.

NVTC is reminded that VA has a strong history and longstanding tradition of innovation—its enterprise-wide electronic health record; mail-order pharmacy system; clinical quality measurement and improvement programs; barcode drug dispensing system; telemedicine efforts; home-based care programs; and a broad array of clinical care innovations for special populations such as blind rehabilitation, posttraumatic stress disorder (PTSD) care, spinal cord injury care, and prosthetic expertise are but a few examples.

In the past, however, emphasis on innovation has, understandably, been more typically geared toward clinical processes. That emphasis must be sustained. At the same time, a similar focus must be also be placed on innovations that support customer-centric process redesign. This will require excellence in executive leadership distributed broadly and deeply across the enterprise; correspondingly, this will require appropriate levels of empowerment conferred from the top-down.

Only by persistently staying the course will VA be positioned again, to blaze new trails for other health care systems to follow.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on November 21, 2014, for publication.

Dated: November 21, 2014.

**Jeffrey M. Martin,**

*Program Manager, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2014–28055 Filed 11–25–14; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 79 Wednesday,
No. 228 November 26, 2014

Part II

## Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Exemptions From Certain Prohibited Transaction Restrictions

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11750, United Association of Journeymen and Apprentices of the Plumbers and Pipefitters Local Union No. 189 Pension Plan; D–11751, The Camco Financial & Subsidiaries Salary Savings Plan; D–11752, Wells Fargo Company; L–11775, Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund; D–11782, Robert W. Baird & Co. Incorporated; D–11826, First Security Group, Inc. 401(k) and Employee Stock Ownership Plan; and, D–11827, BNP Paribas, S.A.

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

*Warning:* All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**SUPPLEMENTARY INFORMATION:**

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

**The United Association of Journeymen and Apprentices of the Plumbers and Pipefitters Local Union No. 189 Pension Plan, as Amended (the Plan) Located in Columbus, Ohio**

[Application No. D–11750]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[2] If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the proposed sale (Sale) of certain improved real property (the Property) by the Plan to Local #189 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the Union),[3] a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) As consideration, the Plan receives the greater of $2,900,000 or the fair market value of the Property as determined by a qualified, independent appraiser (the Appraiser) in a written appraisal (the Appraisal) of the Property, which is updated on the date of Sale (Sale Date);

(c) The Plan pays no commissions, costs or fees with respect to the Sale;

(d) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(e) The Sale has been reviewed and approved by a qualified, independent fiduciary (I/F), who, among other things: has reviewed and approved the methodology used by the Appraiser and has ensured that the appraisal methodology was properly applied in determining the fair market value of the Property; and has determined that it is prudent to go forward with the Sale.

**Summary of Facts and Representations**

*The Parties*

1. The Plan, with offices located in Columbus, Ohio, is a multiemployer

[2] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[3] The Plan and the Union are together referred to herein as ''the Applicants.''

defined benefit plan created as of June 1, 1967, to provide retirement and disability benefits to apprentices and journeymen in the plumbing and pipefitting industry. The Plan is maintained pursuant to a collective bargaining agreement between the Union and the Mechanical Contractors Association of Central Ohio, Inc. (the MCACO), an association of central Ohio contractors formed to promote, among other things, cooperation with state and city inspection departments and develop relations between designers and mechanical engineers.

As of December 31, 2013, the Plan had 1,587 participants and beneficiaries who were either active, terminated with a vested interest, or retired and in pay status. As of the same date, the Plan had total assets of approximately $130,319,233.

2. The Plan is administered by a Board of Trustees (the Board) consisting of eight members, four of whom are elected by the Union members and four of whom are designated by the MCACO. The Trustees are fiduciaries, as defined in section 3(21) of the Act, and therefore are parties in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act. The Plan's current Trustees elected by the Union are Bill Steinhausser (Board Chairman), Michael Kelly, Kenneth Davis, and James C. Green. Mr. Kelly also serves as the Union's Business Manager and Mr. Davis also serves as the Union's Financial Secretary. The Plan's current Trustees designated by the MCACO are Michael Stemen (Board Secretary), Dennis Shuman, Neil Harfield, and Terry Griffith. For purposes of the proposed Sale, Messrs. Kelly and Davis, who currently serve in dual roles as Trustees and Union officials, have recused themselves from all determinations in connection therewith.

The Board employs James A. Wright, the Plan Administrator, to oversee the performance of the routine administrative duties of the Plan. Because the Plan Administrator has discretionary control over a nominal level of Plan assets, he is also a fiduciary under section 3(14)(A) of the Act and a party in interest to the Plan.

3. The Union, which is based in Columbus, Ohio, was chartered in 1899. Members of the Union, except for first-year apprentices, are eligible to participate in the Plan. As an employee organization with members covered by the Plan, the Union is a party in interest with respect to the Plan pursuant to section 3(14)(D) of the Act. The Union represents over 1,500 individuals working in the plumbing and mechanical pipefitting industries within central Ohio.

*The Property*

4. On June 11, 1980, the Plan purchased the Property from Buckeye Telephone, Harold Wirtz and Bob Rice, who were unrelated parties, for $600,000 in cash. The Property consists of approximately 4.868 acres of improved real property located on the north side of Kinnear Road in Clinton Township, Franklin County, Ohio. Although the street address for the Property is 1226 through 1250 Kinnear Road, Columbus, Ohio, the Property is more commonly identified as ''1250 Kinnear Road, Columbus, Ohio.'' The Plan owns no other real property besides the Property.

The Property is improved with a building that was constructed in or about 1951 and remodeled in 1999. The building consists of approximately 37,230 square feet of space. The south and east portions of the building are used as Union offices. The north and west portions of the building have classrooms designed to allow access to training. A large portion of the building is a meeting hall with a stage and a kitchen. There are also some unfinished storage areas.

*Leasing of the Property*

5. On October 30, 1980, the Plan entered into a lease of the Property with the Union (the 1980 Lease) for a 20-year period, effective January 1, 1981. Under the terms of the 1980 Lease, the Union was obligated to: (a) Pay taxes assessed by any governmental taxing authority during the term; (b) maintain insurance on the Property; and (c) maintain the buildings on the Property in good condition at its sole cost and expense. The 1980 Lease was amended several times over the ensuing years. Currently, the Union pays the Plan monthly rent of $10,433.99 or $125,207.89, annually.

According to the Applicants, the Plan and the Union have relied on Prohibited Transaction Exemption (PTE) 76–1, 71 FR 12740 (March 26, 1976, as corrected, 41 FR 16620, April 20, 1976) and PTE 77–10, 42 FR 33918 (July 1, 1977) with respect to the 1980 Lease and the amendments to this lease.[4]

*Plan's Holding Costs and Net Income Related to the Property*

6. For the period from January 31, 1981, to March 31, 2014, the Plan incurred total unaudited expenses of $801,109, in connection with the structural maintenance of the Property, as well as expenses related to that portion of the Property that the Plan retained. Such expenses included $670,005 for repairs and maintenance, $84,187 for property tax and administrative office expenses, and $46,917 for utilities, insurance and other expenses. During this same period, the Plan received total rental income of $2,924,898. Therefore, the Plan's net income for this period is $2,123,789.

*Sale Transaction and Rationale*

7. The Applicants request an individual exemption from the Department that would permit the Plan to sell the Property to the Union. The Applicants represent that the Sale is in the interest of the participants and beneficiaries of the Plan for the following reasons. First, the Sale will be a one-time transaction for cash, which will transfer a non-liquid asset from the Plan. Second, the Plan will receive the greater of $2,900,000 or the fair market value of the Property as determined by an Appraiser, and set forth in an Appraisal of the Property, which will be updated on the Sale Date. Third, the Plan will pay no commissions, costs or fees with respect to the Sale.

Further, as described in more detail below, the Plan does not want to risk a substantial diminution in the value of the Property if it loses the Union as its tenant, so the Plan wishes to sell the Property, at this time, to the Union while the current value of the Property reflects the fact that it is largely occupied.

Following the Sale, the Plan intends to enter into a lease whereby the Union will lease to the Plan the space currently occupied by the Plan.[5] The Applicants represent that the Plan Trustees, who are Union officials, will recuse themselves from any consideration of the proposed sale and leasing arrangement described above, and they will not otherwise exercise any fiduciary authority, control or responsibility in connection with these transactions.

*Request for Exemptive Relief*

8. The Applicants are requesting exemptive relief from section 406(a)(1)(A) and (D) of the Act and section 406(b)(1) and (b)(2) of the Act for the Sale of the Property by the Plan to the Union. In this regard, section 406(a)(1)(A) of the Act provides, in part, that a fiduciary with respect to a plan

[4] The Department expresses no opinion herein as to whether the conditions of PTEs 76–1 and 77–10 have been met.

[5] According to the Applicants, the lease between the Union and the Plan will be consistent with section 408(b)(2) of the Act and the regulations promulgated thereunder.

shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. In addition, section 406(a)(1)(D) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect transfer to or use by or for the benefit of a party in interest of any assets of the plan. Further, section 406(b)(1) of the Act prohibits any fiduciary from dealing with plan assets in his own interest or for his own account. Moreover, section 406(b)(2) of the Act prohibits any fiduciary from acting, in his individual or any other capacity, in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or its participants or beneficiaries.

The term ''party in interest'' is defined under section 3(14)(A) of the Act to include a fiduciary with respect to the Plan, such as the Trustees, or an employee organization any of whose employees are covered by such plan, as defined under section 3(14)(D), such as the Union.

Accordingly, in the absence of a statutory or administrative exemption, the Sale would violate the foregoing provisions of the Act.

*The Appraisal*

9. In an independent appraisal report dated January 31, 2014 (the 2014 Appraisal), Thomas R. Horner, MAI, SRA, ASA (the Appraiser) of Ohio Real Estate Consultants, Inc., updated a July 6, 2012, appraisal (the 2012 Appraisal) that was prepared by his firm, in which the fair market value of the Property in fee simple was placed at $2,650,000, as of July 6, 2012. The Appraiser is President of Ohio Real Estate Consultants, Inc., which is located in Dublin, Ohio. The Appraiser is an Ohio certified general real estate appraiser with approximately 30 years of appraisal experience. The Appraiser is also a member of the Appraisal Institute and the American Society of Appraisers and has served as an expert witness in the Ohio and Michigan judicial systems.

10. The Appraiser represents that he has no present or prospective interest in the Property and has no personal interest with respect to the parties involved. Further, the Appraiser represents that he has derived less than 1% of his annual income from any party in interest involved in the transaction or such party's affiliates for the years 2012, 2013 and 2014.

11. In the 2014 Appraisal, the Appraiser estimated the Property's land value, as if vacant, and compared the land value to the value of the Property, as improved, to determine its highest and best value. The Appraiser did not develop the Income Capitalization Approach to valuation because, among other things, the Property is currently occupied by entities related to the ownership and the rental rates are not considered to reflect market conditions. Likewise, the Appraiser did not develop the Cost Approach to valuation because he determined that the Property's improvements are at or near the end of their useful life.

Using the Sales Comparison Approach to valuation for the land value, if vacant, the Appraiser placed the fair market value of the Property in fee simple at $2,900,000 as of January 27, 2014. As of the same date, using the Sales Comparison Approach to valuation for the Property, as improved, the Appraiser placed the fair market value of the improved Property at $2,250,000.

12. The Appraiser considered the Sales Comparison Approach to value the Property's land, if vacant, to be the best indication of the Property's market value because: (a) Most of the comparables have been redevelopment sites and redevelopment continues to occur throughout the neighborhood; and (b) the Property's existing improvements have reached the end of their economic life and no longer contribute value to the Property other than in an interim use. In this regard, the Appraiser represents that the Property is located in an area that is in transition from older industrial uses to high-density residential and high-tech business and research uses. The Appraiser further represents that Ohio State University (OSU) has purchased many buildings in the area for these uses and that The Commons, a multifamily development located just east of the Property, was developed in 2000. Based upon surrounding land uses in the Property's neighborhood, as well as the Kinnear Road engineering and the increased demand for housing created by OSU, the Appraiser believes that a high-density residential use is probable. Taking into consideration those uses that are legally permissible, physically possible and financially feasible, the Appraiser believes that the highest and best use of the Property, if vacant, is for future high-density residential use.

13. Accordingly, after reconciling the Sales Comparison Approach for the land value, if vacant, and the Sales Comparison Approach for the Property, as improved, the Appraiser represents that in his professional opinion the market value, fee simple estate, of the Property, as a whole, in its present condition, in terms of financial arrangements equivalent to cash, ''as-is'', as of January 27, 2014, is $2,900,000.

*The I/F*

14. Pursuant to an engagement letter dated March 20, 2013 (the Engagement Letter), SEI Investments Management Corporation (SEI), was retained on behalf of the Plan by the Plan Administrator to serve as the qualified independent fiduciary. SEI provides investment management and advisory services and is a federally registered investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

15. The I/F estimates that it will receive approximately $1,236,000 from the Plan in 2014 for its institutional fiduciary investment management services, $0 of which is specifically related to the services described herein.[6] The I/F represents that its revenue from all sources related to its institutional fiduciary investment management services (excluding fixed, nondiscretionary retirement income) for 2013 is estimated to be $187,000,000. Therefore, the I/F represents that its revenue from the Plan for its institutional fiduciary investment management services is expected to comprise approximately 0.7% of its estimated annual institutional fiduciary management gross revenue, 0% of which is attributable to services rendered in connection with the proposed Sale. Further, the I/F states that it does not receive any amount from a party in interest to the Plan.

16. The I/F represents that it is qualified to represent the Plan's interests with respect to the Sale because it has a demonstrated strong understanding of fiduciary duties under the Act for the following reasons. First, the I/F states that it already serves as an independent fiduciary of the Plan, overseeing the Plan's investments. In this regard, the I/F states that it is generally responsible for providing guidance to the Plan's Board of Trustees on matters pertaining to the investment of the Plan's assets, including investment selection and monitoring the Plan's performance and compliance with its investment guidelines. Second, the I/F represents that it has general financial management experience in

[6] The I/F represents that it agreed to provide the services described herein without the receipt of compensation in order to save the Plan the expense of paying for such services and because it expected its engagement to be narrow in scope.

evaluating asset allocations, financial transactions, projected risk and return expectations and certain real estate transactions on behalf of plans gained through its previous fiduciary investment management experience and from overseeing real estate investment trusts.

In addition, the I/F represents that it has engaged Morgan, Lewis & Bockius LLP, a law firm that has experience in dealing with matters under the Act's fiduciary responsibility rules, as outside legal counsel to advise the I/F with regard to the exercise of its fiduciary duties with respect to its engagement on this matter to the extent that this engagement is outside of the I/F's typical role for its clients.

17. Pursuant to the Engagement Letter, the I/F agreed to perform certain services on the Plan's behalf with respect to the Sale. Among other things, the I/F agreed to: (a) Analyze the prudence of the proposed Sale, from an investment standpoint, taking into consideration certain things such as the 2014 Appraisal, the Plan's investment guidelines and objectives, and the interests of the Plan and its participants and beneficiaries with respect to any subsequent leasing of the Property; and (b) issue a written report to the Plan that would include, among other things, a complete analysis of the proposed Sale, a determination of whether the proposed Sale is consistent with the Plan's investment guidelines and financial objectives, a determination as to the financial effects of the proposed Sale, and a determination as to whether the proposed Sale is in the interests of and protective of the Plan and its participants and beneficiaries. The I/F is also authorized to take all appropriate actions to safeguard the interests of the Plan in connection with the Sale and, during the pendency of the subject transaction, to: (a) Monitor the transaction on behalf of the Plan on a continuing basis; (b) ensure that the transaction remains in the interest of the Plan and, if not, to take any appropriate actions available under the circumstances; and (c) enforce compliance with all conditions and obligations imposed on any party dealing with the Plan with respect to the Sale.

18. Based on its analysis of the proposed Sale, the I/F has determined that the Sale is in the interests of the Plan and its participants and beneficiaries, and is protective of the rights of such participants and beneficiaries. In the ''Report of Independent Fiduciary'' (the I/F Report) dated March 25, 2014 (which updated an I/F Report of March 20, 2013), the I/F sets forth the following reasons for its opinion. First, the I/F has analyzed the proposed Sale terms, as well as the Plan's reasons for the proposed Sale, as stated above in Representation 7, which include the Plan's desire to avoid the risk of a substantial diminution in the value of the Property if the Plan should lose the Union as tenant. The I/F notes that the proposed Sale will allow the Plan to sell the Property at a time when its value reflects the fact that it is largely occupied.

19. In addition, the I/F represents that the proposed Sale is consistent with the Plan's investment guidelines. As provided in the Plan's Investment Policy Statement, the I/F states that the primary financial objective is to increase the value of the Plan's assets and a secondary financial objective is to avoid significant downside risk. The I/F represents that the objectives of the Plan must be considered with respect to any investment of the Plan. In particular, the I/F states that consideration must be given to the return and risk expectations of the Plan and how such investment fits within the total portfolio, as well as to the liquidity needs of the Plan. The I/F represents that the current actuarial return assumption of the Plan is 7.50%. The I/F explains that portfolios should be constructed to target expected long-term return of the total portfolio of investments in excess of this target with a reasonable level of annual variation of return.

Further, the I/F opines that ownership of the Property inhibits the Plan from the full ability to rebalance its portfolio and to avail itself of liquid assets should it need to do so for outflow purposes. The I/F states that if the Plan should divest itself of the Property and invest the proceeds across its other portfolio asset classes, the Plan would enhance the expected return of the portfolio as a whole while not affecting the risk level of the portfolio (as measured by standard deviation of returns). The I/F represents that this action would also provide additional liquidity to the Plan by exchanging the investment in a single property for the investment in a collective trust holding many properties or for other diversified fund asset classes within the portfolio.

20. Finally, the I/F confirms that it has reviewed the methodology used by the Appraiser in the 2014 Appraisal and that the methodology is consistent with industry standards in the valuation of commercial properties of this type. The I/F therefore agrees that the Appraiser's methodology has been properly applied to arrive at the Property's fair market value.

*Summary*

21. In summary, the Applicants represent that the Sale will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Sale will be a one-time transaction for cash;

(b) As consideration, the Plan will receive the greater of $2,900,000, or the fair market value of the Property as determined by the Appraiser in a written Appraisal of the Property, which is updated on the Sale Date;

(c) The Plan will pay no commissions, costs, or fees;

(d) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and

(e) The Sale has been reviewed and approved by an I/F, who, among other things: Has reviewed and approved the methodology used by the Appraiser, and has ensured that such methodology was properly applied in determining the fair market value of the Property; and has determined that it is prudent to go forward with the Sale.

*Notice to Interested Parties*

Notice of the proposed exemption (consisting of a copy of the proposed exemption, as published in the **Federal Register**, and the supplemental statement required by 29 CFR 2570.43(b)(2), (together, the Notice)) will be given to interested persons within 15 days of the publication of the Notice in the **Federal Register**. The Notice will be given to interested persons by posting in the Union hall for active Plan participants and by first class mail for inactive Plan participants. Active Plan participants are those Plan participants for whom a participating employer contributed to the Plan within the 60 days before the Notice is distributed. Inactive Plan participants are those participants for whom a participating employer is not currently contributing under a collectively bargained agreement, and includes any deferred vested participant (i.e, a participant who is not drawing retirement benefits and for whom no contributions are being made by a participating employer, either because they are not working or because they are working for a non-contributing employer) and any retiree (a participant who is currently drawing retirement benefits). Written comments are due within 45 days of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information

(such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

**The Camco Financial & Subsidiaries Salary Savings Plan (the Plan) and Huntington Bancshares, Inc. (Huntington) Located in Cambridge, OH and Columbus, OH**

[Application No. D–11751]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (the Act or ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and (E) of the Code,[7] shall not apply to the acquisition and holding of certain warrants (the Warrants) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of Camco Financial Corporation (Camco), the sponsor of the Plan and a party in interest with respect to the Plan.

Section II: Proposed Conditions

(a) The Accounts acquired the Warrants in connection with the exercise of subscription rights (the Rights) to purchase Stock by the Plan's directed trustee (the Directed Trustee) on behalf of Plan participants;

(b) Each stockholder, including each of the Accounts holding Stock on behalf of Plan participants, received the same proportionate number of Rights based on the number of shares of Stock held as of July 29, 2012 (the Record Date), and the same proportionate number of Warrants based on the number of Rights exercised during the Offering;

(c) The Plan participant whose Account received the Warrants made, or will make, all decisions with respect to the holding or exercise of such Warrants;

(d) The Plan did not pay, nor will it pay, any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition, holding, and/or exercise of the Rights or Warrants;

(e) The acquisition of the Rights by the Accounts resulted from an independent corporate act of Camco; and

(f) The Rights and Warrants were acquired pursuant to and in accordance with, provisions under the Plan for individually directed investments of the Accounts holding Stock on behalf of Plan participants.

*Effective Date:* This proposed exemption, if granted, will be effective from November 1, 2012, until the Warrants are exercised or expire.

**Summary of Facts and Representations**[8]

*Background*

1. The Camco Financial & Subsidiaries Salary Savings Plan (the Plan) and Huntington Bancshares Incorporated (Huntington, and together with the Plan, the Applicants) request the prohibited transaction exemption proposed herein. At the time of the transaction described herein, Camco Financial Corporation (Camco), the original sponsor of the Plan, was engaged in the financial services business in Ohio, Kentucky, and West Virginia through its wholly-owned subsidiary, Advantage Bank (Advantage). Advantage is an Ohio savings bank that operates branch offices in Ohio, Kentucky, and West Virginia. The Applicants represent that on October 9, 2013, Camco entered into a definitive agreement with Huntington, by which Huntington acquired Camco and Advantage in a cash and stock transaction (the Acquisition) that allowed Camco shareholders to receive, in exchange for each of their Camco shares, either a fractional share of Huntington stock or $6.00 per Camco share. The Applicants represent that Camco filed proxy materials describing the proposed merger with the SEC and distributed those materials to its shareholders.

2. The Plan is a 401(k) plan qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the Code) and intended to comply with ERISA section 404(c) with respect to accounts subject to participant investment direction. Camco established the Plan on February 1, 1987. The Plan was taken over by Huntington in connection with the Acquisition and has not been merged into any other plans sponsored by Huntington. The Applicants represent that the Plan, as amended and restated, operates in compliance with applicable Code requirements. As of December 31, 2011, approximately 249 participants had account balances in the Plan and total combined assets of approximately $9,374,142. The fair market value of the Plan's shares of Camco common stock (the Stock) as of December 31, 2011, was $288,615, which represented approximately 3% of the Plan's total assets.

3. Prior to the Acquisition, all employees of Camco and Advantage were eligible to participate in the Plan, which allows each participant to choose the investments in his or her Account. Prior to 2008, Camco made profit-sharing contributions to the Plan on behalf of participants, portions of which were automatically invested in shares of the Stock, but the Plan was amended effective January 1, 2009, to make all accounts fully participant-directed. Each Plan participant could choose from a variety of investment options, including any combination of mutual funds, Camco common stock, common/collective funds, and other investment securities.[9] Therefore, starting in 2009, any Plan participant who chose to invest in the Stock did so voluntarily. The Applicants represent that the Stock was a ''qualifying employer security'' as defined under section 407(d)(5) of ERISA and section 4975(e) of the Code.

4. Prior to the Acquisition, the Plan was administered by Camco, which adopted an investment policy that provided for a Plan committee called the ''401(k) Retirement Planning Committee'' (the Committee). The Committee met periodically (typically at least twice a year) and monitored and selected the investment options under the Plan. Jim Huston, Camco's Chairman, CEO, and President, was a member of the Committee.

[7] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[8] The Summary of Facts and Representations is based on the Applicants' representations and does not reflect the views of the Department, unless indicated otherwise.

[9] The Plan's directed trustee, Charles Schwab Trust Company or its affiliates, manage certain investment funds offered within the Plan.

*The MOU, Consent Order, and Rights Offering*

5. Camco was regulated by the Federal Reserve Board (FRB), and Advantage is primarily regulated by the State of Ohio Department of Commerce, Division of Financial Institutions (the Ohio Division) and the Federal Deposit Insurance Corporation (FDIC). The Applicants state that on March 4, 2009, Camco entered into a Memorandum of Understanding (MOU) with the FRB that prohibits Camco from: (1) Declaring or paying dividends to stockholders; and (2) repurchasing the Stock without the prior written approval of the FRB. On August 5, 2009, Camco and the FRB entered into a written agreement that required Camco to obtain FRB approval prior to: (1) Declaring or paying dividends; (2) receiving dividends or any other form of payment representing a reduction in capital from Advantage; (3) making distributions of interest, principal, or other sums or subordinated debentures or trust preferred securities; (4) incurring, increasing, or guaranteeing any debt; or (5) repurchasing any Camco stock. The written agreement also required Camco to develop a capital plan and submit it to the FRB for approval. On February 9, 2012, the FDIC and the Ohio Division executed a Consent Order, which required Advantage to, among other things: (1) Raise its Tier 1 Leverage Capital ratio to 9%; (2) raise its total Risk-Based Capital ratio to 12%; and (3) seek regulatory approval prior to declaring or paying any cash dividend.

6. According to the Applicants, the Camco board of directors chose to raise equity capital through a rights offering (the Offering) in order to improve Advantage's capital position, retain additional capital at Camco, and give stockholders the opportunity to limit ownership dilution by buying additional shares of the Stock. Camco's Offering commenced on September 24, 2012. Through the Offering, Camco offered up to 5,714,286 shares of the Stock at a subscription price of $1.75 per share (the Subscription Price).

7. The Applicants state that on or about September 26, 2012, Camco sent detailed information regarding the Rights Offering to each Plan participant. In this regard, the Applicants represent that Plan participants were provided with a copy of the prospectus that described the Offering, a Q&A entitled *''Important Information Regarding the Rights Offering for Plan Participants,''* an election form, a return envelope addressed to Camco, and a statement indicating the number of shares of Stock each participant held in his or her Account, as of the Record Date. Camco informed stockholders that the proceeds from the Offering would be used to improve Advantage's capital position and to retain additional capital at Camco. Additionally, Camco informed stockholders that even if the Offering was fully subscribed, Advantage would not meet the Consent Order's capital requirements.

8. Under the terms of the Offering, all stockholders, including the Plan participants whose Accounts held shares of the Stock, received at no charge, non-transferable subscription rights (the Rights) to purchase their share of $10 million worth of the Stock. Stockholders could execute their Rights through a ''basic subscription privilege'' and an ''oversubscription privilege.'' The ''basic subscription privilege'' gave each stockholder the opportunity to purchase one share of Stock, for $1.75 per share (the Subscription Price), for every one share of Stock owned as of July 29, 2012 (the Record Date). The Applicants state further that, if a stockholder exercised all of his or her Rights through the basic subscription privilege, that stockholder was also entitled to an ''over-subscription privilege,'' which allowed the stockholder to purchase a proportional share of the Stock that was not subscribed for by other stockholders under their basic subscription privileges.

9. The Applicants represent that for every two Rights a stockholder exercised, the stockholder received one Warrant to purchase one share of Stock at a future date for $2.10 per share. The Applicants represent that the Warrants are exercisable for a period of five years from the close of the Offering. The Applicants state further that the Warrants are not transferrable, except: (1) By will or the laws of descent and distribution upon a Warrant holder's death; and (2) through a distribution of Warrants to a Plan participant whose Account holds the Warrants, assuming that particular participant is eligible to receive a distribution. Moreover, the Applicants state that Camco did not issue any fractional Warrants; instead, Camco rounded the number of Warrants down. Furthermore, the number of shares for which Warrants may be exercised and the exercise price applicable to the Warrants would be proportionately adjusted if Camco paid dividends on the Stock or made a distribution of common stock, or subdivided, combined, or reclassified outstanding shares of common stock such as through a stock split or a reverse stock split. The Applicants represent further that any shares of Stock purchased upon exercise of the Warrants held by a Plan participant's Account would be allocated to a common stock investment option where it would remain subject to further investment direction from the Plan participant.

10. The Offering was originally scheduled to close on October 31, 2012, at 5:00 p.m. Eastern Time. Camco reserved the right to extend the Offering one or more times, but in no event later than December 31, 2012. The Offering was extended one day due to Hurricane Sandy and officially closed on November 1, 2012, at 5:00 p.m. EST. The Applicants represent that the Rights Offering was fully subscribed so that Camco received gross proceeds of $10,000,000 and net proceeds estimated at $9,361,000.[10]

*Early Exercise*

11. The Applicants explain that each Plan participant who desired to exercise Rights was required to make an election to exercise any or all of the Rights in his or her Account. According to the Applicants, the Directed Trustee had to aggregate all such elections and place a single order to exercise Rights on behalf of the Plan as a whole, through a process known as an ''early exercise.'' [11] The early exercise required Plan participants to place orders to exercise his or her Account's Rights by the close of business on the fifth business day prior to the close of the Offering (*i.e.,* October 24, 2012, at 5:00 p.m. EST) so that the Directed Trustee had enough time to combine all of the orders. Additionally, Camco informed all stockholders that their election to exercise the Rights was irrevocable. According to the Applicants, in order to protect Plan participants from a drop in the stock price between October 24, 2012 (Plan participant's early election date), and November 1, 2012, (the close of the Offering), Camco informed Plan participants that the Directed Trustee would not place the order if the closing price of the Stock was below the Subscription Price on October 31, 2012, the business day immediately before the Offering closed.

12. The Applicants represent that on October 31, 2012, there was a discrepancy with respect to the Stock's closing price, as reported on NASDAQ. According to the Applicants, over the

[10] The Applicants represent that expenses related to the Rights Offering included: Legal fees, accounting fees, printing and mailing fees, subscription/escrow/warrant agent fees, and financial advisor fees.

[11] The Applicants note that brokers and stockholders who hold shares for the benefit of third parties commonly utilize this process.

course of the day, the Stock traded between $1.65 and $1.90 per share. The Applicants contend that after the markets closed, Jim Huston and the Plan's counsel checked the NASDAQ official Web site, which indicated an ''Official Close Price'' of $1.85. The Applicants note that The Standard, the Plan's recordkeeper, also used its internal systems to verify that the closing price was $1.85 and informed the Directed Trustee that it could submit the Plan's order to exercise the Rights.[12] Then, according to the Applicants, on November 1, 2012, Camco's financial advisor for the Offering, Paracap Group LLC (Paracap), and Camco's attorney noted that the Web sites for SNL Financial and Yahoo! showed the closing price as $1.70. Additionally, on November 1, 2012, Paracap was aware that NASDAQ's Web site also showed the closing price as $1.70. However, according to the Applicants, the internal computer terminal of a Paracap analyst continued to show the closing price of the Stock as $1.85. Ultimately, the Directed Trustee deferred to Camco and The Standard's reliance on $1.85 as the closing price and caused the Plan to participate in the Offering by exercising the Rights on behalf of electing participants. Accordingly, the Plan purchased and allocated 941,909 shares of Stock and 470,946 Warrants to the Accounts of 47 Plan participants. The Plan paid $1,648,340.75 for the Stock in connection with the Offering, or roughly 16% of the $10 million available in the Offering.

13. After the Offering closed, Plan fiduciaries contacted a NASDAQ employee at the NASDAQ Market Intelligence Desk (the Representative) for an explanation of the price discrepancy. The Applicants represent that the Representative explained that the NASDAQ Official Closing Price is the last trade that occurs on the NASDAQ platform whereas the ''Previous Close'' is based on the last trade across all places where the Stock is traded.[13] According to the Applicants, the Representative confirmed that the last trade on the NASDAQ platform on October 31, 2012, was for $1.85, but there were two later trades on another exchange. Notably, the last trade of the day on October 31, 2012, was for $1.70 per share.[14] Consequently, the Directed Trustee and other Plan fiduciaries caused the Plan to participate in the Offering despite the fact that the Stock's closing price was below $1.75 on October 31, 2012. As described in further detail in paragraph 18, Camco filed a form 5330 with the IRS with respect to the Plan's acquisition and holding of the Rights.

*Exercise of the Rights and Acquisition of the Warrants*

14. The Applicants explain that each Plan participant was instructed to transfer assets in his or her Account into a specially designated investment alternative, the Morley Stable Value Fund (the Fund), in order to purchase the Stock. The Applicants state that if a Plan participant's Account did not hold sufficient assets in the Fund, the Directed Trustee exercised the participant's request to the fullest extent possible based on the cash value of the participant's Fund.

15. The Applicants state that Camco's subscription agent, Registrar and Transfer Company (Registrar), issued the purchased shares of Stock to each subscriber, along with any excess payment from the subscriber, and forwarded the payments to Camco. According to the Applicants, Camco issued the Stock and accompanying Warrants to stockholders, including the Plan, on November 7, 2012.

16. The Applicants represent that Camco paid all expenses associated with the Offering, and the Plan paid no brokerage fees, commissions, subscription fees, or other charges with respect to the acquisition, holding, or exercise of the Rights, Warrants, or Stock.

17. The Applicants also represent that upon completion of the Acquisition, Huntington assumed the Camco Warrant Agreement, dated November 2, 2012, between Camco and Registrar, and each outstanding Warrant was converted into a warrant to purchase Huntington common stock, as adjusted based on an exchange ratio of 0.7264 Huntington warrants for each Camco warrant.

*Requested Relief*

18. The Applicants originally requested retroactive exemptive relief to cover the Plan's acquisition and holding of both the Rights and the Warrants. However, given the uncertainty regarding whether the proper closing price was used for purposes of the Plan's acquisition and holding of the Rights, as discussed above, Camco filed a Form 5330 with the IRS disclosing a prohibited transaction with no related loss amount.[15] Therefore, the Department is proposing relief only for the acquisition and holding of the Warrants (the Warrants Transaction).

19. The Applicants explain that the Warrants Transaction constitutes the acquisition and holding of ''employer securities'' as defined under section 407(d)(1) of the Act. However, the Warrants do not satisfy the definition of ''qualifying employer securities'' as defined under section 407(d)(5) of the Act because they are not stock or marketable securities. Under section 407(a)(1)(A) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of the Act.'' Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act. Therefore, the acquisition and holding of the Warrants constitute prohibited transactions in violation of sections 406(a)(1)(E) and 406(a)(2) of the Act.

20. Additionally, the Applicants explain that other provisions of the Act that are implicated by the Warrants Transaction include section 406(a)(1)(A) of the Act and the fiduciary self-dealing and conflict of interest provisions of section 406(b)(1) and (b)(2) of the Act. In relevant part, section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction is a prohibited sale or exchange of any property between a plan and a party in interest. Because the Plan fiduciaries acquired the Warrants on behalf of Plan participants through the exercise of the Rights in the Offering, the Warrants Transaction also constituted a sale or exchange of property between a Plan and a party in interest, in violation of section 406(a)(1)(A) of the Act. Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a

[12] The Applicants explain that The Standard uses only the official NASDAQ closing price when reporting prices for the Stock held by the Plan, and The Standard did not contact anyone at NASDAQ in connection with its interpretation.

[13] The Stock was traded on 11 exchanges: (1) NASDAQ Stock Market, (2) NASDAQ BX, (3) NASDAQ PSX, (4) Archipelago, (5) National, (6) Bats, (7) Bats Y, (8) DirectEdge EDGA, (9) DirectEdge EDGX, (10) CBOE Stock Exchange, and (11) the Chicago Stock Exchange. Trades that occur off exchanges are reported to NASDAQ via two trade reporting facilities, the FINRA/NASDAQ TRF and FINRA/NYSE TRF.

[14] The Department notes that the NASDAQ now reports $1.70 as the closing price for October 31, 2012.

[15] The Department is taking no view herein regarding whether Camco properly filed the Form 5330, including properly reporting such loss amount.

fiduciary with respect to a plan from acting in any transaction involving the plan on behalf of a party, or represent a party, whose interests are adverse to the interests of the plan or its participants and beneficiaries. In causing the Plan to engage in the Warrants Transaction, the Plan fiduciaries may have violated sections 406(b)(1) and 406(b)(2) of the Act. Therefore, the Applicants request that the Department grant an exemption from the prohibitions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and (E) of the Code, for the Warrants Transaction.

21. The Applicants state that the acquisition of the Warrants has been completed, and although all Accounts that received the Warrants could have held the Warrants until exercised for Stock or until the Warrants expire, five years from the date that the Offering closed, some Plan participants may have already exercised some or all of their Accounts' Warrants. The Applicants requested retroactive relief because Camco sought to comply with the Consent Order with the FDIC and the Ohio Division. Therefore, according to the Applicants, Camco determined that it was in the best interest of all its stockholders, including the Plan, to issue the Rights as soon as possible after the Securities and Exchange Commission approved the Offering documents. Moreover, because of the tight time frame, Camco decided not to wait for a granted exemption before it completed the Offering.

*Statutory Findings*

22. The Applicants represent that the proposed exemption with respect to the Warrants is administratively feasible because all shareholders of Camco, including the Plan, were, and will be treated in the same manner with respect to any acquisition, holding and exercise or other disposition of the Warrants.

23. The Applicants represent that the proposed exemption for the acquisition and holding of the Warrants by the Plan is in the interest of and beneficial to the Plan and to the participants and beneficiaries of the Plan. The Applicants explain that to the extent that the Plan is a shareholder, the Offering and subsequent issuance of Warrants was designed to: (1) Strengthen the financial condition of Camco by improving its capital position; and (2) give shareholders the opportunity to limit ownership dilution by buying additional shares of the Stock. The Applicants represent that Camco's ability to achieve these objectives had significant value to its shareholders, including the Plan. Moreover, the Applicants explain that participants and beneficiaries whose Accounts received the Warrants have been provided with the opportunity to acquire additional equity in Camco at a discount and either: (1) Have exercised the Warrants to purchase the Stock for less than its fair market value; or (2) have the potential opportunity to exercise the Warrants to purchase the Stock for less than its fair market value.

24. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because decisions with regard to the acquisition, holding and exercise or other disposition of the Warrants were made, and will be made, by each Plan participant in accordance with the provisions under the Plan for individually-directed accounts.

*Summary*

25. In summary, the Applicants state that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code because:

(a) The Accounts acquired the Warrants in connection with the exercise of the Rights by the Directed Trustee on behalf of Plan participants;

(b) Each stockholder, including each of the Accounts holding Stock on behalf of Plan participants, received the same proportionate number of Rights based on the number of shares of Stock held as of the Record Date and the same proportionate number of Warrants based on the number of Rights exercised during the Offering;

(c) The Plan participant whose Account received the Warrants made or will make all decisions with respect to the holding or exercise of such Account's Warrants;

(d) The Plan did not pay, nor will it pay, any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition, holding, and/or exercise of the Rights or Warrants;

(e) The acquisition of the Rights by the Accounts resulted from an independent corporate act of Camco; and

(f) The Rights and Warrants were acquired pursuant to and in accordance with, provisions under the Plan for individually directed investments of the Accounts holding Stock on behalf of Plan participants.

**Notice to Interested Persons**

The Applicants will provide notice of the proposed exemption to all Plan participants within fifteen (15) days of the date of publication of the proposed exemption in the **Federal Register**. The Applicants will provide the notice by email to all Plan participants who are actively employed by Huntington in accordance with the Department's procedures for electronic disclosure to active employees under 29 CFR 520.104b–1(c). The Applicants will provide notice to all other Plan participants, including individuals who were Plan participants at the time of the Offering, via first-class mail. In addition to the proposed exemption, as published in the **Federal Register**, the Applicants will provide Plan participants with a supplemental statement, as required, under 29 CFR 2570.43(a)(2). The supplemental statement will inform the Plan participants of their right to comment on and to request a hearing with respect to this proposed exemption. The Department must receive all written comments and/or requests for a hearing within 45 days of the publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

**Wells Fargo Company (WFC), Located in San Francisco, California**

[Application No. D–11752]

*Proposed Exemption*

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, as amended, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[16]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A)

[16] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

and (D), and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A),(D), (E), and (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined in Section V(j), during the existence of an underwriting or selling syndicate with respect to such Securities by an asset management affiliate of WFC (the Asset Manager(s)), as defined in Section V(f), from any person other than such Asset Manager, where the Asset Manager purchases such Securities, as a fiduciary: (1) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined in Section V(g); or (2) on behalf of Client Plans and/or In-House Plan(s), as defined in Section V(m), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined in Section V(h), under the following circumstances:

(a) Where a broker-dealer affiliated with WFC (an Affiliated Broker-Dealer), as defined in Section V(d), is a manager or member of such syndicate (an affiliated underwriter transaction (AUT)); or

(b) Where an Affiliated Broker-Dealer is a manager or member of such syndicate and a servicer affiliated with WFC (an Affiliated Servicer), as defined in Section V(n), serves as servicer of a trust that issues commercial mortgage backed securities (CMBS), as defined in Section V(r), including servicing one or more of the commercial mortgage backed loans in such trust (an affiliated underwriter and affiliated servicer transaction (AUT and AST)); or

(c) Where an Affiliated Servicer serves as servicer of a trust that issues CMBS, including servicing one or more of the commercial mortgage backed loans in such trust (AST); or

(d) Where a trustee affiliated with WFC (an Affiliated Trustee), as defined in Section V(o), serves as trustee of a trust that issues the Securities (whether or not debt securities) or serves as indenture trustee of Securities that are debt securities (an affiliated trustee transaction (ATT)); or

(e) Where an Affiliated Broker-Dealer is a manager or member of such syndicate and where an Affiliated Trustee serves as trustee of a trust that issues the Securities (whether or not debt securities) or serves as an indenture trustee of Securities that are debt Securities (an affiliated underwriter and affiliated trustee transaction (AUT and ATT).

Section II. Conditions for Transactions Described in Section I(A), (B), (D) and (E)

The transactions described in Section I(a), (b), (d), and (e) are conditioned upon satisfaction of the general conditions, as set forth in Section IV, and upon satisfaction of the following requirements:

(a)(1) In the case of a transaction described in Section I(b), the Securities to be purchased are CMBS, as defined in Section V(r). In the case of transactions described in Section I(a), (d), and (e) the Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States;

(B) Are issued by a bank;

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act; or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an eligible Rule 144A offering (Eligible Rule 144A Offering), as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)).[17] Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosures in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by a rating agency (a Rating Agency or collectively, Rating Agencies), as defined in Section V(q); provided that none of the Rating Agencies rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor)

[17] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term, ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the 1933 Act [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such Guarantor:

(i) Is a bank; or

(ii) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased by the Asset Manager with the assets of all Client Plans, and the assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager, and the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities; or

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Agencies; provided that none of the Rating Agencies rates such Securities in a category lower than the fourth highest rating category; and

(3) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the fourth highest rating category by any of the Rating Agencies; and

(4) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), and (2), the amount of Securities in any issue (whether equity or debt securities) purchased pursuant to transactions described in Section I(a), (b), (d), and (e) by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(5) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages described in Section II(c)(1),(2) and (4) is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities described in Section I(a), (b), (d), and (e), including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) If the transaction is an AUT as described in Section I(a), (b), and (e), the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based upon the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or on behalf of any Client Plan or In-House Plan in Pooled Funds.

(f)(1) If the transaction is an AUT as described in Section I(a), (b), and (e), the amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold. Except as described above, nothing in this Section II(f)(1) shall be construed as precluding an Affiliated Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds; and

(2) Each Affiliated Broker-Dealer shall provide, on a quarterly basis, to the Asset Manager a written certification, signed and dated by an officer, as defined in Section V(s), of such Affiliated Broker-Dealer, stating that the amount that each such Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any transactions described in Section I(a), (b), (d), and (e), was not adjusted in a manner inconsistent with Section II(e), (f), or Section IV(d).

(g)(1) The transactions described in Section I(a), (b), (d), and (e), are performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan (the Independent Fiduciary), as defined in Section V(i); and

(2) The authorization described in Section II(g)(1), to engage in the transactions described in Section I(a), (b), (d), and (e), may be terminated at will by the Independent Fiduciary of a single Client Plan, without penalty to such single Client Plan, within five (5) days after receipt by the Asset Manager of a written notification from such Independent Fiduciary that the authorization to engage, on behalf of such single Client Plan, in such transactions is terminated.

(h) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described in Section II(g)(1), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and, if granted, a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and

(e), that such Independent Fiduciary requests the Asset Manager to provide.

(i)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any transactions described in Section I(a), (b), (d), and (e), unless the Asset Manager provides the written information, as described below, and within the time period described below in this Section II(i)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund);

(2) The following information and materials (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the transactions described in Section I(a), (b), (d), and (e) on behalf of a Pooled Fund, and provided further that the information described in this Section II(i)(2)(i) and (iii), is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities, pursuant to this proposed exemption for the transactions described in Section I(a), (b), (d), and (e), a copy of this Notice, and if granted, a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e), that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form (the Termination Form), as defined in Section V(p); and

(3) The Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of an In-House Plan) participating in a Pooled Fund has an opportunity to withdraw the assets of such plan (or such In-House Plan) from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section II(i)(2)(i), and to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Failure of the Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of such plan (or In-House Plan) participating in a Pooled Fund within the time period specified in Section V(p), shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the transactions described in Section I(a), (b), (d), and (e), as an investor in such Pooled Fund.

(j) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the transactions described in Section I(a), (b), (d), and (e), the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described in Section II(i)(2)(i) and (ii), provided that the Notice and the Grant described in Section II(i)(2)(i) are provided simultaneously.

(k) At least once every three months, and not later than 45 days following the period to which such information relates the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the transactions described in Section I(a), (b), (d), and (e), the information described in this Section II(k)(3)–(7) to the Independent Fiduciary of each such single Client Plan;

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described in this Section II(k)(3)–(6) and (8) to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund;

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased during the period to which such report relates, on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each of the transactions;

(ii) The price at which the Securities were purchased in each of the transactions;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each of the transactions;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which each of the transactions relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each of the transactions;

(vii) In the case of AUTs as described in Section I(a), (b), and (e), the underwriting spread in each of the transactions (*i.e.,* the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) In the case of ATTs as described in Section I(d), and (e), the basis upon which the Affiliated Trustee is compensated in each of the transactions;

(ix) The price at which any of the Securities purchased during the period to which such report relates were sold;

(x) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold; and

(xi) In the case of an AST as described in Section I(b), the basis upon which the Affiliated Servicer is compensated;

(4) The Quarterly Report contains:

(i) In the case of AUTs, as described in Section I(a), (b), and (e), a representation that the Asset Manager has received a written certification signed by an officer, as defined in Section V(s), of the Affiliated Broker-Dealer as described in Section II(f)(2), affirming that, as to each such AUT during the past quarter, such Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and Section IV(d);

(ii) In the case of ATTs as described in Section I(d) and (e), a representation by the Asset Manager affirming that, as to each such ATT, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Trustee;

(iii) In the case of an AST as described in Section I(b), a representation of the Asset Manager affirming that, as to each such AST, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(iv) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e), that an Independent Fiduciary (or fiduciary of

an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased for the transactions described in Section I(a), (b), (d), and (e), in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and, as applicable, as an affiliate of an Affiliated Trustee, or as an affiliate of an Affiliated Servicer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in any of the transactions described in Section I(a), (b), (d), and (e) that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in such transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in any of the transactions described in Section I(a), (b), (d), and (e) through a Pooled Fund, that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(l) The Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, and the Affiliated Servicer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any of the transactions described in Section I(a), (b), (d), and (e), such records as are necessary to enable the persons described in Section II(m) to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in any of the transactions described in Section I(a), (b), (d), and (e), other than WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, and the Affiliated Servicer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required by Section II(m); and

(2) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of WFC, the Asset Manager, the Affiliated Broker-Dealer, and the Affiliated Trustee, or the Affiliated Servicer, as applicable, such records are lost or destroyed prior to the end of the six (6) year period.

(m)(1) Except as provided in Section II(m)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section II(l) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in Section II(m)(1)(ii)—(iv) shall be authorized to examine trade secrets of WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, or the Affiliated Servicer, or commercial or financial information which is privileged or confidential; and

(3) Should WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, or the Affiliated Servicer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(m)(2), the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising the person who requested such information of the reasons for the refusal and that the Department may request such information.

(o) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any Securities for an obligor of the indenture Securities must resign as indenture trustee, if a default occurs upon the indenture Securities, within a reasonable amount of time of such default.

Section III. Conditions for Transactions Described In Section I(c)

The transaction described in Section I(c) is conditioned upon satisfaction of the general conditions, as set forth in Section IV and upon satisfaction of the following requirements:

(a) The Securities to be purchased are CMBS, as defined in Section V(r).

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)).[18]

(c)(1) The aggregate amount of CMBS of an issue purchased by the Asset Manager with:

(i) The assets of all Client Plans;

(ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed 35 percent (35%) of the total amount of the CMBS being offered in an issue;

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1), the amount of CMBS in any issue purchased by the Asset Manager on behalf of any single Client Plan, either

[18] The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is the Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, *et. al.,* To Amend the Definition of ''Rating Agency'' (Prohibited Transaction Exemption 2013–08, 78 FR 41090 (July 9, 2013)).

individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue; and

(3) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages described in this Section III(c) is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any CMBS, including any amounts paid by any Client Plan or In-House Plan in purchasing such CMBS through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e)(1) The transaction described in Section I(c) is performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan, as defined in Section V(i); and

(2) The authorization described in Section III(e)(1) to engage in the transaction described in Section I(c) may be terminated at will by the Independent Fiduciary of a single Client Plan, without penalty to such single Client Plan within five (5) days after receipt by the Asset Manager of a written notification from such Independent Fiduciary that the authorization to engage, on behalf of such single Client Plan, in such transactions is terminated.

(f) The following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of a single Client Plan not less than 45 days prior to such Asset Manager engaging in the transaction described in Section I(c), pursuant to this proposed exemption:

(1) A notice of the intent of the Asset Manager to purchase CMBS, pursuant to Section I(c), a copy of the Notice, and, if granted, a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(2) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(3) The basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction described in Section I(c) was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(4) Any other reasonably available information regarding the transaction described in Section I(c) that the Independent Fiduciary of such single Client Plan requests the Asset Manager to provide.

(g)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in a transaction, pursuant to Section I(c), unless the Asset Manager provides the written information, as described below and within the time period described below in this Section III(g)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund);

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in a transaction described in Section I(c) on behalf of a Pooled Fund, pursuant to this proposed exemption; and provided further that the information described in this Section III(g)(2)(i), (ii), (iii), and (v) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase CMBS, pursuant to this proposed exemption for a transaction described in Section I(c), a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(iii) Information on the basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, such transaction, as described in Section I(c), was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer;

(iv) Any other reasonably available information regarding such transaction described in Section I(c) that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(v) A Termination Form, as defined in Section V(p); and

(3) The Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of an In-House Plan) participating in a Pooled Fund has an opportunity to withdraw the assets of such plan (or such In-House Plan) from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section III(g)(2)(i) and to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Failure of the Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of such plan (or In-House Plan) participating in a Pooled Fund within the time period specified in Section V(p), shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in a transaction described in Section I(c), as an investor in such Pooled Fund.

(h)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption for a transaction described in Section I(c), the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of the plan (or by the fiduciary of the In-House Plan, as the case may be) of the written information described in Section III(g)(2); provided that the Notice and, if granted, the Grant described in Section III(g)(2)(i) are provided simultaneously.

(i) The requirements of Section IV are met.

Section IV. General Conditions for Transactions Described in Section I

(a) For purposes of engaging in the transactions described in Section I, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in the transactions described in Section I, involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in the transactions described

in Section I, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (and by In-House Plans) each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in the transactions described in Section I involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (and by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described in Section IV(a), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(b) The Asset Manager is a ''qualified professional asset manager'' (QPAM), as that term is defined under Section V(a) of Prohibited Transaction Exemption (PTE 84–14),[19] as amended from time to time, or any successor exemption thereto. In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the Asset Manager also must have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(c) At the time a transaction described in Section I is entered into, no more than 20 percent of the assets of a Pooled Fund are comprised of assets of In-House Plans for which WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, the Affiliated Servicer, or any affiliate thereof exercises investment discretion.

(d) The transactions described in Section I are not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or any affiliate.

(e) For purposes of Section II(i), Section II(j), Section III(g) and Section III(h), the requirement that the fiduciary responsible for the decision to authorize the transactions described in Section I, as applicable, for each plan proposing to invest in a Pooled Fund be independent of WFC and its affiliates shall not apply in the case of an In-House Plan.

(f) Subsequent to the initial authorization, pursuant to Section II(g) and Section III(e), by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in transactions described in Section I, as applicable, and subsequent to the initial authorization, pursuant to Section II(i), Section II(j), Section III(g), and Section III(h), by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the transactions described in Section I, as applicable, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding such transactions that the Independent Fiduciary of such plan, such Client Plan (or of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(g) The Independent Fiduciary of each Client Plan (and the fiduciary of each In-House Plan) that engages in the transactions described in Section I through a Pooled Fund may terminate the investment in such Pooled Fund, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the Asset Manager that the investment in such Pooled Fund is terminated.

(h) The Applicant establishes internal policies that restrict the contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms.

(i) The Applicant establishes business separation policies and procedures for WFC and its affiliates which are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that can be used by other parts of the organization, to the detriment of the Asset Manager's clients.

Section V. Definitions

(a) The term ''the Applicant'' means WFC.

(b) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate, as the term ''affiliate'' is defined in Section V(b)(1), of the Applicant, as the term ''Applicant'' is defined in Section V(a), that meets the requirements of this proposed exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member.

(e) The term ''manager'' used in Section V(d) above and Section V(f) below, means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined in Section V(j), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(f) The term ''Asset Manager(s)'' means WFC or an affiliate of WFC, as

[19] 49 FR 9494 (March 13, 1984), *as amended at,* 75 FR 38837 (July 6, 2010).

the term ''affiliate'' is defined in Section V(b)(1), which entity acts as the fiduciary with respect to Client Plan(s), as the term ''Client Plan(s)'' is defined in Section V(g), or as the fiduciary with respect to Pooled Fund(s), as the term ''Pooled Fund(s)'' is defined in Section V(h). For purposes of this proposed exemption, the Asset Manager must qualify as a QPAM, as that term is defined under Section V(a) of PTE 84–14, 49 FR 9494, (March 13, 1984), *as amended at,* 75 FR 38837, (July 6, 2010). In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the Asset Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(g) The term ''Client Plan(s)'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s). The term ''Client Plan(s)'' excludes In-House Plans, as defined in Section V(m).

(h) The term ''Pooled Fund(s)'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest;

(2) Which is maintained by an Asset Manager, as defined in Section V(f); and

(3) For which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(i)(1) The term ''Independent Fiduciary'' means a fiduciary of a plan who is unrelated to, and independent of WFC, and is unrelated to, and independent of any affiliate of WFC. For purposes of this proposed exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of WFC, and unrelated to, and independent of any affiliate of WFC, if such fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described in Section I is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of WFC, or of any affiliate of WFC, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur;

(2) Notwithstanding anything to the contrary in this Section V(i), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with WFC, or any affiliate of WFC;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from WFC, or from any affiliate of WFC for his or her own personal account in connection with any transaction described in this proposed exemption; and

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described in Section I is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described in Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for the transactions described in Section I, then Section V(i)(2)(iii) shall not apply.

(j) The term ''Securities'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a 2(36)(1996)). For purposes of this proposed exemption, mortgage-backed or other asset backed securities rated by one of the Rating Agencies, as defined in Section V(q), will be treated as debt securities.

(k) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f-3(a)(4))under the 1940 Act.

(l) The term ''qualified institutional buyer'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(m) The term ''In-House Plan(s)'' means an employee benefit plan or employee benefit plans that is/are subject to the Act and/or the Code, and that is/are sponsored by WFC or by an affiliate of WFC, as the term, affiliate is defined in Section V(b)(1), for its own employees.

(n) The term ''Affiliated Servicer'' means any affiliate of WFC, as defined in Section V(b)(1), that serves as a servicer of a trust that issues CMBS (including servicing one or more of the commercial mortgage loans in such trust).

(o) The term ''Affiliated Trustee'' means any affiliate of WFC, as affiliate is defined in Section V(b)(1), which is a bank or trust company that serves as trustee of a trust that issues Securities which are asset-backed securities or as indenture trustee of Securities which are either asset-backed securities or other debt securities that meet the requirements of Section II of this proposed exemption. For purposes of this proposed exemption, other than Section II(o), performing services as custodian, paying agent, registrar, or similar ministerial capacities is, in each case, also considered as serving as trustee or indenture trustee.

(p) The term ''Termination Form'' is a form provided by the Asset Manager to the Independent Fiduciary of each such plan participating in a Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund) which expressly provides an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions must explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section II(i)(2)(i) or in Section III(g)(2)(i), as applicable, and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund within the time period, specified in Section II(i)(2)(iii) or in Section III(g)(2)(iii), as applicable, shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the transactions described in Section I, as applicable, as an investor in such Pooled Fund.

Further, the instructions will identify WFC, the Asset Manager, the Affiliated Broker-Dealer, and as applicable, the Affiliated Trustee, or the Affiliated Servicer, and will provide the address of the Asset Manager. The instructions will state that this proposed exemption will not be available, unless the fiduciary of each plan participating in any of the transactions described in Section I, as applicable, as an investor in a Pooled Fund is, in fact, independent of WFC,

the Asset Manager, the Affiliated Broker-Dealer, and, as applicable, the Affiliated Trustee or the Affiliated Servicer. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined in Section V(i).

(q) The term ''Rating Agency'' or collectively, ''Rating Agencies'' means a credit rating agency that:

(1) Is currently recognized by the SEC as a nationally recognized statistical ratings organization (NRSRO);

(2) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities;'' and

(3) Has had, within a period not exceeding twelve (12) months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one:

(i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities;

(ii) For which the credit rating agency is compensated for providing ratings;

(iii) Which is made public to investors generally; and

(iv) Which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

(r) The term ''CMBS'' means pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitle the holder to payments of principal, interest, and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property (including obligations secured by leasehold interests on commercial real property) that are rated in one of the four highest rating categories by the Rating Agencies; provided that none of the Rating Agencies rates such securities in a category lower than the fourth highest rating category.

(s) The term ''officer'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for WFC or any affiliate thereof.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

*Effective Date:*

If granted, this proposed exemption will be effective as of the date the Grant is published in the **Federal Register**.

**Summary of Facts and Representations**

1. WFC (or the Applicant) is headquartered in San Francisco, California. WFC is a diversified financial services company organized under the laws of Delaware and is registered as a bank holding company and financial holding company under the Bank Holding Company Act of 1956. WFC engages in banking and a variety of related financial services businesses. Subsidiaries of the Applicant manage institutional portfolios for mutual funds, corporations, employee benefit plans, endowments, foundations, health care organizations, public agencies, sovereign organizations, and insurance companies. These affiliates act as fiduciaries to employee benefit plans, providing trustee, recordkeeping, consulting services, and investment management services. The Applicant states that certain affiliates of the Applicant act as the fiduciary with respect to Client Plan(s), or as the fiduciary with respect to Pooled Fund(s), and qualify as a ''QPAM,'' as that term is defined under Section V(a) of PTE 84–14, 49 FR 9494 (March 13, 1984), *as amended at,* 75 FR 38837, (July 6, 2010). In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, such affiliates of the Applicant must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

As of March 31, 2013, WFC, through its affiliates, had approximately $463 billion in assets under management. The activities of WFC and its affiliates are subject to oversight and regulation by the SEC, the Federal Reserve Board, and the Office of the Comptroller of the Currency.

2. The proposed exemption involves the transactions described in Section I engaged in by single Client Plans (and by Client Plans and In-House Plans invested in Pooled Funds). In this regard, the Applicant represents that there is no feasible manner to identify specific information on all such plans.

3. The Applicant requests an individual administrative exemption that would permit the purchase of certain Securities, including Rule 144A Securities, by an Asset Manager acting as a fiduciary on behalf of single Client Plans or acting on behalf of Client Plans and In-House Plans which are invested in Pooled Funds, from any person other than such Asset Manager or an affiliate, thereof, during the existence of an initial offering of such Securities in which an Affiliated Broker-Dealer is a manager or a member of the underwriting or selling syndicate with respect to such Securities. Such a transaction is described, herein, as an AUT.

4. The Applicant also seeks an individual administrative exemption for certain transactions arising pursuant to an arrangement whereby an Affiliated Broker-Dealer is a manager or member of an underwriting syndicate, and an Affiliated Servicer serves as servicer of a trust that issues CMBS (including servicing one or more of the commercial mortgage backed loans in such trust) which are purchased by an Asset Manager, acting as a fiduciary on behalf of single Client Plans (or acting on behalf of Client Plans and In-House Plan invested in Pooled Funds, as applicable). Such transactions are described herein as an AUT and AST.

5. Further, the Applicant requests an individual administrative exemption for certain transactions arising pursuant to an arrangement whereby an Affiliated Servicer serves as servicer of a trust that issues CMBS where an Affiliated Broker-Dealer is not a manager or member of the underwriting syndicate for such securities. Such a transaction is described, herein, as an AST.

6. In addition, the Applicant seeks an individual administrative exemption for certain transactions arising from an arrangement whereby an Affiliated Trustee serves as trustee of a trust that issues certain Securities (whether or not debt securities) or serves as indenture trustee of such Securities that are debt securities. Such a transaction is described, herein, as an ATT.

7. Finally, the Applicant has requested an individual administrative exemption for certain transactions arising from an arrangement whereby an Affiliated Broker-Dealer is a manager or member of the underwriting syndicate for Securities and an Affiliated Trustee serves as trustee of a trust that issued the Securities (whether or not debt securities) or serves as an indenture trustee of Securities that are debt Securities and where such Securities are purchased by an Asset Manager, acting as a fiduciary on behalf of single Client

Plans (or acting on behalf of Client Plans and In-House Plan which are invested in Pooled Funds). Such transactions are described, herein, as an AUT and ATT.

The Applicant argues that absent an individual administrative exemption, Client Plans (and In-House Plans, as applicable) potentially could be cut off from primary market participation in a significant number of offerings of securities in which affiliates of WFC fill one or more of the roles, described above.

8. When an Asset Manager affiliated with WFC is a fiduciary with investment discretion with respect to the assets of single Client Plans (or with respect to the assets of Client Plans and In-House Plans invested in a Pooled Fund, as applicable), and such Asset Manager decides to engage in any of the transactions described in Section I above, the fact that WFC has an ownership interest in the Asset Manager, the Affiliated Broker-Dealer, and, as applicable, the Affiliated Trustee, or the Affiliated Servicer, raises issues under section 406(a)(1)(A) and (D) and section 406(b) of the Act, because one or more affiliates of such Asset Manager may be receiving compensation as a result of the purchase of the Securities involved in such transactions by Client Plans (or by In-House Plans, as applicable).

*AUTs*

9. In 2007, WFC obtained a Prohibited Transaction Exemption 2007–14 (PTE 2007–14) [20] from the Department, which provides relief for AUTs only. In connection with this proposed exemption, the Applicant requests that PTE 2007–14 be restated, with any updates required and/or granted in the interim by the Department. In Section I(a) of this proposed exemption, the Department has restated the AUT described in PTE 2007–14 and has updated and amended the conditions under which relief for such transaction is provided. Further, the Applicant has requested, and the Department in this proposed exemption has expanded, the relief which was provided in PTE 2007–14. In this regard, this proposed exemption also provides relief for the transactions, described in Section I(b), (c), (d), and (e), provided certain conditions are satisfied.

10. The Applicant represents that, in accordance with Prohibited Transaction Class Exemption 75–1 (PTE 75–1),[21] an asset manager acting as a fiduciary on behalf of a plan may purchase underwritten securities for such plan when an affiliated broker-dealer is a member of the underwriting or selling syndicate. In this regard, Part III of PTE 75–1 provides limited relief from the prohibited transaction provisions of the Act for plan fiduciaries that purchase certain securities from an underwriting or selling syndicate where the fiduciary or an affiliate is only a member of such syndicate. However, such relief is not available if the affiliated broker-dealer is a manager of the underwriting or selling syndicate.

11. Further, the Applicant explains, PTE 75–1 does not provide relief for the purchase of unregistered securities. Unregistered securities include securities purchased by a broker-dealer for resale to a ''qualified institutional buyer'' (QIB), pursuant to the SEC's Rule 144A under the 1933 Act. The Applicant explains that Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to investors in the United States that are QIBs. Notwithstanding the unregistered status of such securities, the Applicant states that syndicates selling Rule 144A Securities are the functional equivalent of syndicates selling registered securities.

12. The Applicant represents that Affiliated Broker-Dealers regularly serve as managers of underwriting or selling syndicates for registered securities, and as managers or members of underwriting or selling syndicates for Rule 144A Securities. The Applicant states that an Asset Manager makes its investment decisions on behalf of, or renders investment advice to single Client Plans (or to Client Plans and In-House Plans invested in Pooled Funds, as applicable), pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because single Client Plans (and In-House Plans) are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

13. The Applicant states, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and the investment criteria of Client Plans (or of In-House Plans, as applicable), not on whether the Securities are currently being sold through an underwriting or selling syndicate. The Applicant further states that, because an Asset Manager's compensation for its services is generally based upon assets under management, such Asset Manager has little incentive to purchase Securities in an offering in which an Affiliated Broker-Dealer is an underwriter, unless such a purchase is in the interests of Client Plans (and in the interest of Client Plans and In-House Plans invested in Pooled Funds, as applicable). If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities. The Applicant points out that under the terms of the proposed exemption, an Affiliated Broker-Dealer may not receive selling concessions, direct or indirect, that are attributable to the amount of Securities purchased by the Asset Manager on behalf of Client Plans (and on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable).

14. The Applicant states that the Asset Manager generally purchases securities in large blocks, because the same investments will be made across several accounts. If there are new offerings of an equity or fixed income Securities that an Asset Manager wishes to purchase, it may be able to purchase such Securities through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact, if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the Securities. Purchasing from an offering syndicate can thus reduce the costs to Client Plans (and to Client Plans and In-House Plans invested in Pooled Funds, as applicable).

15. The Applicant points out that absent the relief requested in this proposed exemption, if an Affiliated Broker-Dealer is a manager of a syndicate that is underwriting an offering of Securities, an Asset Manager will be foreclosed from purchasing any Securities on behalf of Client Plans (or, on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable) from that underwriting syndicate. In this regard, such Asset Manager would have to purchase the same Securities in the secondary market. In such a circumstance, Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) may incur greater costs both because the market price is often higher than the offering price, and because there are transaction cost and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten Securities in the secondary market exceeds the price that the Asset

[20] 72 FR 51467, September 7, 2007.

[21] 40 FR 50845, October 31, 1975.

Manager would have paid to the selling syndicate.

*ATTs*

16. With respect to ATTs and the types of trustees that would be covered by the proposed exemption, the Applicant states that in transactions involving asset-backed securities, there is generally a trustee who is the legal owner of the receivables held by the trust. In more traditional public debt offerings, there is generally only an indenture trustee, who holds the debt obligation of the obligor, holds any assets pledged as collateral to secure payment of the debt obligation, makes required payments, keeps records, and in the event of a default, acts for the note holders. The Applicant represents that the functions and obligations of an indenture trustee are aligned with the interests of the note holders, because such a trustee is generally appointed only to perform ministerial functions (*i.e.,* hold collateral, maintain records, and make payments when due). In this regard, the proposed exemption would also cover situations where the affiliate of the Asset Manager serves as a custodian, paying agent, registrar or other similar ministerial capacities.

17. The Applicant states that the Affiliated Broker-Dealer is frequently involved in underwriting offerings of asset backed securities and other securities where an affiliate of the Asset Manager serves as a trustee for the trust which issues such securities. The inability of the Asset Manager to purchase asset backed securities or other securities for its Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds) in such cases can be detrimental to those accounts, because the accounts can lose important fixed income investment opportunities that are relatively less expensive or qualitatively better than other available opportunities in such securities.

18. The Applicant states that the trustee in a structured finance transaction for asset backed securities, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements, so that the intent of the crafters of the transaction may be honored. These functions are essentially ministerial and include establishing accounts, receiving funds, making payments, and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, trustees in structured finance transactions for asset backed securities do not take on discretionary responsibility to protect the interests of debt holders in the event of default or bankruptcy, because responsibility for collections with respect to the underlying assets which serve as the source of payment on the debt is in the hands of the unaffiliated asset servicer. The Applicant represents that there is no ''issuer'' outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract-explicit structure that outlines the actions to be taken upon the happening of specified events. The Applicant states that there is no opportunity (or incentive) for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter, asset manager, or otherwise, to take or not to take actions that might benefit the underwriter or asset manager to the detriment of plan investors.

With respect to offerings of more traditional public debt securities that are not part of a structured finance transaction, the Applicant states that an indenture trustee may have more discretion when the issuer of the securities is not bankruptcy remote.[22] In such instances, indenture trustees generally exercise meaningful discretion only in the context of a default, at which time the indenture trustee has the duty to act for the bondholders, in a manner consistent with the interests of investing plans (and other investors) and not with the interests of the issuer. In such situations, an indenture trustee may be an affiliate of an underwriter for the securities. In the event of a default, the duty of an indenture trustee in pursuing the bondholders' rights against the issuer might conflict with the indenture trustee's other business interests. However, the Applicant represents that under the Trust Indenture Act of 1939 (the Trust Indenture Act), which applies to many, but not all, trust debt offerings,[23] an indenture trustee whose affiliate has, within the prior twelve (12) months, underwritten any securities for an obligor of the indenture securities generally must resign as indenture trustee, if a default occurs upon the indenture securities. Thus, the Applicant maintains that this requirement and other provisions of the Trust Indenture Act are designed to protect bondholders from conflicts of interest to which an indenture trustee may be subject.

19. According to the Applicant, the role of the underwriter in a structured financing for a series of asset backed securities involves, among other things, assisting the sponsor or originator of the applicable receivables or other assets in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to plan investors in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter of the securities has no further role in the transaction (unless it is a continuous offering, such as for a commercial paper conduit).[24] In addition, the trustee has no opportunity to take or not take action, or to use information in ways that might advantage the underwriter to the detriment of plan investors. The Applicant states that an underwriter, in order to protect its reputation, clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter.

20. The Applicant represents that, in some offerings of asset backed securities or other securities, the trustee's fee is a fixed dollar amount that does not depend on the size of the offering. In such cases, the Asset Manager has no conflict of interest, because it cannot increase the trustee's fee by causing plans to participate in the offering. Where the trustee's fee is a portion of the principal amount of outstanding securities to be offered, the Asset Manager could conceivably cause plans to participate to affect the size of the offering and thus the trustee's fee.[25]

[22] The Applicant represents that the amount of discretion possessed by an indenture trustee will depend on the terms of the particular indenture, and factual issues, such as whether a default has occurred.

[23] In connection with the applicability of the Trust Indenture Act to trust debt offerings, the Applicant further represents that market practice with respect to certain types of non-registered securities offerings is to structure the offering to include both an indenture and an indenture trustee, despite the fact that such offerings are not required to use the indenture structure mandated by the Trust Indenture Act. In such instances, the Applicant represents, it is typically the case that the various requirements of the Trust Indenture Act (including the default provision referenced in Representation 18) will be incorporated (either expressly or by reference) in the trust indenture.

[24] The Applicant further represents that, in a limited number of situations where the offering of the security is ongoing or continuous, the underwriter will have a continuing role in selling the additional securities that are sold over time.

[25] The Applicant represents that this theoretical conflict is directly addressed by the protective conditions in the so-called ''Underwriter Exemptions.'' In this regard, the Applicant states that the proposed exemption, if granted, will apply only to firm commitment underwriters, where, by

Continued

However, in virtually all circumstances, the size of the offering is determined before any sales to plans are discussed, so that the risk of this situation occurring is very small. The Applicant further represents that the protective conditions of the requested exemption (*e.g.,* the requirement of advance approval by an Independent Fiduciary and reporting of the basis for the trustee's fee) render this possibility remote.

In this regard, the Applicant states that the conditions of the proposed exemption, which are based on the prior individual exemptions granted by the Department for AUT, impose adequate safeguards as well for ATT in order to prevent possible abuse. First, there are significant limitations on the quantity of securities that an Asset Manager may acquire for Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds), meaning not only that there will be significant limitations on the ability of the Asset Manager to affect the fees of its affiliate, but also insuring that significant numbers of independent investors also decided that the securities were an appropriate purchase. Second, the Asset Manager must obtain the consent of an independent fiduciary to engage in these transactions. Third, regular reporting of the subject transactions to an Independent Fiduciary will take place. Fourth, an Independent Fiduciary must be provided information on how securities purchased actually performed. Finally, the consent of the Independent Fiduciary may be revoked if, for example, it suspects that purchases by the Asset Manager have been motivated by a desire to generate fees for its affiliate.

*ASTs*

21. With regard to ASTs, the Applicant has requested relief for the purchase by a Client Plan (and by Client Plans and In-House Plans invested in Pooled Funds, as applicable) of CMBS issued by a trust where an Affiliated Servicer originates or services the trust, including servicing one or more commercial mortgage loans in such trust. Specifically, the Applicant asserts that the timing of events relating to the formation of the trust and the marketing of the securities is such that a purchaser (a Client Plan and/or Client Plans and In-House Plans invested in Pooled Funds, as applicable) could not provide additional income or otherwise confer any additional benefit on WFC or the Affiliated Servicer for the origination or servicing of the loan. The Applicant observes that ASTs can arise in situations that happen to need an AUT exemption (*i.e.,* where the Asset Manager is related to a managing underwriter or member of the syndicate and to a servicer of the trust that issues the CMBS), or where the Asset Manager is only related to a servicer of the trust that issued the CMBS, including servicing one or more commercial mortgage loans in such trust.

*Registered Securities Offerings*

22. The Applicant represents that Affiliated Broker-Dealers currently manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate purchases the securities from the issuer and then resells the securities to investors.

23. The Applicant represents that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced in marketed deals, through ''building a book'' (*i.e.,* taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is generally no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting obligations.

24. It is represented that if more than one underwriter is involved in a selling syndicate, the lead manager and the underwriters enter into an ''Agreement among Underwriters'' in the form designated by one of the lead managers selected by the issuer. Most lead managers have a standing form of agreement. This master agreement is then commonly supplemented for the particular deal by sending an ''invitation wire'' or ''terms telex'' that sets forth particular terms to the other underwriters.

25. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase all of the underwritten securities from the issuer in accordance with their respective commitments, if any securities are not purchased. This obligation is met by using the proceeds received from investors purchasing securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold or an investor defaults on its obligation.

26. The Applicant represents that, generally, it is unlikely that in marketed deals that all offered securities will not be sold. In marketed deals, the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters promptly begin contacting the investors to confirm the sales, at first by oral communication and then by written confirmation. Sales may be finalized within hours and sometimes minutes, but in any event prior to the opening of the market for trading the next day. In registered transactions, the underwriters have a strong interest in completing the sales as soon as possible because, until they ''break syndicate,'' they cannot recommence normal trading activity, which includes buying and selling the securities for their customers or own account.

27. The Applicant represents that the process of ''building a book'' or soliciting indications of interest occurs in a registered equity offering, after a registration statement is filed with the SEC. While it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, such investors indicate

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definition, the entire issue of Securities will be purchased, either by the public or the underwriters. Thus, where the trustee's fee would be a fixed percentage of the total dollar amount of the Securities issued in the offering, the amount of the trustee's fee would be, in fact, a fixed dollar amount that would be known to plan investors as part of disclosures made relating to the offering (*e.g.,* the prospectus or private placement memorandum). In this connection the Department notes that plan fiduciaries would have a duty to adequately review, and effectively monitor, all fees paid to service providers, including those paid to parties affiliated with an Asset Manager.

whether they have an interest in buying, and the lead managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. Although investors cannot be legally bound to buy the securities until the registration statement is effective, investors generally follow through on their indications of interest.

28. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicant represents that the issuer of the securities, after consultation with the lead manager, will set the price of the securities upon being declared effective by the SEC. After the registration statement has been declared effective by the SEC and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if the offering is an initial public offering of an equity security, then the underwriters may not sell the securities to (among others) any person that is a broker-dealer, an associated person of a broker-dealer, a portfolio manager, or an owner of a broker-dealer. Additionally, underwriters may not withhold for their own account any initial public offering of an equity security.

29. The Applicant represents that debt offerings and certain equity offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings are conducted in the same manner as marketed equity offerings with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding, rather than negotiating the price with the underwriting syndicate, are often performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (Rule 415) (17 CFR 230.415).[26]

30. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

31. It is represented that because of market forces and the requirements of Rule 415, the competitive bid process is generally, though not exclusively, available only to issuers who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

32. Occasionally, underwriters ''buy'' the entire deal off of a ''shelf registration'' or in a Rule 144A offering before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the securities.

*Information Barriers*

33. The Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against ''insider trading'' (*i.e.,* trading on information not available to the general public that may affect the market price of the securities.) Diversified financial services firms must be concerned about insider trading problems because one part of the firm (*e.g.,* the mergers and acquisitions group) could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm (*e.g.,* the investment management group) could be trading in the securities of that issuer for its clients.

34. Further, the applicant represents business separation policies and procedures of WFC and its affiliates are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients.

35. The Applicant represents that major clients of WFC and its affiliates include investment management firms that are competitors of the Asset Manager. Similarly, an Asset Manager deals on a regular basis with broker-dealers that compete with Affiliated Broker-Dealers. If special consideration was shown to an Affiliated Broker-Dealer, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, it is represented that a goal of the Applicant's business separation policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager in order to prevent any adverse impact on client and business relationships.

*Underwriting Compensation*

36. The Applicant represents that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

37. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

38. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

39. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent (60%) or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However,

[26] The Applicant maintains that Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

40. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation'' or an ''auto pot split'' attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. However, for securities covered by this proposed exemption, an Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by purchases of securities by an Asset Manager on behalf of its Client Plans (or on behalf of Client Plan and In-House Plan in Pooled Funds, if applicable).

41. The second category of allocated securities is ''private client'' or ''retail,'' which are the securities retained by the underwriters for sale to their customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

42. The Applicant represents that the inability of an Affiliated Broker-Dealer to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by an Asset Manager on behalf of Client Plans (or on behalf of Client Plans and In-House Plans invested in Pooled Funds, if applicable), removes the primary economic incentive for an Asset Manager to make purchases that are not in the interests of such Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, if applicable) from offerings for which an Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

*Rule 144A Securities*

43. The Applicant represents that a number of the offerings of Rule 144A Securities in which an Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, as applicable). Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, if applicable) in offerings in which an Affiliated Broker-Dealer participates.

44. The Applicant states that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for re-sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

45. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities and is the reason that Rule 144A transactions are generally limited to debt securities.

46. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of which is the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

47. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These provisions include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

48. The Applicant represents that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

49. The Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. They may be ''negotiated'' offerings, ''competitive bid'' offerings or ''bought deals.'' One difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is substantially similar, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.,* no general advertising). In addition, contracts for sale may be entered into with investors and securities may be priced before a selling agreement is executed (and this is typically the case with respect to sales of asset backed securities). The role of Affiliated Broker-Dealer in these offerings is typically that of a lead or co-manager. Further, generally, there are no non-manager members in a Rule 144A selling syndicate. The Applicant nonetheless requests that the relief offered by the proposed exemption extend to authorization for situations where an Affiliated Broker-Dealer acts as manager or as a member.

50. The proposed exemption is administratively feasible, because the exemption involves easily identified transactions which will require limited ongoing monitoring by the Department.

In this regard, compliance with the terms and conditions of the proposed exemption will be verifiable and subject to audit.

51. The Applicant represents that the proposed exemption is in the interest of participants and beneficiaries of Client Plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will enable the Asset Manager to cause Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) to participate in desirable investment opportunities by purchasing Securities under circumstances described in Section I, where such purchases are determined to be appropriate for and in the best interest of such Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable).

52. The Applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of affected Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable). In this regard, the notification provisions and other requirements in the proposed exemption are similar to the conditions, including consent and the imposition of volume and quality restrictions, set forth in other exemptions published by the Department in similar circumstances.

53. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) will gain access to desirable investment opportunities;

(b) In each offering, an Asset Manager will purchase the Securities for single Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, as applicable) from an underwriter or broker-dealer other than the Asset Manager or an affiliate thereof;

(c) Conditions similar to those found in PTE 75–1, Part III, will restrict the types of Securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of Securities that an Asset Manager may purchase on behalf of single Client Plans (and on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable) will be subject to percentage limitations;

(e) An Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the Securities sold to an Asset Manager on behalf of a single Client Plans (or Client Plans and In-House Plans invested in Pooled Funds, as applicable);

(f) Prior to any purchase of Securities, an Asset Manager will make the required disclosures to an Independent Fiduciary of each single Client Plan (and the fiduciary of each Client Plan invested in Pooled Funds, as applicable) and obtain authorization to engage in the covered transactions in accordance with the procedures set forth in this proposed exemption;

(g) The Asset Manager will provide regular reporting to the Independent Fiduciary of each single Client Plan (and the fiduciary of each Client Plan and In-House Plan invested in Pooled Funds, as applicable) with respect to all Securities purchased in accordance with the procedures set forth in this proposed exemption;

(h) Each single Client Plan (and each Client Plan and In-House Plan invested in Pooled Funds) will be subject to net asset requirements, with certain exceptions for Client Plans and In-House Plans invested in Pooled Funds; and

(i) An Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84–14.

**Notice to Interested Persons**

WFC represents that the class of persons interested in this proposed exemption is comprised of the relevant Independent Fiduciary of each existing single Client Plan (and the Independent Fiduciary of each existing Client Plan and fiduciary of each existing In-House Plan the assets of which are invested in Pooled Funds) of the Asset Manager(s) that intend(s) to rely upon the proposed exemption, if granted. In this regard, it is represented that WFC shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** to all such interested persons via first class mail to each such interested person's most recent address maintained in the records of the administrator of the relevant Client Plans and In-House Plans. Such notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required pursuant to 29 CFR 2570.43(a)(2) which will advise all such interested persons of their right to comment and to request a hearing. WFC will provide such notification to all such interested persons within fifteen (15) days of the date of publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department from such interested persons no later than 45 days after publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund (the Plan) Cape Girardeau, Missouri**

[Application No. L–11775]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the sale by the Plan of a parcel of improved real property (the Property) to the Craftsman Independent Union Local #1 (the Union), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The sales price for the Property is the greater of either: (1) $250,000; or (2) the fair market value of the Property as established by qualified independent appraisers (the Appraisers) in an appraisal of the Property that is updated on the date of the sale;

(c) RMI, as the qualified independent fiduciary (the I/F), reviews and approves the methodology used by the Appraisers to ensure that such methodology is properly applied in determining the fair market value of the Property, and determines that it is prudent to go forward with the sale;

(d) RMI represents the interests of the Plan at the time the sale is consummated;

(e) The Plan pays no real estate fees or commissions in connection with the sale;

(f) The Union reimburses the Plan for 50% of the costs of the exemption application and pays all recording charges, attorney's fees, title insurance premiums, and any transfer fees or taxes; and

(g) The terms of the sale are no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's length transaction with an unrelated party.

**Summary of Facts and Representations**

1. RMI (or the Applicant), which is located in Brentwood, Tennessee, acts as and provides support services to court-appointed independent fiduciaries or court-appointed receivers of: Federally-regulated pension plans, and health and welfare benefit funds; state regulated insurance companies; health maintenance organizations and workers compensation trusts; state regulated trust companies; state regulated finance companies; and securities companies. On June 20, 2011, the United States District Court for the Eastern District of Missouri (the Court) appointed RMI to serve as the I/F of the Plan.

2. The Union is located in Cape Girardeau, Missouri. The Union represents certain workers in the construction and skilled trades industries, generally in Missouri, Illinois, Tennessee, and Arkansas. Bilfinger Industrial Services Inc. (Bilfinger), which is headquartered in Ballwin, Missouri, is the Union's sole contributing employer. Bilfinger provides construction and engineering services to five primary markets: Consumer Products, Pulp and Paper, Chemical and Petrochemical, Food and Beverage, and Power, Energy and Utilities.

3. Members of the Union are eligible to participate in the Plan. The Plan is a self-funded health plan that provides health benefits to the eligible employees of contributing employers pursuant to the employers' collective bargaining agreements with the Union. The Plan began its operations in 1984 in Missouri and presently has offices in Cape Girardeau, Missouri. As of May 31, 2014, the Plan covered 57 participants and 65 beneficiaries. Also, as of May 31, 2014, the Plan had total net assets of $2,074,545.39.

The Plan does not currently have any trustees. As explained in Representation 6, the Plan trustees were removed in 2011 by judicial order. RMI, as independent fiduciary of the Plan, is authorized to exercise full authority and control over the management and disposition of the Plan's assets.

4. In 1987, the Plan purchased the Property, located at 2709 Bloomfield Road in Cape Girardeau, Missouri, from Marshall Maxwell and Marion Maxwell, unrelated third parties, for a purchase price of $76,000. The Plan's former trustees made the original decision to purchase the Property as a long-term growth investment for the Plan. The Property consists of a 2,000 square foot office building with a 2,000 square foot full basement, and 11,600 square feet of concrete and asphalt paved driveways and parking spaces. The Applicant represents that no parties in interest with respect to the Plan own or lease any property adjacent to the Property.

5. On May 21, 1999, the Plan began leasing office space in the Property to the Union for a monthly rental charge of $775. Also on this date, the Craftsman International Union (the International Union)[27] began leasing office space in the Property from the Plan for a monthly rental charge of $355. The Union currently pays the Plan $900 per month under its amended lease, and the International Union still pays the Plan $355 per month under its lease. A total of 3,000 square feet of leased office space is occupied by these tenants. The Plan uses the remainder of the Property for its own office space. The Plan trustees, some of whom were officers of both Unions, approved the specific terms of each lease. Both leases contain automatic renewal provisions.[28]

[27] The Applicant represents that officers and members of the International Union are not eligible to participate in the Plan. However, it is possible for an individual to be a member or an officer of both the Union and the International Union, and that such individual could become eligible for coverage under the Plan by reason of his or her status with the Union. Therefore, the International Union would be considered a party in interest with respect to the Plan.

[28] According to the Applicant, the leases have always complied with the terms and conditions of PTE 76–1 (41 FR 12740, March 26, 1976, as corrected at 41 FR 16620 (April 20, 1976)), and PTE 77–10 (42 FR 33918, July 1, 1977). Part C of PTE 76–1 provides exemptive relief from the prohibited transaction provisions of sections 406(a) and 407(a) of the Act for the leasing of office space, or the provision of administrative services, or the sale or leasing of goods by a multiple employer plan to a participating employee organization, participating employer or another multiple employer plan. PTE 77–10, which complements PTE 76–1, provides exemptive relief from the prohibited transaction provisions of section 406(b)(2) of the Act with respect to the sharing of office space, administrative services or goods, or the leasing of office space, or the provision of administrative services or the sale or leasing of goods.

Notwithstanding the Applicant's assertion that the past and continued leasing arrangements of the Property by the Plan and the Union and the Plan and the International Union are covered by PTEs 76–1 and 77–10, the Department notes that such leasing has resulted in violations of section 406(b)(1) of the Act because some of the Plan trustees are officers of both Unions. PTEs 76–1 and 77–10 do not cover such violations, however, pursuant to the Consent Judgment, described in Representation 6, the Department, the Plan, the Union, the International Union, and other parties expressly agreed to waive any and all claims of any nature that each may have against the other.

6. In 2011, William Kitchen, Jerry Dewrock and Terrance Kelley were removed as trustees of the Plan by a judicial order. As stated above, on June 20, 2011, the Court appointed RMI to serve as the independent fiduciary of the Plan. According to the Consent Judgment issued by the Court, RMI is authorized to exercise full authority and control with respect to the management or disposition of the assets of the Plan. Pursuant to the Consent Judgment, RMI also has the authority to liquidate Plan assets, effectuate the termination of the Plan, identify all legitimate claimants of the Plan and pay the amount of their claims, distribute the Plan's assets for the benefit of eligible participants and to pay service providers. The principal individuals responsible for the actions of RMI are Ms. Jeanne Barnes Bryant and Mr. Robert E. Moore, Jr.

7. Aside from paying the $76,000 purchase price for the Property, excluding interest payments made under the loan from the Cape County Bank, the Plan has incurred certain holding costs of approximately $173,674.76, since it has owned the Property, through April 1, 2014. These costs include property taxes ($25,636.47), utilities ($71,535.59), insurance ($25,037.27), property maintenance expenses ($23,020.29), building repairs ($16,885.84), and labor repairs ($11,559.30). During that same time period, the Applicant represents that the Plan has received rents totaling $246,350.00.

The Applicant represents that the above expense amounts are gross expenses (*i.e.,* the amounts attributable to the Plan's usage of the Property are included in the above expenses). If the Plan's prorated share of the expenses (25% or $43,418.59) is subtracted from the above expenses ($173,674.76), the Plan's expenses are $130,256.17. Thus, the Plan's estimated acquisition and holding costs associated with the Property are $206,256.17 ($76,000 + $130,256.17). Because the Plan earned rental income totaling $246,350, it has received a projected net profit of $40,093.83 ($246,350 − $206,256.17) as of April 2014.

8. The Plan now seeks to sell the Property. In this regard, RMI believes that the Property's value has plateaued, and that it would be prudent for the Plan to dispose of illiquid assets such as the Property. The Applicant represents that the most expeditious way to sell the Property is to offer it to the Union, given the slow real estate market conditions in

Cape Girardeau, Missouri. The Applicant further maintains that selling the Property to an unrelated third party might result in the Plan having to relocate its offices, which would result in additional costs. Therefore, the Applicant requests an administrative exemption from the Department with respect to the proposed sale.[29]

9. The proposed sale violates section 406(a)(1)(A) and (D) of the Act. In this regard, section 406(a)(1)(A) and (D) of the Act provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or transfer to, or use by or for the benefit of a party in interest of any assets of the plan. The term ''party in interest'' is defined under section 3(14)(D) of the Act to include, among other things, an employee organization any of whose employees or members are covered by such plan, such as the Union.

10. In connection with the sale, the Union will pay the Plan the greater of $250,000 or the fair market value of the Property, as determined by the Appraisers (see Representations 11–13) in an appraisal that is updated at closing. The consideration will be paid in cash. Thus, the sales price for the Property will represent approximately 12% of the Plan's assets. The existing lease between the Plan and the Union will expire by operation of law once the sale is consummated.[30]

Both the Union and the Plan will be required to pay 50% of the escrow agent's fees and 50% of the costs of preparing and obtaining an individual prohibited transaction exemption from the Department for the proposed transaction. However, the Union will reimburse the Plan for 50% of the Plan's costs in preparing and obtaining an exemption. The Union will also be required to pay all recording charges, attorney fees, title insurance premiums, and any transfer fees or taxes. Finally, the Plan will pay all of RMI's fees.

11. RMI retained Mr. John M. Karnes and Ms. Holly L. Schneider of Dockins Valuation Company (DVC) to serve as the Appraisers and, in such capacity, to prepare the appraisal of the Property. The Appraisers are both Certified General Real Estate Appraisers in Missouri. The Appraisers' gross revenues received from parties in interest with respect to the Plan, including the appraisal report, represent less than 1% of their 2014 gross revenues.

12. In an appraisal report (the Appraisal Report) dated August 11, 2014, the Appraisers describe the Property as an irregularly-shaped site having frontage of 163.24 feet along Bloomfield Road and containing approximately 0.80 acres. The Appraisers further explain that the site is improved with a 2,000 square foot brick office building with a full basement of 2,000 square feet and approximately 11,600 square feet of concrete and asphalt paved driveways and parking spaces.

13. According to the Appraisers, the Cost Approach to valuation is a good indicator of value if the property being appraised is new or relatively new and the improvements represent the highest and best use of the land. However, in this appraisal, the Appraisers noted a sizable amount of depreciation. For this reason, the Cost Approach value was not developed for the Property.

The Appraisers also considered the Income Approach in their valuation of the Property. The income stream, according to the Appraisers, is often the primary decision-making tool for investment decisions involving income-producing property, such as the Property. Thus, it is the Appraisers' opinion that the Income Approach is a strong indicator of value of the Property. Using this approach, the Appraisers placed the fair market value of the Property at $240,000.

Finally, the Appraisers considered the Sales Comparison Approach in their valuation of the Property. According to the Appraisers, this approach is based upon a comparison between the subject Property and similar properties, which have sold. The Appraisers state that sales of similar properties within the subject's market area were available for comparison with a reasonable degree of comparability to subject. Thus, the Sales Comparison Approach was also considered a strong indicator of value in this appraisal to the Appraisers. Under this approach, the Appraisers placed the fair market value of the Property at $265,000.

In the Appraisers' opinion, the value of the subject Property lay somewhere between the Income Approach and the Sales Comparison Approach. Therefore, based on their analysis and conclusions as to the market value, the Appraisers placed the fair market value of the Property, in fee simple, at $250,000 as of July 7, 2014.

14. RMI represents that it has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the proposed transaction in accordance with the fiduciary duties and responsibilities prescribed by the Act. RMI further represents that it has not, and does not, expect to receive any revenues from any party in interest of the Plan for the current or immediately prior federal income tax year. RMI also represents that it has no relationship with any other party in interest with respect to the Plan.

As the Plan's independent fiduciary, RMI will review and approve the methodology used by the Appraisers, ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go forward with the proposed transaction. In addition, RMI will represent the interests of the Plan at the time the proposed transaction is consummated.

15. RMI represents that the exemption request is administratively feasible because the proposed transaction will be a one-time transaction that will alleviate the administrative burdens that come with the annual valuation and holding of an illiquid asset. RMI also represents that the requested exemption is in the interest of Plan participants and beneficiaries because the sale of the Property will enable the Plan to have more liquid assets and diversify its reserve investments. Further, RMI states that the exemption request is protective of the rights of the Plan's participants and beneficiaries because the proposed transaction will enhance the Plan's ability to continue to provide benefits to its members and their beneficiaries. Finally, RMI notes that the Union will reimburse the Plan for 50% of the costs associated with this exemption application and the proposed transaction.

16. RMI asserts that the Plan's need for liquidity is real and immediate. If the proposed transaction is not approved, the Plan will continue to have the burden of paying real estate taxes and utility and other expenses to maintain the Property, including obtaining and paying for an annual valuation of the Property for financial reporting purposes. Finally, RMI represents that that Plan will be forced

[29] In conjunction with the sale, the Plan proposes to lease office space in the Property from the Union. The Applicant states that the leaseback will comply with section 408(b)(2) of the Act, and the regulations that have been promulgated thereunder. Section 408(b)(2) of the Act provides statutory exemptive relief from section 406(a) of the Act for contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid. The Department expresses no opinion herein on whether the requirements of section 408(b)(2) of the Act will be satisfied with respect to the leasing of the Property by the Union to the Plan.

[30] Similarly, the existing lease between the Plan and the International Union will terminate by operation of law.

to continue to hold a relatively illiquid investment, with no assurance that it can ever be sold to an unrelated third party.

17. In summary, RMI represents that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) The sales price for the Property will be the greater of either: (1) $250,000; or (2) the fair market value of the Property as established by the Appraisers in an appraisal of the Property that is updated on the date of the sale;

(c) RMI will review and approve the methodology used by the Appraisers to ensure that such methodology is properly applied in determining the fair market value of the Property, and will determine that it is prudent to go forward with the sale;

(d) RMI will represent the interests of the Plan at the time the sale is consummated;

(e) The Plan will pay no real estate fees or commissions in connection with the sale;

(f) The Union will reimburse the Plan for 50% of the costs of the exemption application and pay all recording charges, attorney's fees, title insurance premiums, and any transfer fees or taxes; and

(g) The terms of the sale will be no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's length transaction with an unrelated party.

**Notice to Interested Persons**

Notice of the proposed exemption will be given to interested persons within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail, with postage prepaid. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

**Robert W. Baird & Co. Incorporated Located in: Milwaukee, Wisconsin**

[Application No. D–11782]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[31]

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to:

(a) The acquisition, sale or exchange by an Account of shares of an open-end investment company (the Fund) registered under the Investment Company Act of 1940 (the 1940 Act), the investment adviser for which is also a fiduciary with respect to the Account (or an affiliate of such fiduciary) (hereinafter, Robert W. Baird and all its affiliates will be referred to as Investment Adviser),

(b) the in-kind redemptions of shares or acquisitions of shares of the Fund in exchange for Account assets transferred in-kind from an Account,

(c) the receipt of fees for acting as an investment adviser for such Funds, in connection with the investment by the Accounts in shares of the Funds, and

(d) the receipt of fees for providing Secondary Services to the Funds in connection with the investment by the Accounts in shares of the Funds, provided that the applicable conditions set forth in Sections II and III are met.

Section II: General Conditions

(a) The Account does not pay a sales commission or other similar fees to the Investment Adviser or its affiliates in connection with such acquisition, sale, or exchange;

(b) The Account does not pay a purchase, redemption or similar fee to the Investment Adviser in connection with the acquisition of shares by the Account or the sale by the Account to the Fund of such shares.

(c) The Account may pay a purchase or redemption fee to the Fund in connection with an acquisition or sale of shares by the Account, that is fully disclosed in the Fund's prospectus in effect at all times. Furthermore, any purchase fee paid by the Account to the Fund (1) is intended to approximate the difference between ''bid'' and ''asked'' prices on the fixed income securities that the Fund will purchase using the proceeds from the sale of Fund shares to the Account; and (2) is not charged on any assets transferred in-kind to the Fund;

(d) The Account does not pay an investment management, investment advisory or similar fee with respect to Account assets invested in Fund shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the Fund under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act. This condition also does not preclude payment of an investment advisory fee by the Account under the following circumstances:

(1) For Accounts billed in arrears, an investment advisory fee may be paid based on total Account assets from which a credit has been subtracted representing the Account's pro rata share of investment advisory fees paid by the Fund;

(2) For Accounts billed in advance, the Investment Adviser must employ a reasonably designed method to ensure that the amount of the prepaid fee that constitutes the fee with respect to the Account assets invested in the Fund shares:

(A) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, and

(B) Is returned to the Account no later than during the immediately following fee period, or

(C) Is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph, a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) An investment advisory fee may be paid by an Account based on the total

[31] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

assets of the Account, if the Account will receive a cash rebate of such Account's proportionate share of all fees charged to the Fund by the Investment Adviser for investment management, investment advisory or similar services no later than one business day after the receipt of such fees by the Investment Adviser;

(e) The crediting, offsetting or rebating of any fees in Section II(d) is audited at least annually by the Investment Adviser through a system of internal controls to verify the accuracy of the fee mechanism adopted by the Investment Adviser under Section II(d). Instances of non-compliance must be corrected and identified, in writing, in a separate disclosure to affected Accounts within 30 days of such audit;

(f) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and for the provision of any services to a Fund in which an Account may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act;

(g) The Investment Adviser and its affiliates do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this exemption, if granted.

(h) In advance of any initial investment by a Separately Managed Account in a Fund or by a new Plan investor in a Pooled Fund, a Second Fiduciary with respect to that Plan, who is independent of and unrelated to the Investment Adviser or any affiliate thereof, receives in written or in electronic form, full and detailed written disclosure of information concerning such Fund(s). The disclosure described in this Section II(h) includes, but is not limited to:

(1) A current prospectus issued by each of the Fund(s);

(2) A statement describing the fees for investment advisory or similar services, any Secondary Services, and all other fees to be charged to or paid by the Account and by the Fund(s), including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Investment Adviser may consider such investment to be appropriate for the Account;

(4) A statement describing whether there are any limitations applicable to the Investment Adviser with respect to which Account assets may be invested in shares of the Fund(s) and, if so, the nature of such limitations; and

(5) A copy of this proposed exemption and the final exemption, if granted, and any other reasonably available information regarding the transaction described herein that the Second Fiduciary requests, provided that the notice of proposed exemption and notice of grant of exemption may be given within 15 calendar days after the date that the final exemption is published in the **Federal Register**, in the event that the initial investment in a Fund by a Separately Managed Account or by a new Plan investor in a Pooled Fund has occurred prior to such date.

(i) After receipt and consideration of the information referenced in Section II(h), the Second Fiduciary of the Separately Managed Account or the new Plan investing in a Pooled Fund approves in writing the investment of Plan assets in each particular Fund and the fees to be paid by a Fund to the Investment Adviser.

(j)(1) In the case of existing Plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, if granted, unless the Second Fiduciary receives in written or in electronic form, the information described in subparagraph (2) of this Section II(j) not less than 30 days prior to the Investment Adviser's engaging in the covered transactions on behalf of the Pooled Fund pursuant to this exemption, if granted;

(2) The information referred to in subparagraph (1) of this Section II(j) includes:

(A) A notice of the Pooled Fund's intent to engage in the covered transactions described herein, and a copy of the notice of proposed exemption, and a copy of the final exemption, if granted, provided that the notice of the proposed exemption and notice of grant of exemption may be given within 15 calendar days after the date that the final exemption is granted and published in the **Federal Register**, in the event that the Investment Advisor engaged in the covered transactions on behalf of the Pooled Fund prior to such date.

(B) Any other reasonably available information regarding the covered transactions that a Second Fiduciary requests, and

(C) A ''Termination Form,'' within the meaning of Section II(k). Approval to engage in any covered transactions pursuant to this exemption may be presumed notwithstanding that the Investment Adviser does not receive any response from a Second Fiduciary.

(k) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Investment Adviser will be subject to an annual reauthorization wherein any such prior authorization shall be terminable at will by an Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice of termination. A form expressly providing an election to terminate the authorization (the Termination Form) with instructions on the use of the form will be supplied to the Second Fiduciary no less than annually, in written or in electronic form. The instructions for the Termination Form will include the following information:

(1) The authorization is terminable at will by the Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice from the Second Fiduciary. Such termination will be effected by the Investment Adviser by selling the shares of the Fund held by the affected Account within one business day following receipt by the Investment Adviser of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Investment Adviser, the sale cannot be executed within one business day, the Investment Adviser shall have one additional business day to complete such sale; and provided further that, where a Plan's interest in a Pooled Fund cannot be sold within this timeframe, the Plan's interest will be sold as soon as administratively practicable;

(2) Failure of the Second Fiduciary to return the Termination Form or provide any other written notice of termination will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account; and

(3) The identity of Baird, the asset management affiliate of Baird, the affiliated investment advisers, and the address of the asset management affiliate of Baird. The instructions will state that the exemption, if granted, is not available, unless the fiduciary of each Plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Investment Adviser. The instructions will also state that the fiduciary of each such Plan must advise the asset management affiliate of Baird, in writing, if it is not a ''Second Fiduciary,'' as that term is defined, below, in Section IV(h).

However, if the Termination Form has been provided to the Second Fiduciary pursuant to this Section II(k) or Sections II(j), (l), or (m), the Termination Form need not be provided again for an annual reauthorization pursuant to this paragraph unless at least six months has elapsed since the form was previously provided.

(l) In situations where the Fund-level fee is neither rebated nor credited

against the Account-level fee, the Second Fiduciary of each Account invested in a particular Fund will receive full disclosure, in written or in electronic form, in a statement, which is separate from the Fund prospectus, of any proposed increases in the rates of fees for investment advisory or similar services, and any Secondary Services, at least 30 days prior to the implementation of such increase in fees, accompanied by a Termination Form. In situations where the Fund-level fee is rebated or credited against the Account-level fee, the Second Fiduciary will receive full disclosure, in a Fund prospectus or otherwise, in the same time and manner set forth above, of any increases in the rates of fees to be charged by the Investment Adviser to the Fund for investment advisory services. Failure to return the Termination Form will be deemed an approval of the increase and will result in the continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account.

(m) In the event that the Investment Adviser provides an additional Secondary Service to a Fund for which a fee is charged or there is an increase in the rate of any fees paid by the Funds to the Investment Adviser for any Secondary Services resulting from either an increase in the rate of such fee or from a decrease in the number or kind of services provided by the Investment Adviser for such fees over an existing rate for such Secondary Service in connection with a previously authorized Secondary Service, the Second Fiduciary will receive notice, at least 30 days in advance of the implementation of such additional service or fee increase, in written or in electronic form, explaining the nature and the amount of such services or of the effective increase in fees of the affected Fund. Such notice shall be accompanied by a Termination Form. Failure to return the Termination Form will be deemed an approval of the Secondary Service and will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of the Account.

(n) On an annual basis, the Second Fiduciary of an Account investing in a Fund, will receive, in written or in electronic form:

(1) A copy of the current prospectus for the Fund and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Fund, which contains a description of all fees paid by the Fund to the Investment Adviser;

(2) A copy of the annual financial disclosure report of the Fund in which such Account is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor of the Fund, within 60 days of the preparation of the report; and

(3) With respect to each of the Funds in which an Account invests, in the event such Fund places brokerage transactions with the Investment Adviser, the Investment Adviser will provide the Second Fiduciary of such Account, in the same manner described above, at least annually with a statement specifying the following (and responses to oral or written inquiries of the Second Fiduciary as they arise):

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Investment Adviser by such Fund,

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Investment Adviser,

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Investment Adviser by each portfolio of a Fund, and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Investment Adviser.

(o) In all instances in which the Investment Adviser provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR 2520.104b–1(c).

(p) No Separately Managed Account holds assets of a Plan sponsored by the Investment Adviser or an affiliate. If a Pooled Fund holds assets of a Plan or Plans sponsored by the Investment Adviser or an affiliate, the total assets of all such Plans shall not exceed 15% of the total assets of such Pooled Fund.

(q) All of the Accounts' other dealings with the Funds, the Investment Adviser, or any person affiliated thereto, are on terms that are no less favorable to the Account than such dealings are with other shareholders of the Funds.

(r) Baird and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than Baird, and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(s); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Baird or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(r) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC, or

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary, or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities, or

(D) Any participant or beneficiary of a Plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(s)(1)(B)–(D) shall be authorized to examine trade secrets of the Investment Adviser, or commercial or financial information which is privileged or confidential; and

(3) Should the Investment Adviser refuse to disclose information on the basis that such information is exempt from disclosure, the Investment Adviser shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III: Additional Conditions for In-Kind Transactions

(a) In-kind transactions with an Account shall only involve: (1) Publically-traded securities for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule

2a–4 of the 1940 Act; (2) securities that are deemed to be liquid and that are valued based upon prices obtained from a reliable well-established third-party pricing service that is independent of the Investment Adviser (*e.g.,* Interactive Data Pricing and Reference Data, LLC) pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable Securities and Exchange Commission (SEC) rules, regulations and guidance thereunder (SEC Guidance); and (3) cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals on such securities. Securities for which prices cannot be obtained from a third-party pricing service will not be transferred in-kind. Furthermore, in-kind transfers of securities will not include:

(1) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933, as amended (the 1933 Act), other than securities issued under Rule 144A of the 1933 Act;

(2) Securities issued by entities in countries that (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (B) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(3) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements), that, although liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can be traded only with the counter-party to the transaction to effect a change in beneficial ownership;

(4) Cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements);

(5) Other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(6) Securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer; provided however that the foregoing restrictions shall not apply to securities eligible for resale pursuant to Rule 144A under the 1933 Act, or commercial paper or other short-term instruments issued pursuant to Section 4(2) of the 1933 Act so long as such securities are deemed to be liquid and are valued based upon prices obtained from a reliable, well-established third-party pricing service that is independent of the Investment Adviser pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC Guidance.

(b) Subject to the exceptions described in Section III(a) above, in the case of an in-kind exchange of assets (in-kind redemptions and in-kind transfers of Plan assets) between an Account and a Fund, the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule 2a–4 under the 1940 Act, and the then-existing valuation procedures established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the SEC. In connection with a redemption of Fund shares, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such shares at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(c) The Investment Adviser shall provide the Second Fiduciary with a written confirmation containing information necessary to perform a post-transaction review of any in-kind transaction so that the material aspects of such transaction, including pricing, can be reviewed. Such information must be furnished no later than thirty (30) business days after the completion of the in-kind transaction. In the case of a Pooled Fund, the Investment Adviser can satisfy the requirement with a single aggregate report furnished to the Second Fiduciary containing the required information for each in-kind transaction taking place during a month. This aggregate report must be furnished to the Second Fiduciary no later than thirty (30) business days after the end of that month. The information to be provided pursuant to this Section III(c) shall include:

(1) With respect to securities either transferred or received by an Account in-kind in exchange for Fund shares,

(A) the identity of each security either received by the Account pursuant to the redemption, or transferred to the Fund by the Account, and the related aggregate dollar value of all such securities determined in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Directors or Trustees of the Fund (using sources independent of the Investment Adviser), and

(B) the current market price of each security transferred or received in-kind by the Account as of the date of the in-kind transfer;

(2) With respect to Fund shares either transferred or received by an Account in-kind in exchange for securities,

(A) the number of Fund shares held by the Account immediately before the redemption and the related per share net asset value and the total dollar value of such Fund shares, determined in accordance with Rule 2a–4 under the 1940 Act, using sources independent of the Investment Adviser, or

(B) the number of Fund shares held by the Account immediately after the in-kind transfer and the related per share net asset value of the Fund shares received and the total dollar value of such Fund shares, determined in accordance with Rule 2a–4 under the 1940 Act using sources independent of the Investment Adviser; and

(3) The identity of each pricing service or market-maker consulted in determining the value of the securities.

(d) Prior to the consummation of an in-kind exchange, the Investment Adviser must document in writing and determine that such transaction is fair to the Account and comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and that the in-kind transaction is in the best interests of the Account and the participants and beneficiaries of the participating Plans.

Section IV. Definitions

(a) The term ''Account'' means either a Separately Managed Account or a Pooled Fund in which investments are made by Plans.

(b) An ''affiliate'' of a person includes any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person; any officer of, director of, highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of, or partner in any such person; and any corporation or partnership of which such person is an officer, director, partner or owner, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code).

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' means any open end investment company registered under the 1940 Act.

(e) The term ''Investment Adviser'' means Robert W. Baird or any of its current or future affiliates.

(f) The term ''Plan'' means a plan described in section 3(3) of the Act and a plan described in section 4975(e)(1) of the Code.

(g) The term ''Pooled Fund'' means any commingled fund sponsored, maintained, advised or trusteed by the Investment Adviser, which fund holds Plan assets.

(h) The term ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to the Investment Adviser. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Investment Adviser if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Investment Adviser;

(2) Such fiduciary, or any officer, director, partner, or employee of the fiduciary is an officer, director, partner, employee or affiliate of the Investment Adviser; or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption. If an officer, director, partner, affiliate or employee of the Investment Adviser is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment adviser, (B) the approval for the acquisition, sale, holding, and/or exchange of Fund shares by such Plan, and (C) the approval of any increase in fees charged to or paid by the Plan in connection with any of the transactions described herein, then subparagraph (2) above shall not apply.

(i) The term ''Secondary Service'' means a service other than an investment management, investment advisory or similar service which is provided by the Investment Adviser to the Funds, including but not limited to custodial, accounting, brokerage, administrative or any other similar service.

(j) The term ''Separately Managed Account'' means any Account other than a Pooled Fund, and includes single-employer Plans.

*Effective Date:* If granted, this proposed exemption will be effective as of April 1, 2014.

**Summary of Facts and Representations**

*Background*

1. Robert W. Baird & Co. Incorporated (Baird or the Applicant) is an employee-owned wealth management, capital markets, asset management and private equity firm. Baird is headquartered in Milwaukee, Wisconsin, and has offices in the United States, Europe and Asia. Baird is a registered broker-dealer under the Securities Exchange Act of 1934 (the 1934 Act) and a member of the Financial Industry Regulatory Authority. Baird is also a federally-registered investment advisor. It provides trade execution, custody and other standard brokerage services, as well as investment advice and asset management services, to individual, trust, institutional, corporate and other clients, including pension, profit-sharing and retirement plans and accounts (Plans) described in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and/or section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the Code).

2. Baird represents that it provides investment management services to institutional clients including defined benefit Plans seeking to address the volatility and interest rate sensitivity that have made maintenance of these Plans problematic since the interest rate sensitivity and resulting volatility can significantly affect a Plan's funded status and the sponsoring organization's operating results. According to the Applicant, the strategy Baird utilizes to support these Plans, often called ''liability-driven investing'' or ''LDI,'' seeks to reduce the interest rate sensitivity ''gap'' between a Plan's assets and its pension liabilities, which in turn will reduce the variability of the funded status of the Plan and dampen the swings in the Plan's minimum annual funding requirements. Specifically, Baird's LDI strategy utilizes a separate account structure that invests in long maturity (duration) U.S. dollar-denominated, investment-grade quality bonds that are primarily issued by the U.S. Government or corporate entities.

3. The Applicant represents that all current Plan clients invested in Baird's LDI strategy are mid to large sized Plans able to achieve the necessary portfolio diversification through a separate account structure. According to Baird, a separately managed account is not always the optimum vehicle for smaller defined benefit Plan sponsors who wish to maintain their Plans and implement the LDI strategy. In this regard, the Applicant states that the size of the long-dated corporate bond portion of a small to mid-sized Plan's LDI portfolio does not permit it to obtain optimum diversification and ''round lot'' transaction cost efficiencies through the purchase of individual bonds by such a Plan's separate account. Baird explains that corporate bonds are typically traded in ''round lots'' of $1 million par value or higher and best price execution is achieved at these amounts. Anything smaller is considered an ''odd lot'' which can carry additional premiums when buying and discounts when trying to sell, thus widening the ''bid/ask spread'' for odd lot position sizes and increasing transaction costs. The Applicant notes that a separate account structure is only effective if the client has sufficient assets to achieve proper diversification and advantageous pricing in purchasing round lot positions of long-dated corporate bonds in a separate account. To resolve this issue, Baird intends to establish an open-end mutual fund (the Fund), registered under the Investment Company Act of 1940 (the 1940 Act), which would hold the long-dated investment grade corporate bonds as part of the LDI strategy.

4. The Applicant represents that these smaller Plans would benefit by investing in the Fund, because of efficiencies and economies of scale inherent in a pooled investment vehicle. In this regard, according to Baird, the Fund can readily purchase long-dated corporate bonds in round lots, thus reducing costs, and achieve greater issuer diversification given the larger pool of assets to invest. Investments in U.S. Government bonds and futures would continue to be effected in separate accounts for each Plan and not in the Fund.

At this time, the Applicant represents that it desires to launch one Fund, but states that Baird may create additional Funds in the future with different bond exposures, but still consistent with an LDI strategy, to better meet the needs of certain defined benefit Plans. The Applicant notes, for example, that some Plans may want a higher quality long dated corporate bond strategy, and a potential additional Fund would address this by investing only in A-rated or better bonds.

5. The Applicant notes that, even though LDI strategies have been the focus of discussion for traditional pension plans over the last several years, most small to mid-sized plans have not started implementing their LDI de-risking strategy for various reasons.

According to Baird, one reason they have delayed the implementation has been the lack of customized solutions that can accommodate the smaller asset size of their Plans and still offer adequate corporate bond diversification and attractive pricing of the product. The Applicant suggests that the few smaller Plans that have started implementing LDI strategies have implemented a separate account structure that generates a less-than-adequately diversified corporate bond strategy, coupled with higher-than-average transaction costs because they cannot achieve the round lot efficiencies. Other Plans that have attempted to avoid these issues chose to use whatever pooled vehicle they could find that invested in long maturity bonds, even though the solution wasn't necessarily an LDI-focused strategy. The Applicant contends further that, due to these sub-optimal choices, many Plans have chosen to delay implementing an LDI strategy, and many smaller Plans that have begun such a strategy have a less than optimum diversification of the bonds they hold.

*Purchase Fee*

6. The Applicant states that, in order to avoid adverse economic effects on existing Plan investors in the Fund from the transaction costs of investing the cash investments, the Fund would have a fully disclosed purchase fee paid to the Fund, rather than a redemption fee paid to the Fund. The Applicant represents that the purchase fee is not a commission, trailer or other type of sales charge, and neither the advisor nor its affiliates will receive this fee. Baird explains that, like a redemption fee, the purchase fee is paid directly to the Fund and is intended to protect the existing Plan shareholders in the Fund from the transaction costs incurred when a new Plan invests in the Fund and the Fund is required to purchase additional long-dated corporate bonds.

7. According to Baird, the SEC has stated that ''a purchase fee differs from, and is not considered to be, a front-end sales load because a purchase fee is paid to the fund (not to a broker) and is typically imposed to defray some of the fund's costs associated with the purchase.'' The SEC requires mutual funds that have a purchase fee to disclose that fee in the Fees and Expenses section of the prospectus under a category that is separate from a sales charge or distribution (12b–1) fee.[32]

[32] See the SEC's Web site at *http://www.sec.gov/answers/mffees.htm.*

8. The Applicant represents that purchase fees are helpful because of the transaction costs associated with fixed-income investments. According to the Applicant, when bonds are purchased in a separate account or a mutual fund, the account pays the ask (offered) price to the broker/dealer which represents the price at which the broker/dealer is willing to sell and is higher than the bid price which represents the price at which the broker/dealer is willing to buy the bonds. Baird states further that this ''bid/ask spread'' is the mark-up paid to broker/dealers for trading bonds and represents the transaction costs incurred when bonds are traded. However, according to the Applicant, as is commonly the case with mutual funds, the Fund will value its portfolio of fixed income securities at their closing bid prices each day because those prices more accurately reflect the prices at which the portfolio securities could be sold by the Fund in the ordinary course of business. Therefore, when a Plan invests in the Fund, the Fund will have to use the proceeds to purchase bonds at or near the higher ''ask'' price and immediately at the close of business that day those newly purchased bonds will be valued at the lower ''bid'' price. The Applicant states that this will cause an immediate decline in the value of those securities that will impact the existing Plan shareholders in the Fund through a small reduction in the Fund's net asset value (NAV). Thus, the Applicant represents that the purchase fee is intended to cover the transaction costs incurred by this ''ask price to bid price reversion'' that occurs on all bond purchases.

9. Baird represents that the ask price to bid price reversion is more pronounced for long-dated corporate bonds than for Treasury securities or shorter-term fixed income securities, and long-dated corporate bonds constitute the LDI investment strategy adopted for the Fund by Baird. The purchase fee represents the estimated costs to the current shareholders of the Fund of the likely difference between the prices paid by the Fund for corporate bonds using a Plan's cash investment in the fund and the prices at which those bonds are valued for purposes of calculating the Fund's net asset value. Baird represents that, effectively, by utilizing a purchase fee paid to the Fund, the Plan investing in the Fund is appropriately allocated the transaction costs required to purchase long-dated corporate bonds so that existing shareholders do not bear those costs.

*Request for Exemptive Relief*

10. Baird requests relief from section 406(a)(1)(D) and 406(b) of the Act for its investment managers to cause a Plan's acquisition, sale or exchange of shares of the Fund through a separately managed account or a pooled fund in which Plans could invest (each, an Account), in cash or in kind, including publically traded securities and securities sold in reliance on Rule 144A (Rule 144A Securities) under the Securities Act of 1933 (the 1933 Act), and to receive an advisory fee and certain other fees from the Fund that constitute fees for ''secondary services.''

The Applicant states that section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. Sections 3(14)(A) and (B) of the Act define the term ''party in interest'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan, to the extent such person exercises authority or control with respect to the management or disposition of the assets of a plan. Additionally, under section 3(21)(A)(ii) a person is a fiduciary with respect to a plan to the extent such person renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Furthermore, the Applicant notes that under 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

The Applicant represents that Baird entities may currently serve, and may in the future serve, as investment advisors, investment managers, or other fiduciaries with respect to their client Plans (Client Plans). Accordingly, the Applicant and various other Baird affiliates may currently be, or may in the future be parties in interest with respect to Client Plans which engage in the

proposed transactions. In this regard, the investment of assets of a Client Plan in a Fund advised by Baird, in cash or in kind, including Rule 144A Securities, may raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2), and 406(b)(3) of the Act, and the corresponding provisions of the Code, unless an exemption is available, for the transactions themselves and for the receipt of fees from the Fund.

*Fees*

11. The Applicant represents that investment management fees related to investment in the Fund would be offset, credited or waived at the Account level, as provided for in Class Prohibited Transaction Exemption (PTE) 77–4 [33] and other similar individual exemptions based on PTE 77–4 (the Similar Exemptions).[34] The Applicant represents that the billing systems and processes at Baird have been designed to correctly rebate or credit the advisory fees from the Fund against the Plan level fees or credit the Plan level fees against the advisory fees. According to the Applicant, these processes and systems are part of the billing systems of Baird, and they have been tested over the years to ensure compliance with the conditions for exemptive relief in connection with Baird's reliance on PTE 77–4.

*Disclosure and Consent*

12. The Applicant states that the proposed exemption contains disclosure and consent requirements that are based upon PTE 77–4 and the Similar Exemptions.[35] In this regard, the Applicant represents that often, where Plans are invested in a pooled investment vehicle that invests in the Fund, the rules in PTE 77–4 that relate to disclosure and consent are expensive to administer, impractical, time consuming and burdensome. In particular, Baird represents that it is difficult for many pooled investment vehicles to comply with the written consent requirements described above.

13. Currently, the Applicant represents that there is no intention to create a pooled fund in which Plans could invest which would hold shares of the Fund, but that strategy could be employed in the future if small clients preferred to hold interests in a pooled fund rather than hold the shares of the Fund directly. Consequently, Baird requests that the proposed exemption would require the Applicant to provide all of the disclosures currently required by PTE 77–4 to the fiduciaries of a Plan, prior to investing in the Fund, but rather than require written consent, the proposed exemption would permit ''deemed consent'' or negative consent to occur where Baird receives no response to such disclosures. In addition, the proposed exemption contains disclosure and consent procedures which would apply with respect to existing investors in a pooled fund. In addition, the proposed exemption contains a requirement that a plan fiduciary receive an Annual Termination Form, similar to the requirements contained in Similar Exemptions.

14. The proposed exemption would also allow disclosures to be provided in written or in electronic form. Nevertheless, a Second Fiduciary may request a non-electronic copy of any required disclosure. Moreover, the Applicant states that in all instances in which Baird provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR 2520.104b–1(c) [36] to ensure that the Baird's system of providing electronic disclosures results in actual receipt by the intended recipient.

*In-Kind Exchanges*

15. The Applicant represents that if a Plan currently holds securities which are appropriate for the Fund, and an investment in the Fund is consistent with the investment guidelines of the Plan, acquisition of Fund shares may be made in cash or in kind. According to the Applicant, an asset manager's ability to hold and transfer in-kind securities for its client Plans can be helpful to those accounts because the accounts will gain important investment opportunities and avoid significant transaction costs. When a Plan invests in the Fund in-kind, no purchase fee would be charged.

According to the Applicant, the transfers in-kind would comply with Rule 17a–7 under the 1940 Act, including with respect to Rule 144A Securities.[37] The Applicant represents

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[33] See 42 FR 18732, April 8, 1977.

[34] See, *e.g.,* Barclays Global Investors, N.A. (BGI) and its Investment Advisory Affiliates, including Barclays Global Fund Advisors (BGFA, together, the Applicants), PTE 2008–01, 73 FR 3274, January 17, 2008).

[35] The Applicant notes that PTE 77–4 requires that each Plan investor provide advance written consent to the investment in the Fund and provide advance written consent to any change in fees. In this regard, PTE 77–4 requires that a second fiduciary with respect to the Plan, who is independent of and unrelated to the fiduciary/investment advisor or its affiliates, receives a current prospectus issued by the Fund, and full and written detailed disclosure of the investment advisory and other fees charged to or paid by the Plan and the Fund, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the Plan, and whether there are limitations on the fiduciary/investment adviser with respect to which Plan assets may be invested in shares of the Fund and, if so, the nature of such limitations. Furthermore, PTE 77–4 requires that, on the basis of such prospectus and disclosure, a second fiduciary, who is independent of and unrelated to the fiduciary/investment adviser or affiliate, approves purchases and sales consistent with the responsibilities contained within Part 4 of Title I of the Act and such approval must be either: (1) set forth in the Plan documents or in the investment management agreement between the Plan and the fiduciary/investment adviser, (2) indicated in writing prior to each purchase or sale, or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the shares of the Fund. Additionally, PTE 77–4 requires that the second fiduciary, or any successor thereto, is notified of any changes in the rates of fees and approves in writing the continuation of purchases and sales, and the continued holding of any shares of the Fund acquired by the Plan, and such approval may be limited to the investment advisory and other fees paid by the Fund in relation to the fees paid by the Plan.

[36] 29 CFR 2520.104b–1(c) sets forth conditions under which a Plan administrator furnishing documents through electronic media (*e.g.,* email) will be deemed to satisfy the requirements of 29 CFR 2520.104b–1(b)(1), which provides that disclosures required under Title I of ERISA must be furnished using ''measures reasonably calculated to ensure actual receipt of the material by [P]lan participants, beneficiaries and other specified individuals.''

[37] The Applicant explains that Rule 17a–7 under the 1940 Act provides a safe harbor from the general prohibitions contained in section 17(a) of the Investment Company Act against certain transactions between a mutual fund and affiliated persons, including accounts managed by the investment adviser to the fund. Such transactions include a purchase or sale of securities by a mutual fund from or to an affiliated person. Without Rule 17a–7, section 17(a) would prohibit an investment adviser to both a mutual fund and a separate client account from causing the client to make an in-kind transfer of securities in the client's account to the mutual fund. Rule 17a–7 permits such in-kind transfers, provided that certain conditions are met.

Specifically, the Applicant states that Rule 17a–7 provides that a purchase or sale transaction between registered investment companies, or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company or between a registered investment company or a separate series of a registered investment company, and a person which is an affiliated person of such registered investment company (or an affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act, provided that:

- The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;
- The transaction is effected at the independent current market price of the security;
- The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the 1940 Act;

that Rule 17a–7 is relevant to the proposed transactions for which relief has been requested because securities, including Rule 144A Securities, may be contributed in kind from client Plans in exchange for shares of the Fund. The Applicant states that the SEC, through a series of no-action letters, permits mutual funds to effect purchase and sale transactions with affiliated persons on an ''in-kind'' basis rather than for cash in reliance on Rule 17a–7.[38] In addition, the Applicant states that in many other instances, *e.g.* PTE 97–41, the Department has relied on the protective conditions of the Rule to make a finding that the exemption is protective of participants.

The Applicant represents that many fixed income offerings of Rule 144A Securities represent good investment opportunities for the asset manager's client Plans. Particularly with respect to long-dated corporate bonds, an offering of Rule 144A Securities may provide the least expensive and efficient way for issuers to sell such securities, and as QIBs, the Applicant's clients are able to participate in this market.

16. According to Baird, reliance on Rule 144A has become a common way in which corporate bonds are issued and traded. The Applicant states that Rule 144A, which was adopted in 1990, acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to Qualified Institutional Buyers (QIBs). QIBs include several types of institutional entities, such as Plans and commingled trust funds holding assets of such Plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. The Applicant explains that this limitation is designed to prevent side-by-side public and private markets developing for the same class of securities. Furthermore, the Applicant represents that buyers of Rule 144A securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered.[39]

17. The Applicant represents further that sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws.[40] Through these and other provisions, the Applicant explains, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices. According to Baird, this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to ensure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects.

18. The Applicant represents further that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. According to Baird, the major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. Furthermore, the marketing process is the same in most respects, except that the selling efforts are generally limited to QIBs and no general advertisements or general solicitations are used.

19. The Applicant represents that although Rule 144A corporate bonds are traded by QIBs, the market for Rule 144A corporate bonds is liquid and mutual funds are able to treat Rule 144A Securities as liquid securities under the 1940 Act. As such, the Applicant states that syndicates selling Rule 144A Securities are functionally equivalent to syndicates selling securities in registered offerings.[41]

*Valuation*

20. The proposed exemption also contains valuation requirements which apply to any in-kind exchange between a Plan and a Fund. In general, according to the Applicant, the condition requires that the value of Fund shares received by a Plan with respect to an in-kind exchange with a Fund will be determined based on the same valuation principles which govern valuation of the underlying securities held by the Fund, and will use the same pricing sources used by the Fund with respect to its assets. In this regard, the Applicant states that the Fund's valuation policies are consistent with the requirements of the 1940 Act, and transfers in-kind will be effected in accordance with Rule 17a–7 under the 1940 Act, described above. Specifically, the Applicant represents that the Fund will value Rule 144A Securities at their evaluated bid prices obtained through a well-established third party pricing service (Interactive Data Pricing and Reference Data, LLC). Any securities for which prices cannot be obtained from a third party pricing service will not be transferred in-kind.

- No brokerage commission, fee (except for customary transfer fees) or other remuneration is paid in connection with the transaction;
- The board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, adopts procedures pursuant to which such purchase or sale transactions may be effected for the investment company and determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;
- The board of directors of the investment company satisfies the fund governance standards defined in 14 CFR 270.0–1(a)(7); and
- The investment company maintains and preserves a written copy of the procedures and a record of each such purchase and sale transaction for the period of six years, the first two years in an easily accessible place.

[38] According to the Applicant, while Rule 17a–7 on its face only appears to permit mutual funds to buy or sell securities from or to affiliated persons for no consideration other than cash, the SEC no-action letters allow for in-kind transfers of securities. The Applicant represents that, in these no-action letters, the SEC staff stated that in-kind transfers of securities by affiliated persons to a mutual fund in exchange for mutual fund shares instead of cash would be permitted so long as the securities being transferred are valued in accordance with the mutual fund's valuation methods used to calculate net asset value and are consistent with how securities need to be valued under Rule 17a–7; the mutual fund shares being issued in exchange for the securities transferred in-kind are valued at their net asset value; the securities being transferred in-kind are consistent with the fund's investment objectives and principal strategies; the transfer does not involve payment of any brokerage commission, fee or other remuneration; the investment adviser and its affiliates do not have a beneficial interest in the account that is transferring the securities in-kind; and the mutual fund complies with Rule 17a–7(e) and (f) in that the fund's board of directors has adopted procedures related to the transactions and satisfies applicable corporate governance standards. See DFA Investment Trust SEC No-Action Letter (March 21, 1996); Federated Investors SEC No-Action Letter (April 21, 1994); First National Bank of Chicago SEC No-Action Letter (September 22, 1992); and American Medical Association SEC No-Action Letter (January 15, 1987).

[39] The Applicant notes that this condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available, to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof.

[40] The Applicant states that these rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a).

[41] The Applicant notes that the Rule 144A debt market has significant economic importance to firms raising capital and investors looking to participate in the market. According to the Applicant, in 2010 alone, firms issued over $1 trillion in registered and Rule 144A bonds with over half of that debt, $582 billion, issued through the 144A market. The Applicant states further that this represents approximately three times the $201 billion raised by initial public offerings and secondary offerings in the same year. Accordingly, the Applicant contends that the 144A market is a viable and primary means for firms to raise capital and research on Rule 144A bonds can further the understanding of a market responsible for a significant source of capital and avenue of investment.

21. The Applicant states that the Fund must also value its assets pursuant to procedures established by the Fund's Board of Directors or Trustees, as applicable, and as required by the 1940 Act. The Applicant represents that Fund investors, including the Plans, will receive notice of any material changes to the Fund's valuation policies. According to Baird, the Plan fiduciary could, if it disagreed with the change, instruct the investment manager to sell the shares, which are freely redeemable on any day in which the markets are open.

*Secondary Services*

22. The Applicant states that they will receive from the Fund various fees and expenses for providing or arranging for the provision of administrative, recordkeeping, accounting, custody, transfer agency, shareholder and similar services. The Applicant represents that all such services are ''Secondary Services'' under the 1940 Act and under the exemptions that the Department has granted seeking similar relief to that requested here. According to the Applicant, under Similar Exemptions granted by the Department, ''Secondary Services'' has been defined to mean a service other than an investment management service, an investment advisory service, and any similar service, which is provided to a Fund by the investment adviser to that Fund, including but not limited to custodial, accounting, administrative, recordkeeping, transfer agency, shareholder, and other services. All fees for Secondary Services received by Baird are paid to Baird directly by the Fund. The Applicant requests relief from the prohibitions of section 406(b)(1)–(3) for those payments. According to the Applicant, no relief is required from section 406(a) because the services are provided by Baird to the Fund, which does not hold plan assets.

*Statutory Findings*

23. Baird represents that the proposed exemption is administratively feasible because it does not require review by the Department. Furthermore, the Applicant states that compliance with its terms can be measured against market quotations and can be readily audited, because the Plan fiduciary will have received substantial disclosure and a copy of the mutual Fund prospectus to guide its decision making. Finally, Baird represents that the fee offset provisions are easily administered.

24. The Applicant represents that the proposed exemption is in the interest of Plans and their participants and beneficiaries, because the LDI strategy and economies of scale offered by an investment in the Fund serve as a hedge against interest rate fluctuations that could make Plans significantly underfunded and endanger the pension benefits of participants and beneficiaries. Moreover, an investment in the Fund will allow smaller Plans to hold a more diversified array of bonds, including long-dated corporate bonds, and the in-kind exchange provisions will avoid the transaction and execution costs inherent in requiring a cash investment in the Funds. In addition, according to the Applicant, no sales commissions or similar fees will be paid by the Plans to Baird or its affiliates in connection with a purchase, sale or exchange of Fund shares, with the exception of the purchase fee, which will be paid to the Fund (not Baird), in order to protect Plans that are invested in the Fund from paying the transaction costs of other investors in the Fund.

Moreover, the Applicant represents that that it is important to be able to transfer Rule 144A Securities in kind because Plans being managed in separate accounts will have purchased such bonds as an important component of an LDI strategy for their accounts. Baird represents that, if a Plan had to sell its Rule 144A Securities before investing in the Fund, rather than transferring them in kind, it would incur transaction costs and execution costs in selling the Rule 144A Securities. In addition, according to Baird, the Fund would incur similar transaction costs and execution costs in using the cash transferred from the investing plan to reinvest in these same securities, causing unnecessary costs for all Plan investors in the Fund.

25. The Applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of the Plans because it is conditioned on several requirements that ensure that Plans are being treated fairly and at arm's length, using conditions that have been found to be protective in class exemptions and in the Similar Exemptions. In this regard, among other conditions, Baird states that prior to the initial investment of Plan assets in the Fund, the Second Fiduciary of each Plan will receive full disclosure regarding the proposed investment and the fees to be received by the Applicant, and has the opportunity to approve or disapprove the investment. Additionally, Baird represents that no plan sponsored by the Investment Adviser will engage in the proposed transactions.

The Applicant represents that neither Baird and nor its affiliates will receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions described herein, and there will be no double payment of investment management, investment advisory and similar fees to the Applicant by the Plan.

According to the Applicant, the Plan will pay no redemption or similar fees to the Applicant in connection with the sales by the Plan of Fund shares. In addition, the Applicant represents that the Plans will not be paying a purchase fee on assets transferred in kind. Furthermore, Baird states that the combined total of all fees received by the Applicant for the provision of services to a Plan, and in connection with the provision of any services to the Fund in which a Plan may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

26. The Applicant states that in-kind transactions with a plan will only involve securities which are publicly-traded and for which market quotations are readily available or Rule 144A Securities that are valued based on prices obtained from a reliable third-party pricing service. Additionally, the Applicant represents that the Fund will only allow in-kind transfers of securities in compliance with the 1940 Act that meet the Fund's stated investment objective and principal investment strategies disclosed in the Fund's prospectus.

As represented by the Applicant, the Baird portfolio management team will review the securities proposed to be exchanged in-kind to ensure they are in compliance with the Fund's stated investment objective and principal investment strategies as defined in the Fund's prospectus filed with the SEC. In addition, the Applicant states that the Fund's Board of Directors must review and approve all in-kind transfers into and out of the Fund. A component of this review is to ensure securities coming into the Fund via an in-kind transfer are appropriate Fund investments and comply with the Fund's stated investment objective and principal investment strategies, as detailed in the Fund's prospectus.

27. Finally, the Applicant notes that the market for Rule 144A Securities is active and liquid, and trades for Rule 144A Securities are reported through the Trade Reporting and Compliance Engine (TRACE) system administered by the Financial Industry Regulatory Authority (FINRA), thus enabling a third party pricing service to value the securities using objective trade data.

*Summary*

In summary, the Applicant represents that the criteria of section 408(a) of the Act are satisfied for the following reasons:

(a) The Account does not pay a sales commission or other similar fees to the Investment Adviser or its affiliates in connection with the acquisition, sale, or exchange of shares of the Fund.

(b) The Account does not pay a purchase, redemption or similar fee to the Investment Adviser in connection with the acquisition of shares by the Account or the sale by the Account to the Fund of such shares.

(c) The Account may pay a purchase or redemption fee to the Fund in connection with an acquisition or sale of shares by the Account, that is fully disclosed in the Fund's prospectus in effect at all times. Furthermore, any purchase fee paid by the Account to the Fund (1) is intended to approximate the difference between ''bid'' and ''asked'' prices on the fixed income securities that the Fund will purchase using the proceeds from the sale of Fund shares to the Account; and (2) is not charged on any assets transferred in-kind to the Fund.

(d) The Account does not pay an investment management, investment advisory or similar fee with respect to Account assets invested in Fund shares for the entire period of such investment provided the investment advisory fees may be paid if the payment of such fees complies with the rebating, crediting, or offsetting requirements of Section II(d) of the exemption.

(e) The crediting, offsetting or rebating of any fees in Section II(d) of the exemption is audited at least annually by the Investment Adviser through a system of internal controls to verify the accuracy of the fee mechanism adopted by the Investment Adviser.

(f) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and for the provision of any services to a Fund in which an Account may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) The Investment Adviser and its affiliates do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this exemption.

(h) Baird will comply with the disclosure and authorization requirements set forth in Section II(h)–(o) of the exemption.

(i) No separately managed account investing in the Fund holds assets of a Plan sponsored by Baird or its affiliate. If a pooled fund holds assets of a Plan or Plans sponsored by Baird or its affiliate, the total assets of all such Plans shall not exceed 15% of the total assets of such pooled fund.

(j) In-kind transactions with an Account shall only involve publically-traded securities for which market quotations are readily available, securities that are deemed to be liquid and that are valued based upon prices obtained from a reliable well-established third-party pricing service that is independent of Baird pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC rules, regulations and guidance, and cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals on such securities. Securities for which prices cannot be obtained from a third-party pricing service will not be transferred in-kind, nor will any securities specified in Section III(a)(1)–(6) of the exemption.

(k) Subject to the exceptions described in Section III(a) of the exemption, in the case of an in-kind exchange of assets between an Account and the Fund, the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule 2a–4 under the 1940 Act, and the then-existing valuation procedures established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the SEC. In connection with a redemption of Fund shares, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such shares at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(l) Baird will comply with the disclosure requirements of Section III(c) in order to facilitate a post-transaction review of any in-kind transaction so that the material aspects of such transaction, including pricing, can be reviewed.

(m) Prior to the consummation of an in-kind exchange, Baird must document in writing and determine that such transaction is fair to the Account and comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and that the in-kind transaction is in the best interests of the Account and the participants and beneficiaries of the participating Plans.

(n) All of the Accounts' other dealings with the Funds, Baird, or any person affiliated thereto, are on terms that are no less favorable to the Account than such dealings are with other shareholders of the Funds.

(o) Baird and its affiliates, as applicable, will comply with the record-keeping and retention requirements specified in the exemption.

**Notice to Interested Persons**

The persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include all separate account investment management client Plans that may be interested in investing in the Fund.

It is represented that all such interested persons will be notified of the publication of the Notice by electronic delivery within fifteen (15) days of publication of the Notice in the **Federal Register**. The notification will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

**First Security Group, Inc. 401(k) and Employee Stock Ownership Plan (the Plan) Located in Chattanooga, TN**

[Application No. D–11826]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, effective for the period beginning August 21, 2013, and ending on September 20, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[42] shall not apply:

(a) To the acquisition of certain subscription right(s) (the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s) in the Plan (the Invested Participant(s)) in connection with an offering (the Offering) by First Security Group, Inc. (FSG), of shares of common stock (the Common Stock) of FSG, the sponsor of the Plan and a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts of Invested Participants during the subscription period (the Subscription Period) of the Offering; provided that the conditions set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

**Section II: Conditions**

(a) The receipt of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by FSG on the same material terms to all shareholders of record of the Common Stock of FSG, including the Accounts of Invested Participants;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of FSG;

(c) Each shareholder of the Common Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all or a portion of whose Accounts in the Plan held the Common Stock;

(e) The decision with regard to the holding and the exercise of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) No commissions, no fees and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights;

(g) FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire; and

(h) The terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

*Effective Date:* This proposed exemption, if granted, will be effective for the period beginning on August 21, 2013, the commencement date of the Offering, and ending on September 20, 2013, the closing date of the Offering.

**Summary of Facts and Representations**

*Background*

1. The Plan, established on August 1, 1999, is tax-qualified under section 401(a) of the Code. The Plan contains a cash or deferred arrangement under section 401(k) of the Code, and is designed to qualify as a leveraged employee stock ownership plan (ESOP), pursuant to section 4975(e)(7) of the Code. FSGBank, National Association (FSGBank) serves as the trustee of the Plan.

The Plan provides for participants to self-direct the investment of their Accounts and is intended to operate in accordance with section 404(c) of the Act. The participants in the Plan are the only persons who have investment discretion over the assets in the Accounts involved in the subject transactions.

In addition to investment in certain mutual funds and a collective trust fund, Plan participants may invest amounts held in their Accounts in the common stock of FSG (Common Stock) through the ESOP portion of the Plan. Investment in Common Stock by Plan participants is voluntary. The Common Stock held in Plan Accounts is no different from the Common Stock held by other FSG shareholders.

Of the shares of Common Stock issued, as of April 10, 2013 (the Record Date), the Accounts in the Plan held 102,501.746735 shares. As of August 21, 2013, the commencement of the Offering, there were 237 participants in the Plan of which 152 were active participants and 85 were terminated participants. Of these 237 participants, the Accounts of 56 participants in the Plan, four (4) of which were terminated participants, held approximately 46,039 shares of Common Stock (approximately 0.073% of the outstanding shares) with a value of $111,875, based on the closing price of such Common Stock on NASDAQ of $2.43 per share, as of the commencement date of the Offering. As of the same date, the Plan's assets totaled approximately $11,187,500 of which the value of the Common Stock ($111,875) constituted approximately 1.0%.

2. As stated above, FSG (or the Applicant) sponsors the Plan for the benefit of the current and former employees of FSG and its subsidiaries, and for the beneficiaries of such employees or alternative payees. Incorporated in 1999 as a Tennessee corporation, FSG is a bank holding company headquartered in Chattanooga, Tennessee. FSG is regulated and supervised by the Board of Governors of the Federal Reserve System. As of December 31, 2013, FSG had total assets of approximately $977.6 million, total deposits of approximately $857 million, and stockholders' equity of approximately $83.6 million.

FSG operates thirty (30) full-service banking offices through its wholly-owned bank subsidiary, FSGBank. FSG and FSGBank serve the banking and financial needs of various communities in eastern and middle Tennessee, as well as northern Georgia.

*The Common Stock*

3. As of August 20, 2013, 63,270,867 shares of Common Stock were issued and outstanding, 2,276,890 shares of Common Stock were issuable upon exercise of outstanding stock options, and approximately 3,226,775 shares of Common Stock were reserved for future issuance under FSG's stock option plan. As of June 27, 2014, the authorized capital stock of FSG consisted of 150,000,000 shares of Common Stock,

[42] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

and 10,000,000 shares of preferred stock (the Preferred Stock). As of the same date, no shares of Preferred Stock were issued or outstanding. The Common Stock is traded on the NASDAQ Capital Market under the symbol ''FSGI.'' The Common Stock is a ''qualifying employer security,'' as defined under section 407(d)(5) of the Act.

*The Recapitalization*

4. On February 25, 2013, FSG entered into an exchange agreement (the Exchange Agreement) with the United States Department of the Treasury (Treasury). On the same date, FSG entered into a stock purchase agreement (the Stock Purchase Agreement) with certain institutional investors, including affiliates of EJF Capital, GF Financial II, LLC, MFP Partners, L.F., and Ulysses Partners, L.P. (collectively and individually, the Investor(s)). Both the Exchange Agreement and the Stock Purchase Agreement (together, the Agreements) were entered in connection with a $91,100,000 recapitalization of FSG (the Recapitalization). Pursuant to these Agreements, FSG was required to issue and sell in a private placement (the Private Placement), approximately 60,735,000 shares of Common Stock at a price per share of $1.50. The closing of the Private Placement took place over two days. In this regard, on April 11, 2013, pursuant to the Exchange Agreement with Treasury, FSG issued 9,941,908 shares of Common Stock to Treasury in exchange for 33,000 shares of FSG's Fixed Rate Cumulative Perpetual Preferred Stock (the TARP Preferred Stock), and all accrued but unpaid dividends on the TARP Preferred Stock, and a warrant to purchase 82,363 shares of the Common Stock.

Immediately following such exchange, on April 11, 2013, Treasury sold the 9,941,908 shares of Common Stock to the Investors. Pursuant to the Stock Purchase Agreement, FSG could direct each of the Investors to purchase all or a part of each such Investor's committed investment from Treasury. On April 12, 2013, the Investors purchased 50,793,092 shares of Common Stock that remained from their committed investment directly from FSG. In the aggregate, the Investors agreed to purchase approximately $91.1 million of the Common Stock at $1.50 per share.

*The Offering*

5. Under the Stock Purchase Agreement, FSG was required to enter into the offering (the Offering) to provide to shareholders of Common Stock as of the Record Date, the rights (the Rights) to purchase up to $5 million worth of Common Stock at a purchase price per share equal to the Recapitalization purchase price ($1.50 per share.) The Offering permitted FSG to issue up to 3,329,234 shares of Common Stock with a par value of $0.01.

The Plan participants whose Accounts held Common Stock (the Invested Participants) received a special notice that described the Offering in non-technical language, a prospectus, documentation of the number of Rights allocated to their respective Plan Accounts, instructions on how to exercise such Rights, and an ESOP Non-Transferable Subscription Rights Elections Form. The prospectus contained more detailed information regarding the Offering, including the reasons for the Offering, the terms of the Offering, and the investment risks associated with exercise of the Rights and the purchase of Common Stock.

FSG distributed the Rights, at no charge, to the shareholders of Common Stock in FSG, including the Accounts of the Invested Participants, as of 5:00 p.m. EST on the Record Date, April 10, 2013. Each shareholder of record received one Right for each share of Common Stock held by such shareholder. Each Right entitled the recipient to purchase two (2) shares of Common Stock at a subscription price (the Subscription Price) of $1.50 per share (the Basic Subscription Privilege). The Subscription Price was the same price at which Investors purchased Common Stock as part of the Recapitalization.

The Rights could not be sold, transferred, or assigned. The Rights were not listed for trading on the NASDAQ or any other exchange or over-the-counter market. Further, the Rights were non-transferrable in order to permit only those shareholders who owned Stock, as of the Record Date, the opportunity to purchase additional shares of Common Stock to help offset the dilution of such shareholders interest in FSG that occurred as part of the Recapitalization.

6. If a shareholder purchased all of the Common Stock available to the shareholder through the Basic Subscription Privilege, such shareholder could also choose to purchase a portion of Common Stock in the Offering that was not purchased by the other shareholders through the exercise of their Rights (the Over-Subscription Privilege). FSG honored the requests received pursuant to the Over-Subscription Privilege by multiplying the number of shares of Common Stock requested by each shareholder through the exercise of their Over-Subscription Privilege by a fraction that equaled (x) the number of shares of Common Stock available to be issued through the Over-Subscription Privilege divided by (y) the total number of Common Stock requested by all subscribers through the exercise of their Over-Subscription Privilege.

Shareholders sought to exercise their Over-Subscription Privilege for 3,590,434 shares of Stock, which exceeded the number of shares available for the Over-Subscription Privilege. Approximately 1,607,608 shares of Common Stock were issued as part of the exercise of the Basic Subscription Privilege and approximately 1,721,626 shares of Common Stock were issued as part of the exercise of the Over-Subscription Privilege.

*Exercise of the Rights*

7. The Invested Participants chose whether to exercise their Rights in order to purchase shares of Common Stock or to allow the Rights to expire.[43] Any election to exercise the Rights could not be revoked, once made. Any unexercised Rights expired upon the conclusion of the Subscription Period.

In order to exercise their Rights, the Invested Participants were required to submit their election forms to Registrar and Transfer Company (the Tabulator) by September 13, 2013, seven (7) business days earlier than the subscription date (September 20, 2013) set for the elections of other shareholders. It is represented that the earlier deadline for the Plan Accounts was appropriate to help facilitate the tabulation of the elections of all the Invested Participants by the Tabulator and to allow time to provide such information to FSGBank. A total of 41 Invested Participants exercised their Rights to purchase shares of the Common Stock. The Plan was issued 138,260 shares of Common Stock under the Basic Subscription Privilege and 205,008 shares of Common Stock under the Over-Subscription Privilege, for a

[43] It is represented that FSG did not request an administrative exemption from the prohibited transaction provisions of the Act or Code for the exercise of the Rights by the Accounts of the Invested Participants. Instead, FSG relied on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for the exercise of the Rights. Accordingly, the Department is not providing any relief herein from such prohibited transaction provisions with respect to such exercise of the Rights. In addition, the Department is offering no view on whether the statutory exemption provided in section 408(e) of the Act and the Department's regulations, pursuant to 29 CFR § 2550.408(e), are applicable to the exercise of the Rights. Further, the Department is not offering a view on whether FSG satisfied the conditions of such statutory exemption.

total of 343,268 shares of Common Stock.

To facilitate the exercise of the Rights, Invested Participants transferred money into their Plan money market accounts from other investment funds in the Plan. The applicable money market funds were frozen effective as of the close of the NASDAQ Capital Market one (1) business day prior to the Subscription Date (*i.e.,* September 19, 2013) through September 26, 2013, and no additional transfers were permitted into or out of such money market funds during that time. If two (2) business days prior to the Subscription Date, an Invested Participant had insufficient funds in his money market account to cover the aggregate cost of acquiring Common Stock upon the exercise of the Rights, then FSGBank did not process such Invested Participant's election. It is represented that this procedure varied from that employed for other shareholders under similar circumstances, in that other shareholders were issued Common Stock in the amount of the payment made, rather than having the election to exercise their Rights rejected. It is represented that this discrepancy is due to the fact that the record-keeper for the Plan could not implement a partial acceptance procedure for the Invested Participants. It is represented that none of the shareholders, including the Accounts of Invested Participants, were issued shares of Common Stock in an amount less than the amount exercised under the Basic Subscription Privilege, as all Rights exercised by such shareholders were fully paid under that privilege.

The Invested Participants submitted their elections to the Tabulator who then provided such information to FSGBank. FSGBank exercised the Rights based on the information provided by the Tabulator and did not have any discretion as to the number of shares that an Invested Participant elected to be acquired through the exercise of the Rights. However, if the Common Stock traded at a price less than $1.50 per share, FSGBank was not permitted to process the Invested Participants' elections to exercise the Rights. The actual market price per share on the date of placing the offers (*i.e.,* September 20, 2013) was $2.25 per share, and therefore no Invested Participant elections were denied based on the share price.

A portion of the Accounts of Invested Participants which was already invested in Common Stock was frozen from noon EST on the Subscription Date until September 28, 2013 (*i.e.,* the date which was one business day following the date on which FSG Bank received the newly-offered shares of Common Stock on behalf of such Invested Participants). This restriction was applied to ensure that no Invested Participant was able to sell such shares until the Common Stock had been received by FSGBank and allocated to the Accounts of such Invested Participants.

*Request for Exemptive Relief*

8. The transactions for which the FSG has requested retroactive exemptive relief include: (a) The acquisition of the Rights by the Accounts of Invested Participants in connection with the Offering of Rights by FSG; and (b) the holding of the Rights by the Accounts of Invested Participants during the Subscription Period of the Offering.

Section 406(a)(1)(E) of the Act prohibits the acquisition on behalf of the plan of any ''employer security'' in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of the plan to permit such plan to hold any ''employer security'' if he knows or should know that the holding of such security violates section 407(a) of the Act. Section 407(a) of the Act prohibits a plan from acquiring or holding employer securities that are not ''qualifying employer securities.''

It is represented that the Rights acquired by the Accounts of Invested Participants satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or marketable obligations, such Rights do not meet the definition of ''qualifying employer securities,'' as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding on behalf of the Accounts of Invested Participants, of employer securities which are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

FSG has also requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act for self-dealing and conflicts of interest, respectively, which arose as a result of the acquisition and holding of the Rights by the Accounts of Invested Participants in the Plan.

Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary from engaging in his individual or any other capacity to act in any transaction involving the plan on behalf of a party (or represent a party) whose interest are adverse to the interest of the plan or the interests of its participants or beneficiaries.

As employers any of whose employees are covered by the Plan, FSG and its subsidiaries are parties in interest with respect to the Plan pursuant to section 3(14)(C) of the Act. As Plan trustee, FSGBank is a party in interest with respect to the Plan, as a fiduciary service provider, pursuant to section 3(14)(A) and (B) of the Act. FSGBank, as a wholly-owned subsidiary of FSG, the Plan sponsor, is also a party in interest with respect to the Plan, pursuant to section 3(14)(G) of the Act. Accordingly, the acquisition and holding by the Accounts of Invested Participants of the Rights issued by FSG, a party in interest with respect to the Plan would involve self-dealing and conflicts of interest for which relief is needed and has been requested by FSG.

9. It is represented that the subject transactions have already been consummated. In this regard, the Subscription Period began on August 21, 2013, and ended on September 20, 2013. The Accounts of Invested Participants in the Plan acquired the Rights pursuant to the Offering on August 21, 2013, and held such Rights pending the closing of the Offering when such Rights either were exercised or expired. The Applicant represents that there was insufficient time to apply for and be granted an exemption between the dates when the Accounts of Invested Participants acquired the Rights and when such Rights were exercised or expired. Therefore, FSG is seeking a retroactive administrative exemption to be granted, effective from August 21, 2013, the date that such Accounts acquired the Rights, and September 20, 2013, the closing date of the Offering.

10. The Applicant represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants were one-time transactions that involved an automatic distribution of the Rights to all shareholders. All shareholders of the Common Stock, including the Accounts of Invested Participants were treated in the same manner in all material terms with respect to the acquisition and holding of the Rights.

11. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Accounts of Invested Participants, because such Accounts received, at no cost, Rights with a potential for an immediate financial gain. In this regard, for the Accounts of those Invested Participants who elected to exercise their Rights, such Accounts

acquired a valuable opportunity to purchase the Stock at a price of $1.50 per share which price was at or below the then market price ($2.25 per share) for such Stock. Further, it is represented that the Accounts of Invested Participants who exercised the Rights avoided the dilution of their interests in FSG that resulted from the Offering and the Recapitalization.

*Safeguards of Exemption*

12. The Applicant believes that the proposed exemption provides sufficient safeguards for the protection of the Accounts of Invested Participants and the beneficiaries of such Accounts, in that the acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of FSG. FSG made the Rights available on the same material terms to all shareholders of the Common Stock, including the Accounts. Each shareholder of the Common Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder.

The Applicant represents that the Accounts of Invested Participants were adequately protected, in that participation in the Offering by such Accounts was voluntary. The Applicant represents that FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire. In this regard, the Invested Participants were under no obligation to exercise the Rights.

The Applicant represents that Invested Participants received sufficient disclosures with respect to the Offering. It is represented that the terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

The Applicant represents that the Accounts of Invested Participants were protected against economic loss by exercising the Rights. FSGBank, as trustee, was instructed to not execute an Invested Participant's election to exercise the Rights, if the fair market value of the Common Stock was less than the strike price or if the Account of such Invested Participant did not have sufficient funds to cover the aggregate subscription price. In this regard, it is represented that the price of the Common Stock on September 20, 2013, the date of placing the offers was $2.25 per share, which price was in excess of the strike price of $1.50 per share.

It is represented that neither the Plan nor the Accounts of Invested Participants paid any commissions, fees, or expenses to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such Rights. It is further represented that no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights.

*Summary*

13. In summary, FSG represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Offering, and the Rights were made available by FSG to all shareholders of the Common Stock of FSG, including the Invested Participants' Accounts;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of FSG;

(c) Each shareholder of the Common Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all or a portion of whose Accounts in the Plan held the Common Stock;

(e) The decision with regard to the holding and the exercise of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) No commissions, no fees, and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts with respect to the acquisition and holding of the Rights;

(g) FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire; and

(h) The terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

**Notice to Interested Persons**

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all Invested Participants whose Accounts in the Plan were invested in the Common Stock at the time of the Offering.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days following the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within forty-five (45) days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.

**BNP Paribas, S.A. (BNP or the Applicant) Located in Paris, France**

[Application No. D–11827]

*Proposed Exemption*

Based on the foregoing facts and representations submitted by the Applicant, the Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR

part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[44]

Section I: Covered Transactions

If the proposed exemption is granted, the BNP Affiliated QPAMs and the BNP Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84–14 [45] notwithstanding the Convictions (as defined in Section II(c)),[46] provided the following conditions are satisfied:

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(e) A BNP Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g)(1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP; BNP Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h)(1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies and the first of the audits must be completed no later than twelve (12) months after the earlier of the Convictions and must cover the first six-month period that begins on the date of the earlier of the Convictions; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which the audit applies;

(2) The auditor's engagement shall specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this proposed exemption and developed and implemented the Training, as required herein;

(3) The auditor's engagement shall specifically require the auditor to test each BNP Affiliated QPAM's operational compliance with the Policies and Training;

(4) For each audit, the auditor shall issue a written report (the Audit Report) to BNP and the BNP Affiliated QPAM to which the audit applies that describes the steps performed by the auditor during the course of its examination.

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[44] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[45] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[46] Section I(g) generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

The Audit Report shall include the auditor's specific determinations regarding the adequacy of the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM shall be promptly addressed by such BNP Affiliated QPAM, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM;

(6) With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) An executive officer of BNP reviews the Audit Report for each BNP Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(8) Each BNP Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), Room N–5700, 200 Constitution Avenue NW., Washington, DC 20210, no later than 30 days following its completion, and each BNP Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(i) The BNP Affiliated QPAMs comply with each condition of PTE 84–14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of any granted exemption in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of a granted exemption in the **Federal Register**, each BNP Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) If a final exemption is granted in the **Federal Register**, each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs will provide to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of the fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14;

(m) A BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

Section II: Definitions

(a) The term ''BNP Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a)[47] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BNP is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14). The term ''BNP Affiliated QPAM'' excludes the parent entity, BNP.

[47] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) The term ''BNP Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which BNP owns a direct or indirect five percent or more interest, but with respect to which BNP is not an ''affiliate'' (as defined in Section VI(d) of PTE 84–14).

(c) The term ''Convictions'' means the judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

*Effective Date:* If granted, this proposed exemption will be effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

**Summary of Facts and Representations** [48]

*Background*

1. BNP Paribas, S.A. (BNP) is a publicly-held French bank. BNP maintains its principal offices in Paris, France. BNP operates in major banking and securities markets worldwide. As of December 31, 2013, BNP had consolidated assets of $2.4 trillion, stockholders equity of $120.4 billion, and a market capitalization of over $97 billion.

2. The rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' [49] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[50]

3. The broad reach of the prohibited transaction rules was intended to capture all transactions falling under the definition of a ''prohibited transaction,'' regardless of whether such transaction was actually necessary for the operation of a plan or beneficial to a plan. Thus, certain transactions that are actually in the interest of a plan and its participants and beneficiaries may be unavailable to plans. In recognition of this problem, ERISA authorizes certain statutory and administrative exemptions that may allow certain transactions to take place if there is an applicable exemption and the conditions for such exemption are met.

4. One of these exemptions, Class Prohibited Transaction Exemption 84–14 (PTE 84–14) [51] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b)) [52] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[53] Section I(a) of PTE 84–14 provides that, in order for a transaction to be exempt under PTE 84–14, at the time of the transaction (as defined in Section VI(i)) the party in interest, or its ''affiliate'' (as defined in Section VI(c)), cannot have the authority to appoint or terminate the QPAM as a manager of the plan assets involved in the transaction or negotiate, on behalf of the plan, the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction. Based on its experience in considering applications for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department believes that, as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary.[54]

5. PTE 84–14 contains an anti-criminal provision. In this regard, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[55]

6. The Applicant represents that BNP has corporate relationships with a wide range of entities that utilize the exemptive relief provided in PTE 84–14. In this regard, the Applicant represents that BNP is an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of 20 specialist investment managers and other asset management subsidiaries which are under the ''control'' of BNP (as that term is defined in Section VI(e)

[48] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

[49] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[50] The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA, which do not necessitate a transaction between a plan and a party in interest. These include transactions involving fiduciary self-dealing; fiduciary conflicts of interest, and kickbacks to fiduciaries.

[51] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[52] An ''investment fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

[53] See 75 FR 38837, 38839 (July 6, 2010).

[54] See 47 FR 56945, 56946 (December 21, 1982).

[55] See 47 FR 56945, 56947 (December 21, 1982).

of PTE 84–14) and that may act as QPAMs (collectively, the BNP Affiliated QPAMs).[56] According to the Applicant, the BNP Affiliated QPAMs include Fisher Francis Trees and Watt, Inc., BNP Paribas Investment Partners Trust Company, BNP Paribas Asset Management, Inc., BancWest Investment Services, and Bishop Street Capital Management which are subsidiaries of Bank of the West and First Hawaiian Bank, respectively, which themselves provide fiduciary services to ERISA-covered plans and IRAs. The Applicant represents that each of the above-named entities are third tier affiliates of BNP, and BNP owns all or substantially all interests, directly or indirectly, in such entities. In total, the BNP Affiliated QPAMs manage about $3 billion of assets owned by ERISA-covered plans and IRAs. According to the Applicant, BNP Affiliated QPAMs do not provide non-fiduciary services to ERISA-covered plans and IRAs, except in the case of First Hawaiian Bank (which provides custody services to ERISA-covered plans and IRAs) and Banc West Investment Services (which is a U.S. registered broker-dealer).

7. The Applicant represents that BNP also owns a five percent or more interest in over 20 other entities (the BNP Related QPAMs) that may act as QPAMS but that are not ''affiliates'' (as defined in Section VI(d) of PTE 84–14) of BNP because BNP does not have ''control'' (as defined in Section VI(e) of PTE 84–14) over such entities. The Applicant represents that BNP's relationships to many of the entities that may be considered BNP Related QPAMs is so minimal that BNP does not know, nor is it legally responsible for knowing, if such entities are acting as QPAMs in reliance on the relief in PTE 84–14. Furthermore, the Applicant represents that any such BNP Related QPAMs maintain their own information and technology infrastructure and do not share office space or employees with BNP. According to the Applicant, such BNP Related QPAMs are entirely separate and distinct from BNP. Furthermore, the Applicant states that no employee of BNP sits on the board of directors of any BNP Related QPAM.

8. The Applicant notes that BNP is expected to be convicted of certain crimes in the near future (the Convictions). In this regard, on June 30, 2014, the U.S. Department of Justice and the Office of the U.S. Attorney for the Southern District of New York (collectively, the DOJ) filed a notice of intent to file a one-count criminal information (the DOJ Information) in the District Court for the Southern District of New York (the District Court), and the New York County District Attorney's Office (the DANY) filed a two-count criminal information (the DANY Information) in the Supreme Court of the State of New York, County of New York (the New York Supreme Court), respectively, against BNP. The DOJ Information charged BNP with conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act (IEEPA), codified at Title 50, United States Code, Section 1701 *et seq.,* and regulations issued thereunder, and the Trading with the Enemy Act (TWEA), codified at Title 50, United States Code Appendix, Section 1 *et seq.,* and regulations issued thereunder. The DANY Information charged BNP with the crime of falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1). In connection with the DOJ Information and DANY Information, the DOJ filed a Statement of Facts and the DANY filed a Factual Statement (collectively, the Factual Statements) [57] that details the underlying conduct that serves as the basis for the criminal charges and impending Convictions. The Factual Statements explain that from at least 2004 up through 2012, BNP, the defendant, conspired with banks and other entities located in or controlled by countries subject to U.S. sanctions, including Sudan, Iran, and Cuba (Sanctioned Entities), other financial institutions located in countries not subject to U.S. sanctions, and others known and unknown, to knowingly, intentionally and willfully move at least $8,833,600,000 through the U.S. financial system on behalf of Sanctioned Entities in violation of U.S. sanctions laws, including transactions totaling at least $4.3 billion that involved Specially Designated Nationals (SDNs).[58] In carrying out these illicit transactions, BNP's agents and employees were acting, at least in part, to benefit BNP.

9. Pursuant to U.S. law, financial institutions, including BNP, are prohibited from participating in certain financial transactions involving persons, entities, and countries subject to U.S. economic sanctions. The United States Department of the Treasury's Office of Foreign Assets Control (OFAC) promulgates regulations to administer and enforce U.S. laws governing economic sanctions, including regulations for sanctions related to specific countries, as well as sanctions related to SDNs.

10. The Applicant notes that although the applicable prohibitions vary among sanction programs, the prohibitions described above generally apply to ''U.S. persons.'' [59] To the extent a payment is not subject to the jurisdiction of the United States, such as a payment in Euro that is settled totally outside of the United States with no involvement of a U.S. person, non-U.S. persons would not be liable under OFAC-administered sanctions if such a payment involved an SDN or Sanctioned Entity. Therefore, non-U.S. persons, including non-U.S. financial institutions, are generally not subject to the prohibitions of the OFAC-administered sanctions when they are doing business outside of the United States, but there are a number of important exceptions. Relevant here, non-U.S. financial institutions may also be required to comply with the OFAC-administered sanctions if a transaction in which they are engaged is subject to the jurisdiction of the United States. For example, if a transaction that takes place

[56] Section VI(d) of PTE 84–14 defines an ''affiliate'' of a person, for purposes of Section I(g), as: (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

Section VI(e) of PTE 84–14 defines the term ''control'' as the power to exercise a controlling influence over the management or policies of a person other than an individual.

[57] The Applicant notes that the Statement of Facts is essentially identical to the Factual Statement.

[58] An SDN appears on a list of individuals, groups, and entities subject to economic sanctions by OFAC. SDNs are individuals and companies specifically designated as having their assets blocked from the U.S. financial system by virtue of being owned or controlled by, or acting for or on behalf of, targeted countries, as well as individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under sanctions programs that are not country-specific.

[59] U.S. persons include U.S. citizens, permanent resident aliens (*i.e.,* ''green card'' holders), entities organized under the laws of the United States and persons and entities physically present in the United States (regardless of nationality or jurisdiction under which the entity was organized). Financial institutions that are U.S. persons, including any financial institution organized under the laws of the United States or any branch of a foreign financial institution located in the United States, are generally prohibited from engaging in transactions with Sanctioned Entities and SDNs, regardless of the currency in which such a transaction is denominated. For example, a London branch of a U.S. financial institution is prohibited from transacting with an SDN in any currency.

outside the United States between non-U.S. persons calls for payment in U.S. dollars, those payments typically will be cleared through the U.S. dollar settlement system in the United States, which in turn typically would involve a U.S. financial institution inside the United States debiting and crediting accounts held on the books of a U.S. bank or a branch of a non-U.S. bank located in the United States. In this way, the transaction and the participants involved can become subject to the jurisdiction of the United States and subject to compliance with the OFAC-administered sanctions with respect to that transaction. Accordingly, if a payment that has a link to a sanctioned jurisdiction or other target is made in U.S. dollars and cleared through the United States as described above, then the non-U.S. bank presenting the payment for clearing through its correspondent account could be at risk of violating the OFAC-administered sanctions, as well as causing a violation by the U.S. clearing bank.

11. According to the Factual Statements, BNP and its co-conspirators carried out the misconduct in the following ways: (a) BNP intentionally used a non-transparent method of payment messages, known as cover payments, to conceal the involvement of Sanctioned Entities in U.S. dollar transactions processed through BNP New York and other financial institutions in the United States; (b) BNP worked with other financial institutions to structure payments in highly complicated ways, with no legitimate business purpose, to conceal the involvement of Sanctioned Entities in order to prevent the illicit transactions from being blocked when transmitted through the United States; (c) BNP instructed other co-conspirator financial institutions not to mention the names of Sanctioned Entities in U.S. dollar payment messages sent to BNP New York and other financial institutions in the United States; (d) BNP followed instructions from co-conspirator Sanctioned Entities not to mention their names in U.S. dollar payment messages sent to BNP New York and other financial institutions in the United States; and (e) BNP removed information identifying Sanctioned Entities from U.S. dollar payment messages in order to conceal the involvement of Sanctioned Entities from BNP New York and other financial institutions in the United States.

12. The Factual Statements further explain that BNP was on notice of law enforcement concerns regarding its conduct as early as December 2009,[60] when it was contacted by the DANY. In a subsequent meeting, in early 2010 between BNP, the DOJ, and the DANY, BNP agreed to conduct an internal investigation into business conducted at a number of its subsidiaries and branches (including in Paris, London, Milan, Rome and Geneva), from January 1, 2002, through December 31, 2009, with countries subject to U.S. sanctions and covering the time period. The review was expanded after BNP discovered instances in which its illicit conduct continued past the original agreed-upon review period. Despite receiving legal opinions in 2006 that identified potential sanctions-violative conduct, receiving notice of the same from law enforcement in late 2009, and beginning its internal investigation in early 2010, BNP failed to provide the DOJ and DANY with meaningful materials from BNP Geneva until May 2013, and the materials were heavily redacted due to bank secrecy laws in Switzerland. BNP's delay in producing these materials significantly impacted the DOJ's and the DANY's ability to bring charges against responsible individuals, Sudanese Sanctioned Entities, and the satellite banks.

13. Nevertheless, the Statement of Facts indicates that in other respects, BNP has provided substantial cooperation to the DOJ and the DANY by conducting an extensive transaction review; identifying potentially violative transactions; responding to numerous inquiries and multiple requests for information; providing voluminous relevant records from foreign jurisdictions; signing tolling agreements with the DOJ and/or DANY and agreeing to extend such tolling agreements on multiple occasions; conducting interviews with dozens of current and former employees in Paris, London, New York, Geneva, Rome and Milan; and working with the DOJ and the DANY to obtain assistance via a mutual legal assistance treaty with France, among other things. BNP also has taken several corrective measures to enhance its sanctions compliance.

14. As noted above, BNP has agreed to resolve the actions brought by the DANY and the DOJ through the Plea Agreements, under which BNP will plead guilty to the charges set out in the DOJ Information and the DANY Information. The Applicants expect that the District Court and the New York State Supreme Court will enter the Convictions against BNP that will require remedies that are materially the same as set forth in the Plea Agreements. In particular, the Applicant notes that BNP has agreed to lawfully undertake the following pursuant to the Plea Agreements: (a) Pay a monetary penalty in the amount of $8,833,600,000; (b) submit every report produced by any compliance consultant or monitor imposed by the Federal Reserve or the New York State Department of Financial Services (DFS) to each of the Federal Reserve, the DFS, and DANY; (c) enhance its compliance policies and procedures with regard to U.S. sanctions laws and regulations; (d) abide by additional orders with the Federal Reserve, the French Autorité de Contrôle Prudentiel et de Résolution, and the DFS; and (e) truthfully and completely disclose any information requested and completely and fully cooperate with the DANY, the Federal Bureau of Investigation, the Internal Revenue Service Criminal Investigation, and any other governmental agency designated by the DOJ or the DANY.

15. Once either of the Convictions is entered, the BNP Affiliated QPAMs and the BNP Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the BNP Affiliated QPAMs, the BNP Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Convictions, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed exemption herein.

*Past Compliance*

16. Before the Department will consider proposing such exemptive relief, the Applicant must demonstrate past legal compliance with respect to those entities that have acted as QPAMs and independence of operations between those entities acting as QPAMs and the convicted entity. The Applicant explains that each of the BNP Affiliated QPAMs have, at the business level, separate systems, separate infrastructure, separate management,

[60] In May 2007, senior officials at OFAC met with executives at BNP New York and expressed concern that BNP Geneva was conducting U.S. dollar business with Sudan in violation of U.S. sanctions. Shortly after this meeting, OFAC requested that BNP conduct an internal investigation into transactions with Sudan initiated by BNP Geneva that may have violated U.S. sanctions, and asked that BNP report its findings to OFAC. It was not until this intervention by OFAC that BNP made the decision, in June 2007, to stop its U.S. dollar business with Sudan.

separate financial statements, separate payrolls, dedicated risk and compliance officers, and separate legal coverage from BNP. These managers maintain policies and procedures and engage in training designed to ensure that the QPAMs and the assets of the ERISA-covered plans and IRAs they manage are not affected by: (a) The business activities of BNP and/or (b) the conduct that is the subject of the Plea Agreements. Generally, such policies and procedures create information barriers between affiliates that prevent employees of the BNP Affiliated QPAMs from gaining access to insider information that an affiliate may have acquired or developed in connection with CIB activities. These policies and procedures, and corresponding information barriers, apply to employees, officers, and directors at the BNP Affiliated QPAMs and were in effect during the time frame covered by the facts that form the basis of the Plea Agreements. Additionally, the Applicant represents that BNP employees are not involved in the trading decisions and investment strategy of BNP Affiliated QPAMs for their ERISA-covered or IRA clients, nor do the BNP Affiliated QPAMs consult with BNP employees prior to making investment decisions on behalf of their ERISA-covered or IRA clients. According to the Applicant, BNP does not control the asset management decisions of the BNP Affiliated QPAMs or the BNP Related QPAMs, as such decisions are independent of BNP. Furthermore, the Applicant stresses that BNP Affiliated QPAMs and BNP Related QPAMs do not need the consent of BNP to make investment decisions for their clients, for making corrections if errors are made, or for adopting policies, procedures, or training for their staffs.

*Statutory Findings—In the Interest of Affected Plans and IRAs*

17. The Applicant submits that the requested exemption would be in the interest of affected ERISA-covered plans and IRAs. In this regard, the Applicant states that the exemption would allow ERISA-covered plans and IRAs managed by the BNP Affiliated QPAMs and BNP Related QPAMs to avoid the costs or losses that would arise if these QPAMs were immediately unable to rely on the relief afforded by PTE 84–14 as of the date of the earliest of the Convictions. Moreover, the Applicant notes that the transaction costs of changing managers would be significant, especially in some of the strategies employed by the BNP investment managers. In support of this, the Applicant points out that the cost of liquidation, identifying and selecting new managers, and reinvesting the assets would be borne by the ERISA-covered plans and IRAs, with a cost that could exceed several basis points, depending on the strategy.[61]

18. BNP additionally suggests that any ERISA-covered plans or IRAs that remain with BNP's asset management affiliates might be prohibited from engaging in certain transactions that are beneficial to such plans, such as the purchase and sale from a party in interest of a derivative without a readily ascertainable fair market value, because counterparties are far more comfortable with PTE 84–14 than any other exemption, and if other exemptions were required to be utilized, the cost of the transaction might increase to reflect that lack of comfort. Finally, according to the Applicant, BNP has entered into contracts on behalf of ERISA-covered plans for certain outstanding transactions, including swaps, which require BNP to maintain its eligibility for the relief in PTE 84–14. The Applicant asserts that counterparties to those transactions could seek to terminate their contracts, resulting in significant losses to their ERISA-covered plan clients. Moreover, certain derivatives transactions will automatically and immediately be terminated without notice or action if BNP no longer qualifies for the relief in PTE 84–14.

19. The Applicant explains, for example, that Fisher Francis Trees and Watt, Inc. (FFTW), a BNP Affiliated QPAM, manages fixed income and currency strategies utilizing the following derivative instruments, among others: Foreign exchange forwards, credit linked notes, structured notes, and swaps. The Applicant adds that many of FFTW's pension plan accounts, especially those that are governed by ERISA, are dependent upon PTE 84–14 for such instruments. Without such instruments, the Applicant represents that FFTW would be unable to fulfill its mandate to such plans, which could affect approximately $1.67 billion in assets ($1.58 billion in ERISA assets plus $90 million in assets subject to ERISA by contract).[62] The Applicant believes that the cost of the related liquidation would be approximately $2.1 million.

20. The Applicant goes on to explain that another BNP Affiliated QPAM, BNP Paribas Investment Partners Trust Company, is the trustee for a $1.3 billion stable value fund that holds the assets of more than 2,000 plans. The Applicant represents that FFTW acts as the asset manager for the fund under an investment management agreement requiring FFTW to qualify for the relief in PTE 84–14. Furthermore, the Applicant explains that as of June 30, 2014, the fund is wrapped in part by one or more contracts requiring the application of PTE 84–14. The Applicant submits that a default would trigger termination of such contracts and cause the plans to forfeit payment by the issuer of any difference between book and market value, which could be substantial. Additionally, the Applicant adds that the cost of replacing an older legacy wrap contract with a new one would be significant (*e.g.,* wrap fees have increased 100–200 percent since the recent global financial crisis) and entirely borne by the plans, assuming replacement could be found at all in the current market.

21. The Applicant explains that additional losses could be experienced in connection with other BNP Affiliated QPAMs, such as BNP Paribas Asset Management, Inc. (BNP AM), the BancWest group's Hawaiian affiliates (principally First Hawaiian Bank (FHB) and Bishop Street Capital Management (Bishop), and Bank of the West and its subsidiary BancWest Investment Services (BWIS). The Applicant represents that BNP AM currently advises two accounts with approximately $7.9 billion, as of June 30, 2014, in both advisory and managed plan assets. The Applicant notes, to the extent that the loss of the relief under PTE 84–14 would cause the managed accounts to lose confidence in BNP AM, there would be additional liquidation costs. The Applicant adds that FHB, Bishop, and other BankWest affiliates manage 205 ERISA-covered plans and IRAs with about $1.1 billion in assets, and the loss of the relief under PTE 84–14 would cause estimated transaction and liquidation costs, assuming a loss of 5.5 basis points from the market value of the affected plans, of approximately $550,000. Finally, the Applicant notes that Bank of the West and BWIS manage approximately 2,117 ERISA-covered plans and IRAs with approximately $800 million in assets. The Applicant explains that if these ERISA-covered plan and IRA clients chose to leave due to the loss of relief under PTE 84–14,

[61] The Applicant represents that the cost of liquidating an investment is generally the difference between the bid price and the ask price for any particular investment. Furthermore, some investments are more liquid than others (*e.g.,* Treasury bonds are more liquid than foreign sovereign bonds and equities are more liquid than swaps). Some of the strategies followed by the Applicant tend to be less liquid than others and thus, the costs of a transition would be higher than liquidating, for example, a large equity portfolio.

[62] The Applicant notes that many public pension plans hold their investment managers to ERISA-like standards by the terms of their contract.

estimated liquidation costs, again assuming a loss of 5.5 basis points from the market value of the affected plans, would be approximately $400,000, not including the additional costs to reinvest such assets.

22. The Applicant further emphasizes that the proposed exemption would enable ERISA-covered plans and IRAs managed by the BNP Affiliated QPAMs and BNP Related QPAMs to continue with the current investment strategies of their chosen QPAM. The Applicant suggests that any ERISA-covered plan or IRA that is forced to move to a new investment manager could incur transition costs, in addition to the direct costs, as described above, such as the cost of issuing RFPs, finding other managers, and other costs associated with reinvesting the assets.

*Statutory Findings—Protective of Affected Plans and IRAs*

23. The Applicant submits that the proposed exemption, if granted, would be protective of affected ERISA-covered plans and IRAs. The Applicant represents that if this proposed exemption is granted, BNP Affiliated QPAMs will not use their authority or influence to direct an investment fund that is subject to ERISA and managed by a BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services, for a fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. Furthermore, each BNP Affiliated QPAM will ensure that no employee involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM.

24. The Department notes that the proposed exemption, if granted, provides additional protection to affected ERISA-covered plans and IRAs because it requires a prudently selected, independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, to evaluate the adequacy of and compliance with the Policies and Training by conducting an annual audit. The first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register** and must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which it applies. Specifically, the auditor shall determine whether each BNP Affiliated QPAM has developed, implemented, and maintained written policies (the Policies) requiring and designed to ensure that: (a) The asset management decisions of the BNP Affiliated QPAM is conducted independently of BNP's management and business activities; (b) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions (including any appropriate corrective or remedial measures) and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (c) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (d) any filings or statements made by the BNP Affiliated QPAM to relevant regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (e) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with its ERISA-covered plan and IRA clients; (f) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (g) any violations of, or failure to comply with, items (b) through (f) are corrected pursuant to appropriate corrective or remedial measures outlined in the Policies and any such violations or compliance failures not corrected in accordance with the Policies are promptly reported, upon discovery, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plans or IRAs sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP.

25. The independent auditor shall also determine whether each BNP Affiliated QPAM has developed a training program (the Training) for such BNP Affiliated QPAM's personnel covering, at a minimum, the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing. The auditor shall also determine whether each BNP Affiliated QPAM is operationally compliant with the Policies and Training.

26. The auditor shall provide a written report (the Audit Report), upon completion of each audit that it conducts, to BNP and the BNP Affiliated QPAM to which such Audit Report applies that describes the auditor's determinations as required under this proposed exemption, if granted, and the steps performed by the auditor during the course of the auditor's examinations. The Audit Report will also include the auditor's determinations with regards to the adequacy of the Policies and the Training and any recommendations with respect to strengthening the Policies and Training, and any instances of a BNP Affiliated QPAM's noncompliance with developing, implementing, and maintaining the Policies and Training. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by the respective BNP Affiliated QPAM to which the Audit Report applies, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report.

27. The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM.

28. With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the audit applies will certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Additionally, an executive officer of BNP will review and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Finally, each BNP Affiliated QPAM will provide its Audit Report to OED no later than 30 days following its completion and each BNP Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM.

29. The Department notes that the proposed exemption will be protective of plans because each ERISA-covered plan and IRA will have the discretion to retain a BNP Affiliated QPAM as its asset manager or move to a new asset manager without being exposed to unnecessary fees and charges. In this regard, and in order to further protect ERISA-covered plans and IRAs, the proposed exemption requires that each BNP Affiliated QPAM agrees: (a) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (b) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for knowingly violating ERISA or the Code or engaging in prohibited transactions; (c) not to require an ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (d) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from their arrangement with the BNP Affiliated QPAM; and (e) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. This requirement will become effective immediately upon the granting of an exemption and each BNP Affiliated QPAM must provide notice of this requirement to its ERISA-covered plan and IRA clients within six (6) months of publication of a final granted exemption in the **Federal Register**.

30. The Department notes that a BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. Additionally, a BNP Related QPAM will not fail to meet the terms of this proposed exemption solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this proposed exemption.

31. The Applicant represents that if a final granted exemption is published in the **Federal Register**, each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which such BNP Affiliated QPAM relies upon the relief in the exemption.

32. The Applicant represents further that BNP will provide to: (a) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (b) each entity that may be a BNP Related QPAM; and (c) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of such fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption, along with a separate summary of the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14. For avoidance of doubt, in the event that BNP has knowledge of the identity of an ERISA-covered plan or IRA investor in the Income Plus Fund, BNP will ensure that such investor receives the notice(s) contemplated under this paragraph.

33. Finally, the Applicant represents that the proposed exemption will protect the interests of affected ERISA-covered Plans and IRAs because it would allow the BNP Affiliated QPAMs to engage in transactions described in PTE 84–14 only to the extent that all of the longstanding conditions set forth in PTE 84–14 (except for Section I(g), as a result of the Convictions) are fully met for the particular transaction at issue. Furthermore, the exemptive relief available under this proposed exemption, if granted, will not be available to the parent entity that is the subject of the Convictions, BNP.

*Statutory Findings—Administratively Feasible*

34. The Applicant represents that the requested exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that the BNP Affiliated QPAMs' compliance policies, and the conditions for the exemption, are being followed. Furthermore, compliance with other sections of PTE 84–14 has been determined to be administratively feasible by the Department in many other similar cases.

*Summary*

35. In summary, the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of ERISA because:

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any ERISA-covered plan or IRA;

(e) A BNP Affiliated QPAM may not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is

subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g)(1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written Policies requiring and reasonably designed to ensure that: (i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to relevant regulators, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; although, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP;

(2) Each Affiliated QPAM immediately develops and implements Training, conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h)(1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training;

(2) For each audit, the auditor shall issue an Audit Report to BNP and the BNP Affiliated QPAM to which the audit applies that describes the steps performed by the auditor during the course of its examination;

(3) An executive officer of the BNP Affiliated QPAM to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) An executive officer of BNP must review the Audit Report for each BNP Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(8) Each BNP Affiliated QPAM must provide its certified Audit Report to the Department's Office of Exemption Determinations no later than 30 days following its completion, and each BNP Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(i) The BNP Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of any granted exemption in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of a granted exemption in the **Federal Register**, each BNP Affiliated QPAM must provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) If a final exemption is granted in the **Federal Register**, each BNP Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP

Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs must provide to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of the fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14;

(m) A BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

**Notice to Interested Persons**

Notice of the proposed exemption (the Notice) will be provided to all interested persons within fifteen (15) days of publication of the Notice in the **Federal Register**. Notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notification will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but do not submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Erin S. Hesse, telephone (202) 693–8546, or Scott Ness, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of November, 2014.

**Lyssa E. Hall,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2014–27935 Filed 11–25–14; 8:45 am]

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# FEDERAL REGISTER

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Part III

## Department of Health and Human Services

45 CFR Parts 144, 146, 147, et al.
Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016; Proposed Rule

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 144, 146, 147, 148, 153, 154, 155, 156 and 158

**[CMS–9944–P]**

**RIN 0938–AS19**

## Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would set forth payment parameters and provisions related to the risk adjustment, reinsurance, and risk corridors programs; cost sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges. It would also provide additional standards for the annual open enrollment period for the individual market for benefit years beginning on or after January 1, 2016, essential health benefits, qualified health plans, network adequacy, quality improvement strategies, the Small Business Health Options Program, guaranteed availability, guaranteed renewability, minimum essential coverage, the rate review program, the medical loss ratio program, and other related topics.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 22, 2014.

**ADDRESSES:** In commenting, please refer to file code CMS–9944–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.* Follow the ''Submit a comment'' instructions.

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–9944–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–9944–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—

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. For delivery in Baltimore, MD—

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, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously 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:** For general information: Laurie McWright, (301) 492–4311; or Jeff Wu, (301) 492–4305. For matters related to guaranteed availability, guaranteed renewability, rate review, and the U.S. territories: Jacob Ackerman, (301) 492–4179.

For matters related to the risk adjustment program generally, the risk adjustment methodology, and the methodology for determining the reinsurance contribution rate and payment parameters: Kelly Horney, (410) 786–0558.

For matters related to reinsurance generally, distributed data collection good faith compliance policy, and administrative appeals: Adrianne Glasgow, (410) 786–0686.

For matters related to the definition of common ownership for reinsurance contribution purposes: Adam Shaw, (410) 786–1019.

For matters related to risk corridors: Jaya Ghildiyal, (301) 492–5149.

For matters related to the QHP good faith compliance policy: Cindy Yen, (301) 492–5142.

For matters related to essential health benefits, network adequacy, essential community providers, and other standards for QHP issuers: Leigha Basini, (301) 492–4380.

For matters related to the Small Business Health Options Program: Christelle Jang, (410) 786–8438.

For matters related to the Federally-facilitated Exchange user fee: Ruth Tabak, (301) 492–4220.

For matters related to cost-sharing reductions and the premium adjustment percentage: Pat Meisol, (410) 786–1917.

For matters related to re-enrollment, open enrollment periods, and exemptions from the shared responsibility payment under part 155: Christine Hammer, (301) 492–4431.

For matters related to special enrollment periods under part 155: Spencer Manasse, (301) 492–5141.

For matters related to minimum essential coverage: Cam Moultrie Clemmons, (206) 615–2338.

For matters related to quality improvement strategies: Marsha Smith, (410) 786–6614.

For matters related to the medical loss ratio program: Julie McCune, (301) 492–4196.

For matters related to meaningful access to QHP information and consumer assistance tools and programs of an Exchange under part 155, and cost-sharing reduction notices under part 156: Tricia Beckmann, (301) 492–4328.

**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.

**Table of Contents**

**Acronyms**

Affordable Care Act—The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended
AHFS—American hospital formulary system
AV—Actuarial value
CFR—Code of Federal Regulations
CMS—Centers for Medicare & Medicaid Services
ECP—Essential community provider
EHB—Essential health benefits
ERISA—Employee Retirement Income Security Act of 1974 (Pub. L. 93–406)
FFE—Federally-facilitated Exchange
FF–SHOP—Federally-facilitated Small Business Health Options Program
FPL—Federal poverty level
FQHC—Federally qualified health center
HCC—Hierarchical condition category
HHS—United States Department of Health and Human Services
HIPAA—Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
IRS—Internal Revenue Service
MLR—Medical loss ratio
NAIC—National Association of Insurance Commissioners
OMB—Office of Management and Budget
OPM—United States Office of Personnel Management
PHS Act—Public Health Service Act
PRA—Paperwork Reduction Act of 1995
P&T committee—Pharmacy and therapeutics committee
QHP—Qualified health plan
QIS—Quality improvement strategy
SHOP—Small Business Health Options Program
The Code—Internal Revenue Code of 1986
TPA—Third-party administrator
URL—Uniform resource locator
USP—United States Pharmacopeia

## I. Executive Summary

Qualified individuals and qualified employers are now able to purchase private health insurance coverage through competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges'' (also called Health Insurance Marketplaces, or ''Marketplaces''). Individuals who enroll in qualified health plans (QHPs) through individual market Exchanges may be eligible to receive the premium tax credit to make health insurance more affordable and reductions in cost-sharing payments to reduce out-of-pocket expenses for health care services. Additionally, in 2014, HHS began operationalizing the premium stabilization programs established by the Affordable Care Act. These programs—the risk adjustment, reinsurance, and risk corridors programs—are intended to mitigate the potential impact of adverse selection and stabilize the price of health insurance in the individual and small group markets. These programs, together with other reforms of the Affordable Care Act, are making high-quality health insurance affordable and accessible to millions of Americans.

We have previously outlined the major provisions and parameters related to the advance payments of the premium tax credit, cost-sharing reductions, and premium stabilization programs. This rule proposes additional provisions and modifications related to the implementation of these premium stabilization programs, as well as key payment parameters for the 2016 benefit year.

The HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 15410) (2014 Payment Notice) finalized the risk adjustment methodology that HHS will use when it operates risk adjustment on behalf of a State. Risk adjustment factors reflect enrollee health risk and the costs of a given disease relative to average spending. This proposed rule proposes to recalibrate the HHS risk adjustment models for 2016 by using 2010, 2011, and 2012 claims data from the Truven Health Analytics 2010 MarketScan® Commercial Claims and Encounters database (MarketScan) to develop updated risk factors. We also propose that when 2013 MarketScan data become available, we may recalculate these factors for publication in the final rule. We also seek comment on whether the recalculated risk factors should apply for 2015.

Using the methodology set forth in the 2014 Payment Notice and the HHS Notice of Benefit and Payment Parameters for 2015 (79 FR 13744) (2015 Payment Notice), we propose a 2016 uniform reinsurance contribution rate of $27 annually per enrollee, and the 2016 uniform reinsurance payment parameters—a $90,000 attachment point, a $250,000 reinsurance cap, and a 50 percent coinsurance rate. We also propose to decrease the attachment point for the 2015 benefit year from $70,000 to $45,000, while retaining the $250,000 reinsurance cap and a 50 percent coinsurance rate. We include proposals regarding the definition of ''common ownership'' for purposes of determining whether a contributing entity uses a third-party administrator for core administrative functions. In addition, this proposed rule discusses the reinsurance contribution payment schedule and accompanying notifications.

We also propose a clarification and a modification to the risk corridors program. We clarify that the risk corridors transitional adjustment policy established in the 2015 Payment Notice does not adjust the risk corridors calculation based on enrollment in a so-called ''early renewal plan'' (a plan that renewed before January 1, 2014 and before the end of its 12-month term) unless and until the plan renews in 2014 and becomes a transitional plan. Additionally, for the 2016 benefit year, we are proposing an approach for the treatment of risk corridors collections under the policy set forth in our April 11, 2014 FAQ on Risk Corridors and Budget Neutrality, if risk corridors collections available in 2016 exceed risk corridors payment requests from QHP issuers. We reiterate our previous guidance that in the unlikely event of a shortfall in the 2016 benefit year, HHS will use other sources of funding, subject to availability of appropriations. We also propose to extend the good faith safe harbor for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements through the 2015 calendar year.

We also propose several provisions related to cost sharing. First, we propose the premium adjustment percentage for 2016, which is used to set the rate of increase for several parameters detailed in the Affordable Care Act, including the maximum annual limitation on cost sharing for 2016. We propose the maximum annual limitations on cost sharing for the 2016 benefit year for cost-sharing reduction plan variations. For reconciliation of 2014 cost-sharing reductions, we propose to permit issuers whose plan variations meet certain criteria to estimate the portion of claims attributable to non-essential health benefits to calculate cost-sharing reductions provided.

For 2016, we are proposing a Federally-facilitated Exchange (FFE) user fee rate of 3.5 percent of premium. This rule also proposes provisions to enhance the transparency and effectiveness of the rate review program. It also proposes standards related to minimum essential coverage, the individual market annual open enrollment period for benefit years beginning on or after January 1, 2016, and proposes minor amendments to a number of SHOP provisions to clarify how certain Exchange provisions apply to qualified employers and qualified employees. This rule proposes provisions relating to the treatment of

cost-sharing reductions and certain taxes in medical loss ratio (MLR) and rebate calculations, as well as the distribution of rebates by group health plans not subject to Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) (ERISA). The proposed rule would provide more specificity about the meaningful access requirements applicable to an Exchange and to QHP issuers related to access for individuals with disabilities and individuals with limited English proficiency. This proposed rule would require issuers to provide a summary of benefits and coverage (SBC) for each plan variation of the standard QHP and to provide adequate notice to enrollees of changes in cost-sharing reduction eligibility. This proposed rule also includes additional quality improvement strategy reporting provisions for QHP issuers. Finally, this proposed rule specifies the circumstances that may lead an Exchange to suppress a QHP from being offered to new enrollees through an Exchange, and would extend the good faith compliance policy for QHP issuers through the 2015 calendar year.

We propose several provisions relating to essential health benefits (EHBs). This proposed rule proposes a definition of habilitative services, and provides examples of discriminatory plan designs. This proposed rule would also change existing EHB standards regarding coverage of prescription drugs by proposing that formularies be established by issuers' pharmacy and therapeutics committees (P&T committees). In addition, this proposed rule would amend requirements for essential community providers and network adequacy.

## II. Background

### *A. Legislative and Regulatory Overview*

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Affordable Care Act.''

Subtitles A and C of title I of the Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 2701 of the PHS Act, as added by the Affordable Care Act, restricts the variation in premium rates charged by a health insurance issuer for non-grandfathered health insurance coverage in the individual or small group market to certain specified factors. The factors are: family size, rating area, and age and tobacco use (within specified limits).

Section 2701 of the PHS Act operates in coordination with section 1312(c) of the Affordable Care Act. Section 1312(c) of the Affordable Care Act generally requires a health insurance issuer to consider all enrollees in all health plans (except for grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual market and small group market risk pools under section 1312(c)(3) of the Affordable Care Act.

Section 2702 of the PHS Act, as added by the Affordable Care Act, requires health insurance issuers that offer health insurance coverage in the group or individual market in a State to offer coverage to and accept every employer and individual in the State that applies for such coverage unless an exception applies.

Section 2703 of the PHS Act, as added by the Affordable Care Act, and sections 2712 and 2741 of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and codified prior to the enactment of the Affordable Care Act, require health insurance issuers that offer health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual unless an exception applies.

Section 2718 of the PHS Act, as added by the Affordable Care Act, generally requires health insurance issuers to submit an annual MLR report to HHS and provide rebates to enrollees if they do not achieve specified MLR thresholds.

Section 2794 of the PHS Act, as added by the Affordable Care Act, directs the Secretary of HHS (the Secretary), in conjunction with the States, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' [1] The law also requires health insurance issuers to submit to the Secretary and the applicable State justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794(b)(2) further specifies that beginning with plan years beginning in 2014, the Secretary, in conjunction with the States, will monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

Section 1302 of the Affordable Care Act provides for the establishment of an essential health benefits (EHB) package that includes coverage of EHB (as defined by the Secretary), cost-sharing limits, and actuarial value (AV) requirements. The law directs that EHBs be equal in scope to the benefits covered by a typical employer plan and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

Sections 1302(b)(4)(A) through (D) establish that the Secretary must define EHB in a manner that: (1) Reflects appropriate balance among the 10 categories; (2) is not designed in such a way as to discriminate based on age, disability, or expected length of life; (3) takes into account the health care needs of diverse segments of the population; and (4) does not allow denials of EHBs based on age, life expectancy, disability, degree of medical dependency, or quality of life.

Section 1302(d) of the Affordable Care Act describes the various levels of coverage based on actuarial value (AV). Consistent with section 1302(d)(2)(A) of the Affordable Care Act, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the Affordable Care Act directs the Secretary to develop guidelines that allow for *de minimis* variation in AV calculations.

Section 1311(b)(1)(B) of the Affordable Care Act directs that the SHOP assist qualified small employers in facilitating the enrollment of their employees in QHPs offered in the small group market. Sections 1312(f)(1) and (2) of the Affordable Care Act define qualified individuals and qualified employers. Under section 1312(f)(2)(B) of the Affordable Care Act, beginning in 2017, States will have the option to

[1] The implementing regulations in part 154 limit the scope of the requirements under section 2794 of the PHS Act to health insurance issuers offering health insurance coverage in the individual market or small group market. *See* Rate Increase Disclosure and Review; Final Rule, 76 FR 29964, 29966 (May 23, 2011).

allow issuers to offer QHPs in the large group market through the SHOP.[2]

Section 1311(c)(1)(B) of the Affordable Care Act requires the Secretary to establish minimum criteria for provider network adequacy that a health plan must meet to be certified as a QHP. Section 1311(c)(1)(E) of the Affordable Care Act specifies that, to be certified as a QHP participating in Exchanges, each health plan must implement a quality improvement strategy (QIS), which is described in section 1311(g)(1) of the Affordable Care Act.

Section 1311(c)(5) of the Affordable Care Act requires the Secretary to continue to operate, maintain and update the Internet portal developed under section 1103 of the Affordable Care Act to provide information to consumers and small businesses on affordable health insurance coverage options.

Section 1311(c)(6)(B) of the Affordable Care Act states that the Secretary is to set annual open enrollment periods for Exchanges for calendar years after the initial enrollment period.

Section 1301(a)(1)(B) of the Affordable Care Act directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the Affordable Care Act, including coverage of the services described in section 1302(b) of the Affordable Care Act, to adhere to the cost-sharing limits described in section 1302(c) of the Affordable Care Act and to meet the AV levels established in section 1302(d) of the Affordable Care Act. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the coverage of the EHB package to non-grandfathered individual and small group coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost sharing under the plan does not exceed the limitations described in sections 1302(c)(1) and (2) of the Affordable Care Act.

Sections 1313 and 1321 of the Affordable Care Act provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321 of the Affordable Care Act provides for State flexibility in the operation and enforcement of Exchanges and related requirements.

Section 1321(a) of the Affordable Care Act provides the Secretary with broad authority to establish standards and regulations to implement statutory requirements related to Exchanges, QHPs and other components of title I of the Affordable Care Act. Under the authority established in section 1321(a)(1) of the Affordable Care Act, the Secretary promulgated the regulations at § 155.205(d) and (e). Section 155.205 authorizes Exchanges to perform certain consumer service functions, including the Navigator program described in § 155.210. Section 155.205(d) provides that each Exchange must conduct consumer assistance activities, and § 155.205(e) provides that each Exchange must conduct outreach and education activities to inform consumers about the Exchange and insurance affordability programs to encourage participation. Section 155.205(d) and (e) also allow for the establishment of a non-Navigator consumer assistance program. Section 155.215 establishes standards for Navigators and non-Navigator assistance personnel in Federally-facilitated Exchanges and for non-Navigator assistance personnel that are funded with Exchange establishment grant funds under section 1311(a) of the Affordable Care Act.

When operating an FFE under section 1321(c)(1) of the Affordable Care Act, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the Affordable Care Act to collect and spend user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Section 1321(c)(2) of the Affordable Care Act authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the PHS Act. Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Part A of title XXVII of the PHS Act when a State fails to substantially enforce these provisions.

Section 1321(d) of the Affordable Care Act provides that nothing in title I of the Affordable Care Act should be construed to preempt any State law that does not prevent the application of title I of the Affordable Care Act. Section 1311(k) of the Affordable Care Act specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1341 of the Affordable Care Act requires the establishment of a transitional reinsurance program in each State to help pay the cost of treating high-cost enrollees in the individual market in benefit years 2014 through 2016. Section 1342 of the Affordable Care Act directs the Secretary to establish a temporary risk corridors program that protects against inaccurate rate setting from 2014 through 2016. Section 1343 of the Affordable Care Act establishes a permanent risk adjustment program that is intended to provide increased payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, funded by payments from those that attract lower-risk populations, thereby reducing incentives for issuers to avoid higher-risk enrollees.

Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing for essential health benefits for qualified low- and moderate-income enrollees in silver level health plans offered through the individual market Exchanges. These sections also provide for reductions in cost sharing for Indians enrolled in QHPs at any metal level.

Section 5000A of the Code, as added by section 1501(b) of the Affordable Care Act, requires all non-exempt individuals to maintain minimum essential coverage or make the individual shared responsibility payment. Section 5000A(f) of the Code defines minimum essential coverage as any of the following: (1) Coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; and (4) coverage under a grandfathered health plan. Section 5000A(f)(1)(E) of the Code authorizes the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage.

1. Premium Stabilization Programs

In the July 15, 2011 **Federal Register** (76 FR 41930), we published a proposed rule outlining the framework for the premium stabilization programs. We

[2] If a State elects this option, the rating rules in section 2701 of the PHS Act and its implementing regulations will apply to all coverage offered in such State's large group market (except for self-insured group health plans) pursuant to section 2701(a)(5) of the PHS Act.

implemented the premium stabilization programs in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17220) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73118), we published a proposed rule outlining the benefit and payment parameters for the 2014 benefit year to expand the provisions related to the premium stabilization programs and set forth payment parameters in those programs (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15410).

In the December 2, 2013 **Federal Register** (78 FR 72322), we published a proposed rule outlining the benefit and payment parameters for the 2015 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13744).

2. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37032), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the ''first Program Integrity Rule'' published in the August 30, 2013 **Federal Register** (78 FR 54070) and the ''second Program Integrity Rule'' published in the October 30, 2013 **Federal Register** (78 FR 65046).

3. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to States on Exchanges on November 18, 2010. We proposed a rule in the July 15, 2011 **Federal Register** (76 FR 41866) to implement components of the Exchange, and a rule in the August 17, 2011 **Federal Register** (76 FR 51202) regarding Exchange functions in the individual market, eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18310) (Exchange Establishment Rule).

We established standards for the administration and payment of cost-sharing reductions and the SHOP in the 2014 Payment Notice and in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the March 11, 2013 **Federal Register** (78 FR 15541). The provisions established in the interim final rule were finalized in the second Program Integrity Rule. We also set forth standards related to Exchange user fees in the 2014 Payment Notice. We also established an adjustment to the FFE user fee in the Coverage of Certain Preventive Services Under the Affordable Care Act final rule, published in the July 2, 2013 **Federal Register** (78 FR 39870) (Preventive Services Rule).

In a final rule published in the July 17, 2013 **Federal Register** (78 FR 42859), we established standards for Navigators and non-Navigator assistance personnel in Federally-facilitated Exchanges and for non-Navigator assistance personnel funded through an Exchange establishment grant.

4. Essential Health Benefits, Actuarial Value

We established requirements relating to EHBs and AVs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the February 25, 2013 **Federal Register** (78 FR 12834) (EHB Rule).

5. Market Rules

A proposed rule relating to the 2014 health insurance market rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the market rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and Beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015 and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule).

6. Rate Review

A proposed rule to establish the rate review program was published in the December 23, 2010 **Federal Register** (75 FR 81004). A final rule with comment period implementing the rate review program was published in the May 23, 2011 **Federal Register** (76 FR 29964) (Rate Review Rule). The provisions of the Rate Review Rule were amended in a final rule published in the September 6, 2011 **Federal Register** (76 FR 54969) and in the proposed and final 2014 Market Rules.

7. Medical Loss Ratio (MLR)

We published a request for comment on PHS Act section 2718 in the April 14, 2010 **Federal Register** (75 FR 19297), and published an interim final rule with a 60-day comment period relating to the MLR program on December 1, 2010 (75 FR 74864). A final rule with a 30-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76574). An interim final rule with a 60-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76596).

*B. Stakeholder Consultation and Input*

HHS has consulted with stakeholders on policies related to the operation of Exchanges, including the SHOP and the premium stabilization programs. HHS has held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and State representatives to gather public input. HHS consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange Establishment grant and Exchange Blueprint approval processes, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all of the public input as we developed the policies in this proposed rule.

*C. Structure of Proposed Rule*

The regulations outlined in this proposed rule would be codified in 45 CFR parts 144, 146, 147, 148, 153, 154, 155, 156 and 158. The proposed regulations in parts 144 propose a revised definition of the term ''plan'' and amendments relating to the definition of ''State'' for purposes of the group and individual market reforms added by the Affordable Care Act.

The proposed regulations in parts 146, 147, and 148 would establish parallel provisions in the guaranteed renewability regulations that prohibit an issuer that is discontinuing a product from automatically enrolling plan sponsors or individuals into a product of another licensed health insurance issuer.

The proposed regulations in part 153 outline the 2016 uniform reinsurance contribution rate, the uniform reinsurance payment parameters for the 2016 benefit year, and a modification to the attachment point for the 2015

benefit year. We propose an approach with respect to the transitional reinsurance program and the definition of ''common ownership'' for purposes of determining whether a contributing entity uses a third-party administrator for core administrative functions. The proposed regulations also propose the risk adjustment user fee for 2016 and outline certain modifications to the HHS risk adjustment methodology. We propose to clarify that the risk corridors transitional adjustment policy does not adjust the risk corridors calculation based on enrollment in early renewal plans (plans that renewed before January 1, 2014 and before the end of their 12-month term) unless and until the plan renews in late 2014 and becomes a transitional plan, and propose how to distribute any excess risk corridors funds at the end of the 3-year program. We also propose to extend the good faith safe harbor for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements into the 2015 calendar year.

The proposed regulations in part 154 outline certain modifications to enhance the transparency and effectiveness of the rate review process. We propose to consider the impact of rate increases at the ''plan'' level as opposed to the ''product'' level when determining whether a rate increase in the individual or small group market is subject to review. Part 154 also includes related revisions to the definition of ''rate increase'' and a new definition of ''plan.'' We further propose an approach to ensure that all rate increases in the individual and small group market—for both QHPs and non-QHPs—are filed on a uniform timeline, and that States with Effective Rate Review Programs provide public access from their Web site to information about proposed and final rate increases in the individual and small group markets by consistent times for every relevant State market.

The proposed regulations in part 155 include a clarification related to the functions of an Exchange, and would establish the individual market open enrollment period for benefit years beginning on or after January 1, 2016. They also make certain proposals related to the SHOP Exchanges, which we discuss in greater detail below. We also propose to specify oral interpretation services standards for Exchanges and for QHP issuers offering coverage through Exchanges and certain agents and brokers. We propose to clarify the scope of the physical presence requirement at § 155.215(h) with regard to non-Navigator assistance personnel in State Exchanges that are funded with section 1311(a) Exchange Establishment grants.

The proposed regulations in part 156 set forth provisions related to cost sharing, including the premium adjustment percentage, the maximum annual limitation on cost sharing, and the reductions in the maximum annual limitation for cost-sharing plan variations for 2016. They describe a limited exception to the process issuers are required to use to estimate the portion of claims for non-essential health benefits when calculating 2014 cost-sharing reductions provided. They also outline the 2016 FFE user fee rate, and include provisions related to the essential health benefits and the calculation of AV.

In part 156, we also propose a clarification to the administrative appeals process applicable to the premium stabilization, cost-sharing reduction, advance payments of the premium tax credit, and FFE user fee programs. Part 156 also outlines health insurance issuer responsibilities, including consumer disclosure requirements in the summary of benefits and coverage (SBC) related to plan variations and changes in eligibility for cost-sharing reductions. Part 156 also includes proposals related to essential health benefits, including proposed collection of new benchmark plan information, clarification of habilitative services coverage, and examples of possible discriminatory plan designs. We also propose a change in the EHB prescription drug standard, amendments to network adequacy requirements, and amendments to essential community provider requirements. Part 156 also contains a proposal relating to the recognition of State high risk pool coverage as minimum essential coverage.

The proposed regulations in part 158 propose clarifications regarding the treatment of cost-sharing reductions in MLR calculations, and amendments regarding the treatment of payroll taxes in MLR and rebate calculations, and relating to the distribution of rebates to group enrollees in non-Federal governmental and other group health plans not subject to ERISA.

## III. Provisions of the Proposed HHS Notice of Benefit and Payment Parameters for 2016

### *A. Part 144—Requirements Relating to Health Insurance Coverage*

#### 1. Definitions (§ 144.103)

#### a. Plan

In the 2015 Market Standards Rule, we codified a definition of ''plan'' at § 144.103. Under that definition, the term ''plan'' means, with respect to an issuer and a product, the pairing of the health insurance coverage benefits under the product with a metal tier level (as described in sections 1302(d) and (e) of the Affordable Care Act) and service area. The product comprises all plans offered within the product, and the combination of all plans offered within a product constitutes the total service area of the product.

We propose to amend this definition to provide further specificity about the characteristics that distinguish a plan. Specifically, we propose that the term ''plan'' mean, with respect to an issuer and a product, the pairing of the health insurance coverage benefits under the product with a particular cost-sharing structure, provider network, and service area. This definition would make clear that plans that differ in their cost-sharing requirements (such as copayments, coinsurance or deductibles), or that have different networks of contracted providers or different service areas, are considered to be different plans. This would be true even if the plans are offered at the same metal tier level.

This definition is consistent with our approach for determining whether a plan offered outside the Exchange is the same plan as one that is certified as a QHP and offered through the Exchange.[3] It is also consistent with the standards for determining whether a plan is the ''same'' or ''substantially the same'' as a QHP under § 153.500 and will therefore participate in the risk corridors program.[4] The proposed amendments would also better align the defining features of a plan with the permitted plan-level adjustments under the single risk pool provision at § 156.80. For these reasons, we are also proposing the same definition apply for purposes of part 154, rate review program, and part 156, health insurance issuer standards.

We recognize that an issuer may, at the time of coverage renewal, make uniform modifications to a product, including modifying the cost sharing, provider network, and service area of a plan. We seek comment on when a plan should be considered the same plan for purposes of review for unreasonable rate increases, plan identification in the Health Insurance Oversight System (HIOS), and other programs based on changes in these characteristics. For instance, we seek comment on whether to adopt standards, similar to the

[3] Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, and Eligibility Appeals, 78 FR at 54074 (August 30, 2013).

[4] *Id.,* at 78 FR 54073.

product-level standards for uniform modification of coverage at § 147.106(e), for identifying when plan-level modifications constitute the same or different plan, and the particular form such standards should take.

b. State

On July 16, 2014, we issued letters to the Insurance Commissioners of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands clarifying the applicability of certain Affordable Care Act provisions to health insurance issuers in the U.S. territories.[5] We had been informed by representatives of the territories that subjecting issuers in the territories to the new market reforms in the PHS Act was undermining the stability of the territories' health insurance markets. Accordingly, the letters explained that, in HHS's determination, the new provisions of the PHS Act enacted in title I of the Affordable Care Act are appropriately governed by the definition of ''State'' set forth in that title, and therefore do not apply to group and individual health insurance issuers in the territories. The portions of the PHS Act that will not apply to group or individual health insurance issuers in the U.S. territories are sections 2701 through 2719A and 2794. As explained in the letters, this analysis applies only to health insurance that is governed by the PHS Act. It does not affect the PHS Act requirements that were enacted in the Affordable Care Act and incorporated into ERISA and the Internal Revenue Code (the Code) and apply to group health plans (whether insured or self-insured), because such applicability does not rely upon the term ''State'' as it is defined in either the PHS Act or in the Affordable Care Act. Similarly, it also does not affect the PHS Act requirements that were enacted in the Affordable Care Act and apply to non-Federal governmental plans. As a practical matter, therefore, PHS Act, ERISA, and the Code requirements applicable to group health plans continue to apply to such coverage, and issuers selling policies to both private sector and public sector employers in the territories will want to make certain that their products comply with the relevant Affordable Care Act amendments to the PHS Act applicable to group health plans since their customers—the group health plans—are still subject to those provisions of the PHS Act that were enacted in the Affordable Care Act including the prohibition on lifetime and annual limits (PHS Act section 2711), the prohibition on rescissions (PHS Act section 2712), coverage of preventive health services (PHS Act section 2713), and the revised internal and external appeals process (PHS Act section 2719), among other provisions.

We propose to codify this interpretation in § 144.103. The proposed amendments would provide that, for purposes of the Affordable Care Act requirements implemented in part 147, the term ''State'' does not include the U.S. territories of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The term ''State'' would continue to include the territories for purposes of parts 146, 148, and 150. Furthermore, part 147 requirements would continue to apply to non-Federal governmental plans, consistent with the analysis in the letters to the territories. In proposing this amendment, we are also proposing a minor modification to the definition of ''State'' to replace the words ''several States'' with ''50 States,'' so that the definition of ''State'' will read, ''State means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands; except that for purposes of part 147, the term does not include Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.''

We also propose to amend the regulations regarding rate review (§ 154.102) and EHB (§ 156.100) to reflect this interpretation. For a discussion of those provisions, see sections III.F.1.a and III.H.2.a of this preamble.

*B. Part 146—Requirements for the Group Health Insurance Market*

For a discussion of the provisions of this proposed rule related to part 146, see section III.C.2 of this preamble.

*C. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets*

1. Guaranteed Availability of Coverage (§ 147.104)

Section 147.104(b)(2) incorporates certain triggering events for special enrollment periods described in the Exchange regulations at § 155.420(d), and applies them to health insurance issuers offering non-grandfathered coverage in the individual market through or outside the Exchange. Sections 147.104(b)(2) and 155.420(d)(1)(ii) also establish a special enrollment period (also referred to as a limited open enrollment period) for individuals enrolled in non-calendar year individual health insurance policies when their policy year ends in 2014.

In this proposed rule, as described below, we propose to modify § 155.420(d)(1)(ii) to extend the availability of the special enrollment period for a qualified individual and his or her dependent who, in any year, has coverage under a group health plan or individual health insurance coverage that is offered on a non-calendar year basis. Because the special enrollment period in § 155.420(d)(1)(ii) is cross-referenced in § 147.104(b)(2), the parallel regulation text in § 147.104(b)(2) is no longer necessary, and we propose to remove it.

We also propose to move the related regulation text in § 147.104(b)(2) that requires individual market and merged market plans to be offered on a calendar year basis. We propose to redesignate existing paragraphs (f) through (h) as paragraphs (g) through (i) and to codify the calendar-year requirement in new paragraph (f), with minor modifications for clarity.

To further ensure consistency between plans offered through or outside the individual market Exchange, we also propose to amend § 147.104(b)(4) by cross-referencing § 155.420(c)(2). Section 147.104(b)(4) provides that an individual has 60 days from the date of a triggering event to select an individual market plan during a special enrollment period. This amendment would apply the advance availability provisions in § 155.420(c)(2) to the broader individual market, allowing an individual 60 days before and after certain triggering events to make a plan selection through or outside the individual market Exchange.

Finally, we propose to update the cross-reference in § 147.104(b)(1)(i)(C) to refer to § 155.725 rather than § 155.725(a)(2), to conform with proposed amendments in § 155.725 described later in this preamble.

2. Guaranteed Renewability of Coverage (§ 147.106)

The guaranteed renewability provisions of title XXVII of the PHS Act provide that an issuer may discontinue a product offered in the group or individual market if the issuer offers to each plan sponsor or individual who is enrolled in that particular product the option to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer in that market, and complies with other

[5] *See* for example, Letter to Virgin Islands on the Definition of State (July 16, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Francis.pdf.*

requirements of those sections, as well as with any applicable State law.

In previous guidance outlining our current regulatory interpretation of the product discontinuation provisions, we explained that an issuer does not satisfy the requirement to offer other coverage currently being offered ''by the issuer'' in the applicable market if it automatically enrolls a plan sponsor or individual into a product of another issuer that is separately licensed to engage in the business of insurance in a State.[6] We propose to codify that interpretation by amending the guaranteed renewability regulations at § 146.152(c)(2), § 147.106(c)(2), and § 148.122(d)(2).

We note that this proposal would not prevent an issuer that decides to discontinue all health insurance coverage in a market (market withdrawal) from automatically enrolling plan sponsors or individuals into a product of another licensed issuer, to the extent permitted by applicable State law. However, if the issuer terminates all coverage in a market or markets, it is subject to certain requirements outlined in § 146.152(d), § 147.106(d), and § 148.122(e), as applicable. In particular, the issuer must provide at least 180 days' notice to the applicable State authority and to each plan sponsor or individual, as applicable, (and participants and beneficiaries covered under such coverage), and it is prohibited from issuing coverage in the market(s) or State involved for 5 years following the date of discontinuation. The issuer must also comply with any applicable State law.

In instances when an issuer is not withdrawing from the market, we note that permitting the purchase and sale of products between issuers, whether through acquisitions of the product, statutory mergers of the issuers, or other corporate combinations, could create an opportunity for insurance holding companies to segment risk on the basis of health status between their subsidiary companies. However, we also do not want to impose undue constraints on standard corporate reorganization practices. Where an issuer may wish to transfer its product(s) to another issuer, it is not clear whether the purposes of the guaranteed renewability provisions are better served by requiring the ceding issuer to offer the consumer enrollment in a different product offered by that issuer, or by having the acquiring issuer automatically enroll the consumer in the transferred product, which may have the same benefits, cost sharing, and other plan features.

We are considering how to interpret the guaranteed renewability provisions in the context of various corporate transactions involving a change of ownership, such as mergers, acquisitions, and similar business restructuring, as well as particular standards that may be necessary to ensure seamless coverage for enrollees and to facilitate the ongoing operational processes of HHS-administered programs. For example, we could allow for the retention of enrollees under a product that is being transferred to another issuer under certain types of transactions as permitted by applicable State law, but only if the same benefits, network, and other coverage features remain in place and the acquiring issuer agrees to accept liability for any payments and charges for the advance payments for the premium tax credit, cost-sharing reductions, the FFE user fee, and the HHS-operated risk adjustment, reinsurance, and risk corridors programs. We believe that this allocation of liability would accord with many parties' expectations upon entering into such a transaction. We seek comment on such a standard, or what other allocation of liability should apply following such a transaction for each of these programs.

In addition to interpretations of the guaranteed renewability provisions in this context, mid-year changes in ownership affect operational processes, in particular for the data and payment processes associated with the programs listed above. These programs utilize plan identification in the Health Insurance Oversight System (HIOS), and at this time, cannot easily accommodate changes in such identification that would result from certain mid-year changes in ownership. Therefore issuers subject to these programs must continue data and payment processes under the original HIOS identifying information for affected programs until operations for the coverage year are complete. Operational guidance addressing data submissions and payments and charges when an issuer participating in the programs listed above experiences a change of ownership will be forthcoming.

To facilitate these operational processes, we propose to impose a notification requirement on issuers of a QHP, a plan otherwise subject to risk corridors, or a reinsurance-eligible plan or a risk adjustment covered plan, in cases of changes of ownership, as recognized by the State in which the issuer offers coverage. As an alternative, we also are considering defining a change of ownership for these purposes as a transaction that would cause a change in an issuer's tax identification number, or any change in legal ownership of an issuer's plan, for example through an asset sale or transfer or change in holding company ownership. We propose to require the post-transaction issuer to notify HHS of the transaction in the manner specified by HHS, by the later of the date the transaction is entered into or the 30th day prior to the effective date of the transaction. We anticipate that these timelines will not interfere with the negotiation and consummation of the transaction, but will permit the parties and HHS to clarify operational payment processes in a timely manner.

We seek comment on how the guaranteed renewability provisions should be interpreted as related to the transfer of products or corporate transformations of issuers. In particular, we seek comment on what, if any, types of automatic enrollment practices should be permitted in connection with specific types of corporate transactions and whether the regulations should be amended to create an exception to the prohibition on auto-enrollment with a different issuer in certain situations involving changes of ownership; how common such transactions are and how they are typically structured; the extent to which State laws and regulations impose restrictions on such transactions, and how our interpretation of the guaranteed renewability provisions would best protect the interests of consumers. We also seek comment on how the timing of such transactions may interact with other applicable market reforms in the relevant market segment, such as the timing of index rate updates under the single risk pool provision at § 156.80. We additionally seek comment on whether particular disclosure or special enrollment period provisions are necessary to ensure consumers are timely notified of a transaction affecting their coverage and given options for electing other coverage.

Finally, we seek comment on all aspects of proposed notification to HHS, including the identity of the notifying issuer, the timing of the proposed notification, types of transactions for

[6] *See* Insurance Standards Bulletin, Form and Manner of Notices When Discontinuing or Renewing a Product in the Group or Individual Market, section IV (September 2, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Renewal-Notices-9-3-14-FINAL.PDF. See also* Patient Protection and Affordable Care Act; Annual Eligibility Redeterminations for Exchange Participation and Insurance Affordability Programs; Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Related to Exchanges, 79 FR at 53000 (September 5, 2014).

which notification should be required, operational guidance that should be offered, and which issuer should be liable for payments and charges for the advance payments for the premium tax credit, cost-sharing reductions, the Federally-facilitated Exchange user fees, and the HHS-operated risk adjustment, reinsurance, and risk corridors programs. We also seek comment on whether the notification requirement should apply to issuers of all plans subject to the guaranteed renewability requirements, including, for example, grandfathered health plans.

*D. Part 148—Requirements for the Individual Health Insurance Market*

For a discussion of the provisions of this proposed rule related to part 148, see section III.C.2 of this preamble.

*E. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act*

1. Provisions for the State Notice of Benefit and Payment Parameters (§ 153.100)

In § 153.100(c), we established a deadline of March 1 of the calendar year prior to the applicable benefit year for a State to publish a State notice of benefit and payment parameters if the State is required to do so under § 153.100(a) or (b)—that is, if the State is operating a risk adjustment program, or if the State is establishing a reinsurance program and wishes to modify the data requirements for issuers to receive reinsurance payments from those specified in the HHS notice of benefit and payment parameters for the benefit year, wishes to collect additional reinsurance contributions or use additional funds for reinsurance payments, or elects to use more than one applicable reinsurance entity. As of the date of publication of this proposed rulemaking, Connecticut is the only State that has elected to establish a transitional reinsurance program and Massachusetts is the only State that has elected to operate a risk-adjustment program.

We have previously recognized in the 2014 and 2015 Payment Notices that it may be difficult for States to publish such a notice by the required deadline if the final HHS notice of benefit and payment parameters for the applicable benefit year has not yet been published. Therefore, we propose to modify § 153.100(c) so that the publication deadline for the State notice of benefit and payment parameters would be the later of March 1 of the calendar year prior to the applicable benefit year, or the 30th day following publication of the final HHS notice of benefit and payment parameters for that benefit year. This deadline corresponds to the extended deadlines we implemented for the 2014 and 2015 benefit years in the 2014 and 2015 Payment Notices, respectively. We seek comment on this proposal.

2. Provisions and Parameters for the Permanent Risk Adjustment Program

The risk adjustment program is a permanent program created by section 1343 of the Affordable Care Act that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges, to balance risk and maintain market stability. In subparts D and G of the Premium Stabilization Rule, we established standards for the administration of the risk adjustment program. A State that is approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf.

a. Risk Adjustment User Fee

If a State is not approved to operate or chooses to forgo operating its own risk adjustment program, HHS will operate risk adjustment on the State's behalf. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of States is funded through a risk adjustment user fee. Section 153.610(f)(2) provides that an issuer of a risk adjustment covered plan must remit a user fee to HHS equal to the product of its monthly enrollment in the plan and the per-enrollee-per-month risk adjustment user fee specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The risk adjustment program will provide special benefits as defined in section 6(a)(1)(b) of Circular No. A–25R to issuers of risk adjustment covered plans because it will mitigate the financial instability associated with potential adverse risk selection. The risk adjustment program also will contribute to consumer confidence in the health insurance industry by helping to stabilize premiums across the individual and small group health insurance markets.

In the 2015 Payment Notice, we estimated Federal administrative expenses of operating the risk adjustment program to be $0.96 per-enrollee-per-year, based on our estimated contract costs for risk adjustment operations. For the 2016 benefit year, we propose to use the same methodology to estimate our administrative expenses to operate the program. These contracts cover development of the model and methodology, collections, payments, account management, data collection, data validation, program integrity and audit functions, operational and fraud analytics, stakeholder training, and operational support. To calculate the user fee, we would divide HHS's projected total costs for administering the risk adjustment programs on behalf of States by the expected number of enrollees in risk adjustment covered plans (other than plans not subject to market reforms and student health plans, which are not subject to payments and charges under the risk adjustment methodology HHS uses when it operates risk adjustment on behalf of a State) in HHS-operated risk adjustment programs for the benefit year.

We estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2016 will be approximately $50 million, and that the risk adjustment user fee would be $1.75 per enrollee per year. The increased risk adjustment user fee for 2016 is the result of the increased contract costs to support the risk adjustment data validation process, which will be administered for the first time in 2016. We seek comment on this proposed risk adjustment user fee rate.

b. Overview of the HHS Risk Adjustment Model

The HHS risk adjustment model predicts plan liability for an average enrollee based on that person's age, sex, and diagnoses (risk factors), producing a risk score. The HHS risk adjustment methodology utilizes separate models for adults, children, and infants to account for cost differences in each of these age groups. In each of the adult and child models, the relative costs assigned to an individual's age, sex, and diagnoses are added together to produce a risk score. Infant risk scores are determined by inclusion in one of 25 mutually exclusive groups based on the infant's maturity and the severity of its diagnoses. If applicable, the risk score is multiplied by a cost-sharing reduction adjustment.

The enrollment-weighted average risk score of all enrollees in a particular risk

adjustment-covered plan, or the plan liability risk score, within a geographic rating area is one input into the payment transfer formula, which determines an issuer's transfer (payment or charge) for that plan. Thus, the HHS risk adjustment model predicts individual-level risk scores, but is designed to predict average group costs to account for risk across plans, which, as we stated in the 2014 Payment Notice, accords with the Actuarial Standards Board's Actuarial Standards of Practice for risk classification.

c. Proposed Updates to Risk Adjustment Model

We propose to continue to use the same risk adjustment methodology finalized in the 2014 Payment Notice, with changes to reflect more current data, as described here. As we stated above, in the adult and child models, enrollee health risks are estimated using the HHS risk adjustment model, which assigns a set of additive factors that reflect the relative costs of demographics and diagnoses. Risk adjustment factors are developed using claims data and reflect the costs of a given disease relative to average spending. The longer the lag in data used to develop the risk factors, the greater the potential that the costs of treating one disease versus another have changed in a manner not fully reflected in the risk factors.

To provide risk adjustment factors that best reflect more recent treatment patterns and costs, we propose to recalibrate the HHS risk adjustment models for 2016 by using more recent claims data to develop updated risk factors. The risk factors published in the 2014 Payment Notice for use in 2014 and 2015 were developed using the Truven Health Analytics 2010 MarketScan® Commercial Claims and Encounters database (MarketScan); we are proposing to update the risk factors in the HHS risk adjustment model using 2010, 2011, and 2012 MarketScan data. We seek comment on this proposal.

We propose to implement the recalibrated risk adjustment factors in 2016 to provide sufficient time for issuers to account for risk adjustment model changes. However, we also seek comment on making the recalibrated HHS risk adjustment models effective beginning for the 2015 benefit year instead of the 2016 benefit year.

We also propose that if 2013 MarketScan data becomes available after the publication of this proposed rule, we would update the risk factors in the HHS risk adjustment model using the 3 most recent years of data available—MarketScan 2011, 2012, and 2013 data. These updated risk factors would be published and finalized in this final rule. We seek comment on this approach, including whether we should update risk factors based on 2013 MarketScan data when it becomes available after publication of this proposed rule, and whether the updated risk factors should be implemented for 2015, or 2016.

We believe that using multiple years of data will promote market stability and minimize volatility in coefficients for certain rare diagnoses. In using multiple years of data to recalibrate the risk adjustment model, we considered either pooling data from 3 sample years or blending coefficients from three separately estimated calibrations, based on the 2010, 2011, and 2012 data. We examined the effects of pooling data and blending separate calibrations, and did not find a significant difference between the resulting coefficients. However, we believe that blending coefficients offers the advantage of transparency and ease in future recalibrations. Blending coefficients using the 3 most recent years of separately estimated calibrations allows for most recent data to be incorporated into the model, while ensuring that coefficients remain relatively stable. We would publish the R-squared statistics of the 3 separately-estimated sample years and the blended coefficient for each risk adjustment factor. We seek comment on this approach.

We made minor refinements to the underlying MarketScan recalibration samples from which the risk adjustment factors are derived. In particular, we changed our treatment of Age 0 infants without birth hierarchical condition categories (HCCs). There may be cases in which there is no separate infant birth claim from which to gather diagnoses. For example, at an operational level, mother and infant claims may be bundled such that infant diagnoses appear on the mother's record. Where newborn diagnoses appear on the mother's claims, HHS has issued operational guidance on how best to associate those codes with the appropriate infant.[7] This assumes that the mother and infant enrollment records exist and can be matched.

However, we are proposing a change in how we categorize age 0 infants who do not have birth codes. We previously stated in the operational guidance referenced above that infants without birth codes would be assigned an ''Age 0, Term'' factor in risk adjustment operations. We did so under the assumption that issuers paid the birth costs, yet the birth HCCs were missing (perhaps because claims were bundled with the mother's, whose claims were excluded). Upon further analysis of age 0 and age 1 claims, we found that age 0 infants without birth HCCs had costs more similar to age 1 infants by severity level. We believe that these infants should be assigned to age 1 in situations where the issuer did not pay the birth costs during the plan year. For many age 0 infants without birth HCCs, the birth could have occurred in the prior year or was paid by a different issuer. We are proposing that age 0 infants without birth HCCs be assigned to ''Age 1'' by severity level. We have made this change in the recalibration samples that we are using to calculate risk factors for proposed implementation in the 2016 benefit year. We are also proposing to make this change in the operation of the risk adjustment methodology for the year in which we would implement the recalibrated risk adjustment factors. We seek comment on this approach.

d. List of Factors To Be Employed in the Model

The HHS risk adjustment models predict annualized plan liability expenditures using age and sex categories and the HHS HCCs included in the HHS risk adjustment model. Dollar coefficients were estimated for these factors using weighted least squares regression, where the weight was the fraction of the year enrolled.

We are including the same HCCs that were included in the original risk adjustment calibration in the 2014 Payment Notice. For each model, the factors are the statistical regression dollar values for each HCC in the model divided by a weighted average plan liability for the full modeling sample. The factors represent the predicted relative incremental expenditures for each HCC. The proposed factors resulting from the blended factors from the 2010, 2011, and 2012 separately solved models are shown in the tables below. For a given enrollee, the sums of the factors for the enrollee's HCCs are the total relative predicted expenditures for that enrollee. Table 1 contains factors for each adult model, including the interactions. Table 3 contains the factors for each child model. Table 4 contains the factors for each infant model.

[7] HHS-Developed Risk Adjustment Model Algorithm Software Instructions. June 2, 2014. *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/DIY-instructions-5-20-14.pdf.*

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| **Demographic Factors** | | | | | |
| Age 21–24, Male | 0.245 | 0.197 | 0.139 | 0.079 | 0.063 |
| Age 25–29, Male | 0.259 | 0.207 | 0.144 | 0.079 | 0.062 |
| Age 30–34, Male | 0.314 | 0.252 | 0.176 | 0.095 | 0.074 |
| Age 35–39, Male | 0.379 | 0.307 | 0.220 | 0.125 | 0.099 |
| Age 40–44, Male | 0.464 | 0.379 | 0.281 | 0.169 | 0.138 |
| Age 45–49, Male | 0.553 | 0.456 | 0.347 | 0.219 | 0.183 |
| Age 50–54, Male | 0.711 | 0.593 | 0.464 | 0.305 | 0.257 |
| Age 55–59, Male | 0.834 | 0.698 | 0.556 | 0.379 | 0.325 |
| Age 60–64, Male | 1.005 | 0.844 | 0.681 | 0.475 | 0.412 |
| Age 21–24, Female | 0.408 | 0.327 | 0.216 | 0.102 | 0.072 |
| Age 25–29, Female | 0.516 | 0.417 | 0.289 | 0.153 | 0.117 |
| Age 30–34, Female | 0.635 | 0.521 | 0.387 | 0.240 | 0.201 |
| Age 35–39, Female | 0.738 | 0.615 | 0.479 | 0.329 | 0.288 |
| Age 40–44, Female | 0.824 | 0.691 | 0.545 | 0.381 | 0.335 |
| Age 45–49, Female | 0.858 | 0.718 | 0.567 | 0.393 | 0.343 |
| Age 50–54, Female | 0.983 | 0.828 | 0.667 | 0.467 | 0.407 |
| Age 55–59, Female | 1.019 | 0.856 | 0.690 | 0.481 | 0.418 |
| Age 60–64, Female | 1.126 | 0.945 | 0.766 | 0.538 | 0.468 |
| **Diagnosis Factors** | | | | | |
| HIV/AIDS | 5.788 | 5.291 | 4.962 | 4.962 | 4.971 |
| Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock | 13.018 | 12.842 | 12.720 | 12.792 | 12.820 |
| Central Nervous System Infections, Except Viral Meningitis | 7.352 | 7.230 | 7.147 | 7.178 | 7.190 |
| Viral or Unspecified Meningitis | 5.066 | 4.796 | 4.649 | 4.590 | 4.578 |
| Opportunistic Infections | 10.028 | 9.915 | 9.848 | 9.852 | 9.851 |
| Metastatic Cancer | 25.642 | 25.144 | 24.784 | 24.890 | 24.924 |
| Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia | 11.814 | 11.428 | 11.169 | 11.196 | 11.204 |
| Non-Hodgkin's Lymphomas and Other Cancers and Tumors | 6.522 | 6.247 | 6.069 | 6.030 | 6.015 |
| Colorectal, Breast (Age <50), Kidney, and Other Cancers | 5.935 | 5.661 | 5.483 | 5.439 | 5.421 |
| Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors | 3.467 | 3.259 | 3.129 | 3.075 | 3.055 |
| Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors | 1.693 | 1.516 | 1.407 | 1.296 | 1.258 |
| Pancreas Transplant Status/Complications | 7.981 | 7.895 | 7.819 | 7.841 | 7.845 |
| Diabetes with Acute Complications | 1.333 | 1.184 | 1.095 | 0.977 | 0.933 |
| Diabetes with Chronic Complications | 1.333 | 1.184 | 1.095 | 0.977 | 0.933 |
| Diabetes without Complication | 1.333 | 1.184 | 1.095 | 0.977 | 0.933 |
| Protein-Calorie Malnutrition | 14.895 | 14.913 | 14.901 | 14.977 | 15.000 |
| Mucopolysaccharidosis | 2.334 | 2.196 | 2.112 | 2.052 | 2.032 |
| Lipidoses and Glycogenosis | 2.334 | 2.196 | 2.112 | 2.052 | 2.032 |
| Amyloidosis, Porphyria, and Other Metabolic Disorders | 2.334 | 2.196 | 2.112 | 2.052 | 2.032 |
| Adrenal, Pituitary, and Other Significant Endocrine Disorders | 2.334 | 2.196 | 2.112 | 2.052 | 2.032 |
| Liver Transplant Status/Complications | 17.442 | 17.225 | 17.090 | 17.131 | 17.150 |
| End-Stage Liver Disease | 6.311 | 6.031 | 5.853 | 5.879 | 5.890 |
| Cirrhosis of Liver | 2.591 | 2.399 | 2.290 | 2.258 | 2.247 |
| Chronic Hepatitis | 2.134 | 1.970 | 1.871 | 1.799 | 1.776 |
| Acute Liver Failure/Disease, Including Neonatal Hepatitis | 4.501 | 4.322 | 4.209 | 4.201 | 4.202 |
| Intestine Transplant Status/Complications | 53.540 | 53.545 | 53.543 | 53.563 | 53.571 |
| Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis | 13.301 | 13.001 | 12.793 | 12.848 | 12.867 |
| Intestinal Obstruction | 7.360 | 7.048 | 6.853 | 6.898 | 6.917 |
| Chronic Pancreatitis | 6.620 | 6.343 | 6.171 | 6.209 | 6.227 |
| Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption | 3.357 | 3.132 | 2.999 | 2.956 | 2.944 |
| Inflammatory Bowel Disease | 3.091 | 2.816 | 2.655 | 2.539 | 2.495 |
| Necrotizing Fasciitis | 7.589 | 7.358 | 7.198 | 7.230 | 7.242 |
| Bone/Joint/Muscle Infections/Necrosis | 7.589 | 7.358 | 7.198 | 7.230 | 7.242 |
| Rheumatoid Arthritis and Specified Autoimmune Disorders | 3.565 | 3.292 | 3.116 | 3.094 | 3.089 |
| Systemic Lupus Erythematosus and Other Autoimmune Disorders | 1.289 | 1.138 | 1.050 | 0.952 | 0.917 |
| Osteogenesis Imperfecta and Other Osteodystrophies | 3.519 | 3.299 | 3.151 | 3.092 | 3.071 |
| Congenital/Developmental Skeletal and Connective Tissue Disorders | 3.519 | 3.299 | 3.151 | 3.092 | 3.071 |
| Cleft Lip/Cleft Palate | 1.728 | 1.545 | 1.437 | 1.349 | 1.322 |
| Hemophilia | 46.995 | 46.679 | 46.437 | 46.451 | 46.455 |
| Myelodysplastic Syndromes and Myelofibrosis | 14.398 | 14.258 | 14.158 | 14.185 | 14.194 |
| Aplastic Anemia | 14.398 | 14.258 | 14.158 | 14.185 | 14.194 |
| Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn | 9.323 | 9.130 | 8.996 | 8.989 | 8.989 |
| Sickle Cell Anemia (Hb-SS) | 9.323 | 9.130 | 8.996 | 8.989 | 8.989 |
| Thalassemia Major | 9.323 | 9.130 | 8.996 | 8.989 | 8.989 |
| Combined and Other Severe Immunodeficiencies | 5.539 | 5.361 | 5.242 | 5.258 | 5.263 |
| Disorders of the Immune Mechanism | 5.539 | 5.361 | 5.242 | 5.258 | 5.263 |

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS—Continued

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Coagulation Defects and Other Specified Hematological Disorders | 3.167 | 3.053 | 2.976 | 2.952 | 2.943 |
| Drug Psychosis | 3.735 | 3.469 | 3.306 | 3.209 | 3.176 |
| Drug Dependence | 3.735 | 3.469 | 3.306 | 3.209 | 3.176 |
| Schizophrenia | 3.199 | 2.922 | 2.760 | 2.675 | 2.649 |
| Major Depressive and Bipolar Disorders | 1.857 | 1.674 | 1.561 | 1.439 | 1.397 |
| Reactive and Unspecified Psychosis, Delusional Disorders | 1.857 | 1.674 | 1.561 | 1.439 | 1.397 |
| Personality Disorders | 1.187 | 1.051 | 0.955 | 0.821 | 0.774 |
| Anorexia/Bulimia Nervosa | 2.779 | 2.599 | 2.483 | 2.406 | 2.378 |
| Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes | 3.815 | 3.668 | 3.574 | 3.532 | 3.516 |
| Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes | 1.384 | 1.280 | 1.203 | 1.120 | 1.090 |
| Autistic Disorder | 1.187 | 1.051 | 0.955 | 0.821 | 0.774 |
| Pervasive Developmental Disorders, Except Autistic Disorder | 1.187 | 1.051 | 0.955 | 0.821 | 0.774 |
| Traumatic Complete Lesion Cervical Spinal Cord | 13.467 | 13.285 | 13.155 | 13.164 | 13.167 |
| Quadriplegia | 13.467 | 13.285 | 13.155 | 13.164 | 13.167 |
| Traumatic Complete Lesion Dorsal Spinal Cord | 9.938 | 9.745 | 9.616 | 9.614 | 9.613 |
| Paraplegia | 9.938 | 9.745 | 9.616 | 9.614 | 9.613 |
| Spinal Cord Disorders/Injuries | 6.268 | 6.031 | 5.883 | 5.864 | 5.857 |
| Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease | 4.060 | 3.784 | 3.618 | 3.579 | 3.571 |
| Quadriplegic Cerebral Palsy | 1.208 | 0.961 | 0.825 | 0.753 | 0.731 |
| Cerebral Palsy, Except Quadriplegic | 0.372 | 0.280 | 0.220 | 0.167 | 0.148 |
| Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies | 0.301 | 0.207 | 0.156 | 0.139 | 0.133 |
| Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy | 5.313 | 5.145 | 5.041 | 5.017 | 5.008 |
| Muscular Dystrophy | 2.201 | 2.008 | 1.906 | 1.832 | 1.806 |
| Multiple Sclerosis | 8.413 | 7.975 | 7.673 | 7.736 | 7.756 |
| Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders | 2.201 | 2.008 | 1.906 | 1.832 | 1.806 |
| Seizure Disorders and Convulsions | 1.578 | 1.403 | 1.296 | 1.207 | 1.177 |
| Hydrocephalus | 7.868 | 7.733 | 7.636 | 7.623 | 7.615 |
| Non-Traumatic Coma, and Brain Compression/Anoxic Damage | 10.042 | 9.885 | 9.770 | 9.773 | 9.772 |
| Respirator Dependence/Tracheostomy Status | 39.643 | 39.644 | 39.620 | 39.697 | 39.721 |
| Respiratory Arrest | 12.584 | 12.408 | 12.271 | 12.354 | 12.383 |
| Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes | 12.584 | 12.408 | 12.271 | 12.354 | 12.383 |
| Heart Assistive Device/Artificial Heart | 35.480 | 35.184 | 34.977 | 35.065 | 35.099 |
| Heart Transplant | 35.480 | 35.184 | 34.977 | 35.065 | 35.099 |
| Congestive Heart Failure | 3.651 | 3.522 | 3.438 | 3.440 | 3.441 |
| Acute Myocardial Infarction | 11.824 | 11.431 | 11.143 | 11.303 | 11.358 |
| Unstable Angina and Other Acute Ischemic Heart Disease | 6.167 | 5.830 | 5.628 | 5.667 | 5.686 |
| Heart Infection/Inflammation, Except Rheumatic | 7.052 | 6.895 | 6.793 | 6.780 | 6.775 |
| Specified Heart Arrhythmias | 3.369 | 3.197 | 3.091 | 3.039 | 3.020 |
| Intracranial Hemorrhage | 10.890 | 10.560 | 10.343 | 10.374 | 10.388 |
| Ischemic or Unspecified Stroke | 4.214 | 3.985 | 3.856 | 3.877 | 3.890 |
| Cerebral Aneurysm and Arteriovenous Malformation | 4.887 | 4.638 | 4.491 | 4.462 | 4.452 |
| Hemiplegia/Hemiparesis | 6.179 | 6.069 | 5.988 | 6.049 | 6.071 |
| Monoplegia, Other Paralytic Syndromes | 3.942 | 3.789 | 3.697 | 3.675 | 3.668 |
| Atherosclerosis of the Extremities with Ulceration or Gangrene | 12.276 | 12.162 | 12.073 | 12.166 | 12.198 |
| Vascular Disease with Complications | 8.278 | 8.061 | 7.919 | 7.940 | 7.948 |
| Pulmonary Embolism and Deep Vein Thrombosis | 4.709 | 4.510 | 4.386 | 4.372 | 4.369 |
| Lung Transplant Status/Complications | 34.373 | 34.131 | 33.949 | 34.046 | 34.078 |
| Cystic Fibrosis | 11.033 | 10.684 | 10.430 | 10.438 | 10.440 |
| Chronic Obstructive Pulmonary Disease, Including Bronchiectasis | 1.101 | 0.970 | 0.884 | 0.791 | 0.759 |
| Asthma | 1.101 | 0.970 | 0.884 | 0.791 | 0.759 |
| Fibrosis of Lung and Other Lung Disorders | 2.568 | 2.426 | 2.343 | 2.310 | 2.299 |
| Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections | 8.848 | 8.747 | 8.678 | 8.703 | 8.713 |
| Kidney Transplant Status | 11.117 | 10.782 | 10.581 | 10.596 | 10.608 |
| End Stage Renal Disease | 40.465 | 40.171 | 39.935 | 40.097 | 40.149 |
| Chronic Kidney Disease, Stage 5 | 2.400 | 2.272 | 2.200 | 2.193 | 2.194 |
| Chronic Kidney Disease, Severe (Stage 4) | 2.400 | 2.272 | 2.200 | 2.193 | 2.194 |
| Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism | 1.430 | 1.234 | 1.123 | 0.918 | 0.831 |
| Miscarriage with Complications | 1.430 | 1.234 | 1.123 | 0.918 | 0.831 |
| Miscarriage with No or Minor Complications | 1.430 | 1.234 | 1.123 | 0.918 | 0.831 |
| Completed Pregnancy With Major Complications | 3.914 | 3.381 | 3.175 | 2.970 | 2.940 |
| Completed Pregnancy With Complications | 3.914 | 3.381 | 3.175 | 2.970 | 2.940 |
| Completed Pregnancy with No or Minor Complications | 3.914 | 3.381 | 3.175 | 2.970 | 2.940 |
| Chronic Ulcer of Skin, Except Pressure | 2.554 | 2.413 | 2.332 | 2.320 | 2.318 |
| Hip Fractures and Pathological Vertebral or Humerus Fractures | 10.056 | 9.807 | 9.634 | 9.697 | 9.719 |
| Pathological Fractures, Except of Vertebrae, Hip, or Humerus | 1.860 | 1.725 | 1.640 | 1.554 | 1.522 |
| Stem Cell, Including Bone Marrow, Transplant Status/Complications | 32.497 | 32.482 | 32.463 | 32.490 | 32.499 |

TABLE 1—ADULT RISK ADJUSTMENT MODEL FACTORS—Continued

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Artificial Openings for Feeding or Elimination | 11.444 | 11.324 | 11.232 | 11.295 | 11.316 |
| Amputation Status, Lower Limb/Amputation Complications | 6.152 | 5.974 | 5.855 | 5.894 | 5.910 |
| **Interaction Factors** | | | | | |
| Severe illness x Opportunistic Infections | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Metastatic Cancer | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Non-Hodgkin's Lymphomas and Other Cancers and Tumors | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Heart Infection/Inflammation, Except Rheumatic | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x Intracranial Hemorrhage | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x HCC group G06 (G06 is HCC Group 6 which includes the following HCCs in the blood disease category: 67, 68) | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x HCC group G08 (G08 is HCC Group 8 which includes the following HCCs in the blood disease category: 73, 74) | 12.052 | 12.304 | 12.437 | 12.542 | 12.573 |
| Severe illness x End-Stage Liver Disease | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x Acute Liver Failure/Disease, Including Neonatal Hepatitis | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x Atherosclerosis of the Extremities with Ulceration or Gangrene | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x Vascular Disease with Complications | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x Artificial Openings for Feeding or Elimination | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |
| Severe illness x HCC group G03 (G03 is HCC Group 3 which includes the following HCCs in the musculoskeletal disease category: 54, 55) | 2.611 | 2.768 | 2.841 | 2.942 | 2.971 |

TABLE 2—HHS HCCS IN THE SEVERITY ILLNESS INDICATOR VARIABLE

| Description |
|---|
| Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock. |
| Peritonitis/Gastrointestinal Perforation/Necrotizing Enter colitis. |
| Seizure Disorders and Convulsions. |
| Non-Traumatic Coma, Brain Compression/Anoxic Damage. |
| Respirator Dependence/Tracheostomy Status. |
| Respiratory Arrest. |
| Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes. |
| Pulmonary Embolism and Deep Vein Thrombosis. |

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| **Demographic Factors** | | | | | |
| Age 2–4, Male | 0.264 | 0.196 | 0.108 | 0.031 | 0.010 |
| Age 5–9, Male | 0.179 | 0.130 | 0.065 | 0.003 | 0.000 |
| Age 10–14, Male | 0.228 | 0.177 | 0.107 | 0.044 | 0.030 |
| Age 15–20, Male | 0.306 | 0.247 | 0.174 | 0.100 | 0.080 |
| Age 2–4, Female | 0.211 | 0.152 | 0.072 | 0.010 | 0.002 |
| Age 5–9, Female | 0.142 | 0.100 | 0.044 | 0.001 | 0.000 |
| Age 10–14, Female | 0.207 | 0.160 | 0.095 | 0.043 | 0.031 |
| Age 15–20, Female | 0.358 | 0.285 | 0.191 | 0.096 | 0.072 |
| **Diagnosis Factors** | | | | | |
| HIV/AIDS | 3.508 | 3.108 | 2.862 | 2.709 | 2.665 |
| Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock | 18.633 | 18.476 | 18.371 | 18.395 | 18.404 |
| Central Nervous System Infections, Except Viral Meningitis | 12.297 | 12.095 | 11.951 | 11.964 | 11.969 |
| Viral or Unspecified Meningitis | 3.643 | 3.409 | 3.280 | 3.134 | 3.084 |
| Opportunistic Infections | 23.813 | 23.736 | 23.693 | 23.677 | 23.669 |
| Metastatic Cancer | 38.610 | 38.324 | 38.101 | 38.102 | 38.101 |
| Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia | 12.521 | 12.200 | 11.971 | 11.895 | 11.867 |
| Non-Hodgkin's Lymphomas and Other Cancers and Tumors | 9.945 | 9.655 | 9.451 | 9.349 | 9.314 |
| Colorectal, Breast (Age < 50), Kidney, and Other Cancers | 3.870 | 3.641 | 3.473 | 3.332 | 3.282 |

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS—Continued

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors | 3.276 | 3.046 | 2.896 | 2.764 | 2.715 |
| Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors | 1.665 | 1.482 | 1.354 | 1.217 | 1.169 |
| Pancreas Transplant Status/Complications | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Diabetes with Acute Complications | 2.668 | 2.335 | 2.166 | 1.882 | 1.777 |
| Diabetes with Chronic Complications | 2.668 | 2.335 | 2.166 | 1.882 | 1.777 |
| Diabetes without Complication | 2.668 | 2.335 | 2.166 | 1.882 | 1.777 |
| Protein-Calorie Malnutrition | 15.118 | 15.003 | 14.912 | 14.952 | 14.964 |
| Mucopolysaccharidosis | 6.331 | 6.034 | 5.820 | 5.764 | 5.746 |
| Lipidoses and Glycogenosis | 6.331 | 6.034 | 5.820 | 5.764 | 5.746 |
| Congenital Metabolic Disorders, Not Elsewhere Classified | 6.331 | 6.034 | 5.820 | 5.764 | 5.746 |
| Amyloidosis, Porphyria, and Other Metabolic Disorders | 6.331 | 6.034 | 5.820 | 5.764 | 5.746 |
| Adrenal, Pituitary, and Other Significant Endocrine Disorders | 6.331 | 6.034 | 5.820 | 5.764 | 5.746 |
| Liver Transplant Status/Complications | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| End-Stage Liver Disease | 14.421 | 14.253 | 14.144 | 14.137 | 14.138 |
| Cirrhosis of Liver | 5.357 | 5.183 | 5.063 | 5.006 | 4.989 |
| Chronic Hepatitis | 0.950 | 0.790 | 0.664 | 0.562 | 0.533 |
| Acute Liver Failure/Disease, Including Neonatal Hepatitis | 7.729 | 7.577 | 7.462 | 7.433 | 7.425 |
| Intestine Transplant Status/Complications | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis | 17.127 | 16.729 | 16.447 | 16.473 | 16.483 |
| Intestinal Obstruction | 6.086 | 5.815 | 5.635 | 5.538 | 5.504 |
| Chronic Pancreatitis | 13.304 | 12.986 | 12.777 | 12.788 | 12.793 |
| Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption | 3.572 | 3.410 | 3.300 | 3.189 | 3.148 |
| Inflammatory Bowel Disease | 5.553 | 5.157 | 4.899 | 4.761 | 4.714 |
| Necrotizing Fasciitis | 5.393 | 5.116 | 4.925 | 4.851 | 4.829 |
| Bone/Joint/Muscle Infections/Necrosis | 5.393 | 5.116 | 4.925 | 4.851 | 4.829 |
| Rheumatoid Arthritis and Specified Autoimmune Disorders | 3.062 | 2.821 | 2.650 | 2.510 | 2.465 |
| Systemic Lupus Erythematosus and Other Autoimmune Disorders | 1.260 | 1.087 | 0.966 | 0.819 | 0.772 |
| Osteogenesis Imperfecta and Other Osteodystrophies | 1.645 | 1.510 | 1.401 | 1.305 | 1.273 |
| Congenital/Developmental Skeletal and Connective Tissue Disorders | 1.645 | 1.510 | 1.401 | 1.305 | 1.273 |
| Cleft Lip/Cleft Palate | 1.858 | 1.622 | 1.473 | 1.321 | 1.267 |
| Hemophilia | 54.299 | 53.777 | 53.390 | 53.377 | 53.370 |
| Myelodysplastic Syndromes and Myelofibrosis | 24.525 | 24.330 | 24.187 | 24.183 | 24.182 |
| Aplastic Anemia | 24.525 | 24.330 | 24.187 | 24.183 | 24.182 |
| Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn | 8.038 | 7.730 | 7.520 | 7.441 | 7.414 |
| Sickle Cell Anemia (Hb-SS) | 8.038 | 7.730 | 7.520 | 7.441 | 7.414 |
| Thalassemia Major | 8.038 | 7.730 | 7.520 | 7.441 | 7.414 |
| Combined and Other Severe Immunodeficiencies | 6.604 | 6.386 | 6.246 | 6.182 | 6.157 |
| Disorders of the Immune Mechanism | 6.604 | 6.386 | 6.246 | 6.182 | 6.157 |
| Coagulation Defects and Other Specified Hematological Disorders | 4.878 | 4.716 | 4.596 | 4.498 | 4.464 |
| Drug Psychosis | 4.456 | 4.181 | 4.016 | 3.931 | 3.905 |
| Drug Dependence | 4.456 | 4.181 | 4.016 | 3.931 | 3.905 |
| Schizophrenia | 5.488 | 5.073 | 4.812 | 4.681 | 4.640 |
| Major Depressive and Bipolar Disorders | 1.856 | 1.641 | 1.494 | 1.301 | 1.236 |
| Reactive and Unspecified Psychosis, Delusional Disorders | 1.856 | 1.641 | 1.494 | 1.301 | 1.236 |
| Personality Disorders | 0.948 | 0.810 | 0.694 | 0.491 | 0.417 |
| Anorexia/Bulimia Nervosa | 2.504 | 2.293 | 2.144 | 2.047 | 2.014 |
| Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes | 3.328 | 3.078 | 2.933 | 2.900 | 2.887 |
| Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes | 2.003 | 1.795 | 1.668 | 1.558 | 1.518 |
| Autistic Disorder | 1.824 | 1.614 | 1.470 | 1.278 | 1.213 |
| Pervasive Developmental Disorders, Except Autistic Disorder | 0.961 | 0.818 | 0.696 | 0.491 | 0.417 |
| Traumatic Complete Lesion Cervical Spinal Cord | 15.854 | 15.746 | 15.662 | 15.736 | 15.762 |
| Quadriplegia | 15.854 | 15.746 | 15.662 | 15.736 | 15.762 |
| Traumatic Complete Lesion Dorsal Spinal Cord | 14.020 | 13.813 | 13.675 | 13.699 | 13.708 |
| Paraplegia | 14.020 | 13.813 | 13.675 | 13.699 | 13.708 |
| Spinal Cord Disorders/Injuries | 5.531 | 5.265 | 5.099 | 5.009 | 4.980 |
| Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease | 11.987 | 11.687 | 11.485 | 11.444 | 11.427 |
| Quadriplegic Cerebral Palsy | 4.773 | 4.463 | 4.269 | 4.294 | 4.304 |
| Cerebral Palsy, Except Quadriplegic | 1.400 | 1.172 | 1.037 | 0.931 | 0.896 |
| Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies | 1.252 | 1.089 | 0.976 | 0.888 | 0.858 |
| Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy | 8.606 | 8.390 | 8.246 | 8.178 | 8.151 |
| Muscular Dystrophy | 3.364 | 3.138 | 2.992 | 2.896 | 2.864 |
| Multiple Sclerosis | 5.914 | 5.555 | 5.304 | 5.274 | 5.264 |
| Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders | 3.364 | 3.138 | 2.992 | 2.896 | 2.864 |
| Seizure Disorders and Convulsions | 2.314 | 2.115 | 1.976 | 1.803 | 1.744 |
| Hydrocephalus | 6.470 | 6.320 | 6.219 | 6.207 | 6.203 |
| Non-Traumatic Coma, and Brain Compression/Anoxic Damage | 9.166 | 8.977 | 8.853 | 8.819 | 8.804 |
| Respirator Dependence/Tracheostomy Status | 40.570 | 40.448 | 40.351 | 40.512 | 40.563 |

TABLE 3—CHILD RISK ADJUSTMENT MODEL FACTORS—Continued

| Factor | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Respiratory Arrest | 14.474 | 14.256 | 14.114 | 14.125 | 14.126 |
| Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes | 14.474 | 14.256 | 14.114 | 14.125 | 14.126 |
| Heart Assistive Device/Artificial Heart | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Heart Transplant | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Congestive Heart Failure | 6.832 | 6.704 | 6.609 | 6.562 | 6.545 |
| Acute Myocardial Infarction | 4.876 | 4.783 | 4.725 | 4.727 | 4.734 |
| Unstable Angina and Other Acute Ischemic Heart Disease | 4.876 | 4.783 | 4.725 | 4.727 | 4.734 |
| Heart Infection/Inflammation, Except Rheumatic | 16.293 | 16.130 | 16.019 | 16.019 | 16.020 |
| Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders | 7.938 | 7.710 | 7.527 | 7.384 | 7.334 |
| Major Congenital Heart/Circulatory Disorders | 2.264 | 2.133 | 2.003 | 1.855 | 1.810 |
| Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders | 1.312 | 1.203 | 1.088 | 0.961 | 0.926 |
| Specified Heart Arrhythmias | 5.180 | 4.968 | 4.808 | 4.726 | 4.699 |
| Intracranial Hemorrhage | 20.007 | 19.725 | 19.533 | 19.542 | 19.545 |
| Ischemic or Unspecified Stroke | 7.836 | 7.690 | 7.592 | 7.643 | 7.657 |
| Cerebral Aneurysm and Arteriovenous Malformation | 4.674 | 4.421 | 4.264 | 4.194 | 4.161 |
| Hemiplegia/Hemiparesis | 6.060 | 5.920 | 5.837 | 5.815 | 5.807 |
| Monoplegia, Other Paralytic Syndromes | 5.353 | 5.170 | 5.061 | 5.033 | 5.026 |
| Atherosclerosis of the Extremities with Ulceration or Gangrene | 10.802 | 10.595 | 10.455 | 10.343 | 10.292 |
| Vascular Disease with Complications | 15.629 | 15.437 | 15.310 | 15.322 | 15.331 |
| Pulmonary Embolism and Deep Vein Thrombosis | 14.822 | 14.613 | 14.473 | 14.504 | 14.515 |
| Lung Transplant Status/Complications | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Cystic Fibrosis | 13.994 | 13.502 | 13.147 | 13.156 | 13.161 |
| Chronic Obstructive Pulmonary Disease, Including Bronchiectasis | 0.524 | 0.443 | 0.345 | 0.210 | 0.168 |
| Asthma | 0.524 | 0.443 | 0.345 | 0.210 | 0.168 |
| Fibrosis of Lung and Other Lung Disorders | 5.214 | 5.066 | 4.954 | 4.868 | 4.840 |
| Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections | 9.469 | 9.373 | 9.291 | 9.304 | 9.308 |
| Kidney Transplant Status | 17.992 | 17.577 | 17.297 | 17.316 | 17.326 |
| End Stage Renal Disease | 38.852 | 38.586 | 38.382 | 38.492 | 38.527 |
| Chronic Kidney Disease, Stage 5 | 11.138 | 10.943 | 10.809 | 10.718 | 10.690 |
| Chronic Kidney Disease, Severe (Stage 4) | 11.138 | 10.943 | 10.809 | 10.718 | 10.690 |
| Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism | 1.276 | 1.084 | 0.957 | 0.719 | 0.629 |
| Miscarriage with Complications | 1.276 | 1.084 | 0.957 | 0.719 | 0.629 |
| Miscarriage with No or Minor Complications | 1.276 | 1.084 | 0.957 | 0.719 | 0.629 |
| Completed Pregnancy With Major Complications | 3.462 | 2.960 | 2.749 | 2.485 | 2.425 |
| Completed Pregnancy With Complications | 3.462 | 2.960 | 2.749 | 2.485 | 2.425 |
| Completed Pregnancy with No or Minor Complications | 3.462 | 2.960 | 2.749 | 2.485 | 2.425 |
| Chronic Ulcer of Skin, Except Pressure | 1.579 | 1.481 | 1.390 | 1.310 | 1.284 |
| Hip Fractures and Pathological Vertebral or Humerus Fractures | 6.169 | 5.861 | 5.643 | 5.527 | 5.491 |
| Pathological Fractures, Except of Vertebrae, Hip, or Humerus | 2.058 | 1.921 | 1.798 | 1.635 | 1.582 |
| Stem Cell, Including Bone Marrow, Transplant Status/Complications | 33.090 | 32.913 | 32.794 | 32.834 | 32.845 |
| Artificial Openings for Feeding or Elimination | 15.660 | 15.540 | 15.451 | 15.602 | 15.651 |
| Amputation Status, Lower Limb/Amputation Complications | 10.245 | 9.973 | 9.802 | 9.701 | 9.658 |

TABLE 4—INFANT RISK ADJUSTMENT MODELS FACTORS

| Group | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Extremely Immature * Severity Level 5 (Highest) | 410.348 | 408.872 | 407.691 | 407.693 | 407.703 |
| Extremely Immature * Severity Level 4 | 218.224 | 216.730 | 215.551 | 215.509 | 215.506 |
| Extremely Immature * Severity Level 3 | 62.449 | 61.375 | 60.541 | 60.202 | 60.106 |
| Extremely Immature * Severity Level 2 | 62.449 | 61.375 | 60.541 | 60.202 | 60.106 |
| Extremely Immature * Severity Level 1 (Lowest) | 62.449 | 61.375 | 60.541 | 60.202 | 60.106 |
| Immature * Severity Level 5 (Highest) | 217.679 | 216.228 | 215.075 | 215.072 | 215.086 |
| Immature * Severity Level 4 | 93.597 | 92.104 | 90.918 | 90.899 | 90.906 |
| Immature * Severity Level 3 | 50.841 | 49.478 | 48.421 | 48.331 | 48.317 |
| Immature * Severity Level 2 | 33.561 | 32.279 | 31.304 | 31.068 | 31.006 |
| Immature * Severity Level 1 (Lowest) | 33.561 | 32.279 | 31.304 | 31.068 | 31.006 |
| Premature/Multiples * Severity Level 5 (Highest) | 168.945 | 167.526 | 166.408 | 166.364 | 166.363 |
| Premature/Multiples * Severity Level 4 | 34.579 | 33.195 | 32.161 | 31.973 | 31.939 |
| Premature/Multiples * Severity Level 3 | 19.070 | 17.942 | 17.128 | 16.748 | 16.633 |
| Premature/Multiples * Severity Level 2 | 10.224 | 9.307 | 8.652 | 8.095 | 7.907 |
| Premature/Multiples * Severity Level 1 (Lowest) | 6.921 | 6.234 | 5.664 | 5.018 | 4.810 |
| Term * Severity Level 5 (Highest) | 144.955 | 143.654 | 142.633 | 142.485 | 142.440 |
| Term * Severity Level 4 | 19.307 | 18.234 | 17.478 | 17.000 | 16.862 |
| Term * Severity Level 3 | 6.881 | 6.181 | 5.640 | 4.964 | 4.724 |
| Term * Severity Level 2 | 4.010 | 3.481 | 3.021 | 2.286 | 2.029 |

TABLE 4—INFANT RISK ADJUSTMENT MODELS FACTORS—Continued

| Group | Platinum | Gold | Silver | Bronze | Catastrophic |
|---|---|---|---|---|---|
| Term * Severity Level 1 (Lowest) | 1.718 | 1.442 | 1.026 | 0.349 | 0.176 |
| Age1 * Severity Level 5 (Highest) | 63.225 | 62.492 | 61.921 | 61.814 | 61.786 |
| Age1 * Severity Level 4 | 10.493 | 9.956 | 9.554 | 9.291 | 9.218 |
| Age1 * Severity Level 3 | 3.645 | 3.281 | 2.973 | 2.642 | 2.549 |
| Age1 * Severity Level 2 | 2.286 | 2.001 | 1.735 | 1.383 | 1.281 |
| Age1 * Severity Level 1 (Lowest) | 0.623 | 0.518 | 0.334 | 0.161 | 0.125 |
| Age 0 Male | 0.695 | 0.642 | 0.625 | 0.587 | 0.557 |
| Age 1 Male | 0.147 | 0.125 | 0.117 | 0.089 | 0.077 |

TABLE 5—HHS HCCS INCLUDED IN INFANT MODEL MATURITY CATEGORIES

| Maturity category | HCC/description |
|---|---|
| Extremely Immature | Extremely Immature Newborns, Birthweight <500 Grams. |
| Extremely Immature | Extremely Immature Newborns, Including Birthweight 500–749 Grams. |
| Extremely Immature | Extremely Immature Newborns, Including Birthweight 750–999 Grams. |
| Immature | Premature Newborns, Including Birthweight 1000–1499 Grams. |
| Immature | Premature Newborns, Including Birthweight 1500–1999 Grams. |
| Premature/Multiples | Premature Newborns, Including Birthweight 2000–2499 Grams. |
| Premature/Multiples | Other Premature, Low Birthweight, Malnourished, or Multiple Birth Newborns. |
| Term | Term or Post-Term Singleton Newborn, Normal or High Birthweight. |
| Age 1 | All age 1 infants. |

TABLE 6—HHS HCCS INCLUDED IN INFANT MODEL SEVERITY CATEGORIES

| Severity category | HCC |
|---|---|
| Severity Level 5 (Highest) | Metastatic Cancer. |
| Severity Level 5 | Pancreas Transplant Status/Complications. |
| Severity Level 5 | Liver Transplant Status/Complications. |
| Severity Level 5 | End-Stage Liver Disease. |
| Severity Level 5 | Intestine Transplant Status/Complications. |
| Severity Level 5 | Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis. |
| Severity Level 5 | Respirator Dependence/Tracheostomy Status. |
| Severity Level 5 | Heart Assistive Device/Artificial Heart. |
| Severity Level 5 | Heart Transplant. |
| Severity Level 5 | Congestive Heart Failure. |
| Severity Level 5 | Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders. |
| Severity Level 5 | Lung Transplant Status/Complications. |
| Severity Level 5 | Kidney Transplant Status. |
| Severity Level 5 | End Stage Renal Disease. |
| Severity Level 5 | Stem Cell, Including Bone Marrow, Transplant Status/Complications. |
| Severity Level 4 | Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock. |
| Severity Level 4 | Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia. |
| Severity Level 4 | Mucopolysaccharidosis. |
| Severity Level 4 | Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age <2. |
| Severity Level 4 | Myelodysplastic Syndromes and Myelofibrosis. |
| Severity Level 4 | Aplastic Anemia. |
| Severity Level 4 | Combined and Other Severe Immunodeficiencies. |
| Severity Level 4 | Traumatic Complete Lesion Cervical Spinal Cord. |
| Severity Level 4 | Quadriplegia. |
| Severity Level 4 | Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease. |
| Severity Level 4 | Quadriplegic Cerebral Palsy. |
| Severity Level 4 | Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy. |
| Severity Level 4 | Non-Traumatic Coma, Brain Compression/Anoxic Damage. |
| Severity Level 4 | Respiratory Arrest. |
| Severity Level 4 | Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes. |
| Severity Level 4 | Acute Myocardial Infarction. |
| Severity Level 4 | Heart Infection/Inflammation, Except Rheumatic. |
| Severity Level 4 | Major Congenital Heart/Circulatory Disorders. |
| Severity Level 4 | Intracranial Hemorrhage. |
| Severity Level 4 | Ischemic or Unspecified Stroke. |
| Severity Level 4 | Vascular Disease with Complications. |
| Severity Level 4 | Pulmonary Embolism and Deep Vein Thrombosis. |
| Severity Level 4 | Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections. |
| Severity Level 4 | Chronic Kidney Disease, Stage 5. |
| Severity Level 4 | Hip Fractures and Pathological Vertebral or Humerus Fractures. |
| Severity Level 4 | Artificial Openings for Feeding or Elimination. |
| Severity Level 3 | HIV/AIDS. |
| Severity Level 3 | Central Nervous System Infections, Except Viral Meningitis. |

TABLE 6—HHS HCCs INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

| Severity category | HCC |
|---|---|
| Severity Level 3 | Opportunistic Infections. |
| Severity Level 3 | Non-Hodgkin's Lymphomas and Other Cancers and Tumors. |
| Severity Level 3 | Colorectal, Breast (Age <50), Kidney and Other Cancers. |
| Severity Level 3 | Breast (Age 50+), Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors. |
| Severity Level 3 | Lipidoses and Glycogenosis. |
| Severity Level 3 | Adrenal, Pituitary, and Other Significant Endocrine Disorders. |
| Severity Level 3 | Acute Liver Failure/Disease, Including Neonatal Hepatitis. |
| Severity Level 3 | Intestinal Obstruction. |
| Severity Level 3 | Necrotizing Fasciitis. |
| Severity Level 3 | Bone/Joint/Muscle Infections/Necrosis. |
| Severity Level 3 | Osteogenesis Imperfecta and Other Osteodystrophies. |
| Severity Level 3 | Cleft Lip/Cleft Palate. |
| Severity Level 3 | Hemophilia. |
| Severity Level 3 | Disorders of the Immune Mechanism. |
| Severity Level 3 | Coagulation Defects and Other Specified Hematological Disorders. |
| Severity Level 3 | Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes. |
| Severity Level 3 | Traumatic Complete Lesion Dorsal Spinal Cord. |
| Severity Level 3 | Paraplegia. |
| Severity Level 3 | Spinal Cord Disorders/Injuries. |
| Severity Level 3 | Cerebral Palsy, Except Quadriplegic. |
| Severity Level 3 | Muscular Dystrophy. |
| Severity Level 3 | Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders. |
| Severity Level 3 | Hydrocephalus. |
| Severity Level 3 | Unstable Angina and Other Acute Ischemic Heart Disease. |
| Severity Level 3 | Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders. |
| Severity Level 3 | Specified Heart Arrhythmias. |
| Severity Level 3 | Cerebral Aneurysm and Arteriovenous Malformation. |
| Severity Level 3 | Hemiplegia/Hemiparesis. |
| Severity Level 3 | Cystic Fibrosis. |
| Severity Level 3 | Fibrosis of Lung and Other Lung Disorders. |
| Severity Level 3 | Pathological Fractures, Except of Vertebrae, Hip, or Humerus. |
| Severity Level 2 | Viral or Unspecified Meningitis. |
| Severity Level 2 | Thyroid, Melanoma, Neurofibromatosis, and Other Cancers and Tumors. |
| Severity Level 2 | Diabetes with Acute Complications. |
| Severity Level 2 | Diabetes with Chronic Complications. |
| Severity Level 2 | Diabetes without Complication. |
| Severity Level 2 | Protein-Calorie Malnutrition. |
| Severity Level 2 | Congenital Metabolic Disorders, Not Elsewhere Classified. |
| Severity Level 2 | Amyloidosis, Porphyria, and Other Metabolic Disorders. |
| Severity Level 2 | Cirrhosis of Liver. |
| Severity Level 2 | Chronic Pancreatitis. |
| Severity Level 2 | Inflammatory Bowel Disease. |
| Severity Level 2 | Rheumatoid Arthritis and Specified Autoimmune Disorders. |
| Severity Level 2 | Systemic Lupus Erythematosus and Other Autoimmune Disorders. |
| Severity Level 2 | Congenital/Developmental Skeletal and Connective Tissue Disorders. |
| Severity Level 2 | Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn. |
| Severity Level 2 | Sickle Cell Anemia (Hb-SS). |
| Severity Level 2 | Drug Psychosis. |
| Severity Level 2 | Drug Dependence. |
| Severity Level 2 | Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes. |
| Severity Level 2 | Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies. |
| Severity Level 2 | Seizure Disorders and Convulsions. |
| Severity Level 2 | Monoplegia, Other Paralytic Syndromes. |
| Severity Level 2 | Atherosclerosis of the Extremities with Ulceration or Gangrene. |
| Severity Level 2 | Chronic Obstructive Pulmonary Disease, Including Bronchiectasis. |
| Severity Level 2 | Chronic Ulcer of Skin, Except Pressure. |
| Severity Level 1 (Lowest) | Chronic Hepatitis. |
| Severity Level 1 | Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption. |
| Severity Level 1 | Thalassemia Major. |
| Severity Level 1 | Autistic Disorder. |
| Severity Level 1 | Pervasive Developmental Disorders, Except Autistic Disorder. |
| Severity Level 1 | Multiple Sclerosis. |
| Severity Level 1 | Asthma. |
| Severity Level 1 | Chronic Kidney Disease, Severe (Stage 4). |
| Severity Level 1 | Amputation Status, Lower Limb/Amputation Complications. |
| Severity Level 1 | No Severity HCCs. |

e. Cost-Sharing Reductions Adjustments

We propose to continue to include an adjustment for the receipt of cost-sharing reductions in the model, and propose to continue not to adjust for receipt of reinsurance payments in the model. We have updated the adjustments to the HHS risk adjustment models for individuals who receive cost-sharing reductions to be consistent with the cost-sharing reductions advance payment formula finalized in the 2015 Payment Notice, for implementation in 2015 benefit year risk adjustment. We note that the silver plan variant and zero cost-sharing factors are unchanged from those finalized in the 2014 Payment Notice. The adjustment factors are set forth in Table 7. These adjustments are multiplied against the sum of the demographic, diagnosis, and interaction factors. We will continue to evaluate this adjustment as more data becomes available. We seek comment on this approach.

TABLE 7—COST-SHARING REDUCTION ADJUSTMENT

| Household income | Plan AV | Induced utilization factor |
|---|---|---|
| **Silver Plan Variant Recipients** | | |
| 100–150% of FPL | Plan Variation 94% | 1.12 |
| 150–200% of FPL | Plan Variation 87% | 1.12 |
| 200–250% of FPL | Plan Variation 73% | 1.00 |
| >250% of FPL | Standard Plan 70% | 1.00 |
| **Zero Cost-Sharing Recipients** | | |
| <300% of FPL | Platinum (90%) | 1.00 |
| <300% of FPL | Gold (80%) | 1.07 |
| <300% of FPL | Silver (70%) | 1.12 |
| <300% of FPL | Bronze (60%) | 1.15 |
| **Limited Cost-Sharing Recipients** | | |
| >300% of FPL | Platinum (90%) | 1.00 |
| >300% of FPL | Gold (80%) | 1.07 |
| >300% of FPL | Silver (70%) | 1.12 |
| >300% of FPL | Bronze (60%) | 1.15 |

f. Model Performance Statistics

To evaluate model performance, we examined its R-squared and predictive ratios. The R-squared statistic, which calculates the percentage of individual variation explained by a model, measures the predictive accuracy of the model overall. The predictive ratios measure the predictive accuracy of a model for different validation groups or subpopulations. The predictive ratio for each of the HHS risk adjustment models is the ratio of the weighted mean predicted plan liability for the model sample population to the weighted mean actual plan liability for the model sample population. The predictive ratio represents how well the model does on average at predicting plan liability for that subpopulation. A subpopulation that is predicted perfectly would have a predictive ratio of 1.0. For each of the HHS risk adjustment models, the R-squared statistic and the predictive ratio are in the range of published estimates for concurrent risk adjustment models.[8] Because we are proposing to blend the coefficients from separately solved models based on MarketScan 2010, 2011 and 2012 data, we are publishing the R-squared statistic for each model and year separately to verify their statistical validity. The R-squared statistic for each model is shown in Table 8.

TABLE 8—R-SQUARED STATISTIC FOR HHS RISK ADJUSTMENT MODELS

| | R-squared statistic | | |
|---|---|---|---|
| Risk adjustment model | 2010 | 2011 | 2012 |
| Platinum Adult | 0.3619 | 0.3684 | 0.3937 |
| Platinum Child | 0.3030 | 0.2835 | 0.2856 |
| Platinum Infant | 0.2892 | 0.3371 | 0.2845 |
| Gold Adult | 0.3572 | 0.3636 | 0.3896 |
| Gold Child | 0.2985 | 0.2786 | 0.2805 |
| Gold Infant | 0.2871 | 0.3351 | 0.2821 |
| Silver Adult | 0.3537 | 0.3602 | 0.3865 |
| Silver Child | 0.2949 | 0.2749 | 0.2767 |
| Silver Infant | 0.2858 | 0.3339 | 0.2807 |
| Bronze Adult | 0.3519 | 0.3582 | 0.3842 |
| Bronze Child | 0.2919 | 0.2721 | 0.2737 |
| Bronze Infant | 0.2859 | 0.3341 | 0.2808 |
| Catastrophic Adult | 0.3511 | 0.3574 | 0.3833 |

[8] Winkleman, Ross and Syed Mehmud. ''A Comparative Analysis of Claims-Based Tools for Health Risk Assessment.'' Society of Actuaries. April 2007.

TABLE 8—R-SQUARED STATISTIC FOR HHS RISK ADJUSTMENT MODELS—Continued

| Risk adjustment model | R-squared statistic | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| Catastrophic Child | 0.2907 | 0.2710 | 0.2726 |
| Catastrophic Infant | 0.2859 | 0.3340 | 0.2808 |

g. Overview of the Payment Transfer Formula

We do not propose to alter our payment transfer methodology. Plan average risk scores would be calculated as the member month-weighted average of individual enrollee risk scores. We defined the calculation of plan average actuarial risk and the calculation of payments and charges in the Premium Stabilization Rule. In the 2014 Payment Notice, we combined those concepts into a risk adjustment payment transfer formula. Risk adjustment transfers (payments and charges) would be calculated following the completion of issuer risk adjustment data reporting. The payment transfer formula includes a set of cost adjustment terms that require transfers to be calculated at the geographic rating area level for each plan (that is, HHS would calculate two separate transfer amounts for a plan that operates in two rating areas).

The payment transfer formula is designed to provide a per member per month (PMPM) transfer amount. The PMPM transfer amount derived from the payment transfer formula would be multiplied by each plan's total member months for the benefit year to determine the total payment due or charge owed by the issuer for that plan in a rating area.

(1) Overview of the Payment Transfer Formula

Though we do not propose to change the payment transfer formula from what was finalized in the 2014 Payment Notice (78 FR 15430–15434), we believe it would be useful to republish the formula in its entirety, since we are proposing to recalibrate the HHS risk adjustment model. Transfers (payments and charges) will be calculated as the difference between the plan premium estimate reflecting risk selection and the plan premium estimate not reflecting risk selection. As finalized in the 2014 Payment Notice, the HHS risk adjustment payment transfer formula is:

$$T_i = \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)} - \frac{AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i)}\right] \overline{P}_S$$

Where:

$\overline{P}_S$ = State average premium;
$PLRS_i$ = plan *i*'s plan liability risk score;
$AV_i$ = plan *i*'s metal level AV;
$ARF_i$ = allowable rating factor;
$IDF_i$ = plan *i*'s induced demand factor;
$GCF_i$ = plan *i*'s geographic cost factor;
$s_i$ = plan *i*'s share of State enrollment;

and the denominator is summed across all plans in the risk pool in the market in the State.

The difference between the two premium estimates in the payment transfer formula determines whether a plan pays a risk transfer charge or receives a risk transfer payment. Note that the value of the plan average risk score by itself does not determine whether a plan would be assessed a charge or receive a payment—even if the risk score is greater than 1.0, it is possible that the plan would be assessed a charge if the premium compensation that the plan may receive through its rating practices (as measured through the allowable rating factor) exceeds the plan's predicted liability associated with risk selection. Risk adjustment transfers are calculated at the risk pool level and catastrophic plans are treated as a separate risk pool for purposes of risk adjustment.

h. HHS Risk Adjustment Methodology Considerations

In the 2014 Payment Notice, we finalized the methodology that HHS will use when operating a risk adjustment program on behalf of a State. In the second Program Integrity Rule (78 FR 65046), we clarified the modification to the transfer formula to accommodate community rated States that utilize family tiering rating factors. We are further clarifying this formula to ensure that the allowable rating factor (ARF) is appropriately applied in the transfer formula in community rated States for 2014 risk adjustment. In the second Program Integrity rule, we stated that the ARF formula should be modified so that the numerator is a summation over all subscribers of the product of the family tiering factor and the subscriber member months, and the denominator the sum of billable member months. However, we do not believe the formula accurately reflects that description, as it does not distinguish between subscriber months (months attributed to the sole subscriber) and billable member months (months attributed to all allowable members of the family factored into the community rating). The calculation of ARF for family tiering States that was published in the second Program Integrity rule that would be calculated at the level of the subscriber, was as follows:

$$ARF_i = \frac{\sum_s (ARF_s \cdot M_s)}{\sum_s (M_s)}$$

Where:

$ARF_s$ is the rating factor for the subscriber(s) (based on family size/composition), and $M_s$ is the number of billed person-months that are counted in determining the premium(s) for the subscriber(s).

While the preamble description in the second Program Integrity rule is correct, as we noted, the formula itself is incorrect in that it does not distinguish between billable member months and subscriber months by using the same variable for both. Therefore, we are proposing a technical change to the ARF calculation for family tiering States, as follows:

$$ARF_i = \frac{\sum_s (ARF_s \cdot MS_s)}{\sum_s (MB_s)}$$

Where:

$ARF_i$ is the allowable rating factor for plan *i,*
$ARF_s$ is the allowable rating factor—also known as the family rating tier—for subscriber (family) *s* in plan *i,*
$MS_s$ is the number of subscriber months for subscriber *s,* and
$MB_s$ is the number of billable member months for subscriber (family) *s.*

The numerator is summed over the product of the allowable rating factor and the number of subscriber months (that is, months of family subscription), and the denominator is the sum over all billable members. Each family unit covered under a single contract is considered a single ''subscriber.'' Therefore, a family of four that purchases coverage for a period from January through December will accumulate 12 subscriber months ($MS_s$), although coverage is being provided for 48 member months (both billable and non-billable). Billable members are individuals who are counted for purposes of placing the subscriber in a family tier. For example, in a community rated State that rates based on two adults and one or more children with one full year of enrollment, the family of four would have 36 billable member months ($MB_s$), (12 billable member months for the subscriber, 12 billable member months for the second adult, and 12 billable months for the first child). We seek comment on this proposed clarification.

3. Provisions and Parameters for the Transitional Reinsurance Program

The Affordable Care Act directs that a transitional reinsurance program be established in each State to help stabilize premiums for coverage in the individual market from 2014 through 2016. In the 2014 Payment Notice, we expanded on the standards set forth in subparts C and E of the Premium Stabilization Rule and established the reinsurance payment parameters and uniform reinsurance contribution rate for the 2014 benefit year. In the 2015 Payment Notice, we established the reinsurance payment parameters and uniform reinsurance contribution rate for the 2015 benefit year and certain oversight provisions related to the operation of the reinsurance program.

a. Common Ownership Clarification

The definition of a ''contributing entity'' at § 153.20 provides that for the 2015 and 2016 benefit years, a contributing entity is (i) a health insurance issuer or (ii) a self-insured group health plan, including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage, that uses a third party administrator (TPA) in connection with claims processing or adjudication, including the management of internal appeals, or plan enrollment for services other than for pharmacy benefits or excepted benefits within the meaning of section 2791(c) of the PHS Act. A self-insured group health plan will not be deemed to use a TPA for this purpose if it uses an unrelated third party: (a) To obtain a provider network and related claims repricing services; or (b) for up to 5 percent of claims processing or adjudication or plan enrollment, based on either the number of transactions processed by the third party, or the value of the claims processing and adjudication and plan enrollment services provided by the third party.

The definition of a ''contributing entity'' does not include qualifying self-administered, self-insured group health plans for the purpose of the requirement to make reinsurance contributions for the 2015 and 2016 benefit years. In the preamble to the 2015 Payment Notice, we indicated that we consider a TPA to be, with respect to a self-insured group health plan, an entity that is not under common ownership or control with the self-insured group health plan or its plan sponsor that provides the specified core administrative services (79 FR 13773).

We have received a number of inquiries seeking clarification on how to determine common ownership or control for purposes of the definition of a ''contributing entity'' in § 153.20. In response, we propose to clarify that principles similar to the controlled group rules of section 414(b) and (c) of the Code should be used to determine whether the TPA is under common ownership or control with the self-insured group health plan or the plan sponsor.

We believe that applying principles similar to the controlled group rules under the Code are appropriate for use in determining whether a TPA is under common ownership or control with the self-insured group health plan or plan sponsor for purposes of the definition of a ''contributing entity'' under § 153.20 because they are familiar to many stakeholders. We also note that similar common ownership or control rules apply for other purposes under the Affordable Care Act, such as the shared responsibility payment for applicable large employers that do not offer full-time employees and dependents the opportunity to enroll in minimum essential coverage. See, for example, section 4980H(c)(2)(C)(i) of the Code, which states that all persons treated as a single employer under section 414 are to be treated as one employer. Additionally, section 9010(c)(3) of the Affordable Act applies similar controlled group rules for purposes of the annual fee on health insurance issuers.

We seek comment on this proposal and on alternative definitions that are based on existing standards that would be familiar to stakeholders for determining whether a TPA is under common ownership or control with the self-insured group health plan or its sponsor for purposes of the definition of ''contributing entity'' at § 153.20.

b. Self-Insured Expatriate Plans (§ 153.400(a)(1)(iii))

Section 1341(b)(3)(B) of the Affordable Care Act and the implementing regulations at § 153.400(a)(1) require contributing entities to make reinsurance contributions for major medical coverage that is considered to be part of a commercial book of business. In the 2014 Payment Notice (78 FR 15457), we stated that we interpret this language to exclude expatriate health coverage, as defined by the Secretary, and we codified this approach in regulatory text at § 153.400(a)(1)(iii). In the March 8, 2013, FAQs about the Affordable Care Act Implementation Part XIII,[9] an expatriate health plan is defined as an *insured* group health plan with respect to which enrollment is limited to primary insured who reside outside of their home country for at least 6 months of the plan year and any covered dependents, and its associated group health insurance coverage. Therefore, under our current regulation, *self-insured* expatriate plans that would otherwise meet the conditions outlined in the March 2013 FAQ are required to make reinsurance contributions if these plans provide major medical coverage, unless another exemption in § 153.400(a) applies, because the definition in the FAQ applies only to *insured* expatriate plans.

We propose to amend § 153.400(a)(1)(iii), which currently exempts expatriate health coverage, as defined by the Secretary, from reinsurance contributions, so that it also exempts, beginning for the 2015 benefit year, any self-insured group health plan with respect to which enrollment is limited to participants who reside outside of their home country for at least 6 months of the plan year, and any covered dependents. This approach and definition, applicable solely to this program, is consistent with FAQs discussed above for insured expatriate health plans and aligns the definition for this time-limited program. We seek comment on this proposed amendment.

[9] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs13.html.*

c. Determination of Debt (§ 153.400(c))

Consistent with the determination of debt provision set forth in § 156.1215(c), we propose to clarify in a new § 153.400(c) that any amount owed to the Federal government by a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage), including reinsurance contributions that are not remitted in full in a timely manner, would be a determination of a debt. We seek comment on this proposal.

d. Reinsurance Contribution Submission Process

On May 22, 2014, we released an FAQ about the reinsurance contribution submission process.[10] As detailed in this FAQ, we have implemented a streamlined process for the collection of reinsurance contributions. A contributing entity, or a TPA or administrative services-only (ASO) contractor on behalf of the contributing entity, will complete all required steps for the reinsurance contribution submission process on *www.pay.gov* (Pay.gov). The ''ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form'' available on Pay.gov must be completed and submitted by a contributing entity or a TPA or ASO contractor on its behalf no later than November 15, 2014, 2015, or 2016, as applicable, under § 153.405(b). The form includes basic company and contact information, and the annual enrollment count for the applicable benefit year. The form will auto-calculate the contribution amounts owed.

We propose to amend § 153.405(b), requiring a contributing entity to submit its annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS no later than November 15 of benefit year 2014, 2015, or 2016. When November 15 does not fall on a business day, we propose that a contributing entity submit its annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS no later than November 15, 2014, 2015, or 2016, or if such date is not a business day, the next business day. Similarly, because November 15, 2015 and January 15, 2017 do not fall on a business day, we propose in § 153.405(c)(2) that a contributing entity must remit reinsurance contributions to HHS no later than January 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next applicable business day, if making a combined contribution or the first payment of the bifurcated contribution; and no later than November 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next applicable business day, if making the second payment of the bifurcated contribution.

Although we stated in the 2015 Payment Notice (79 FR 13776) that, for operational reasons, HHS would not permit contributing entities to elect to make the entire benefit year's reinsurance contribution by January 15, 2015, 2016, or 2017, as applicable, we have resolved those operational difficulties, and will offer contributing entities the option to pay: (1) the entire 2014, 2015, or 2016 benefit year contribution in one payment no later than January 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day), reflecting the entire uniform contribution rate applicable to each benefit year (that is, $63 per covered life for 2014, $44 per covered life for 2015, and a proposed $27 per covered life for 2016); or (2) in two separate payments for the 2014, 2015, or 2016 benefit years, with the first remittance due by January 15, 2015, 2016, and 2017, as applicable (or, if such date is not a business day, the next applicable business day), reflecting the first payment of the bifurcated contribution (that is, $52.50 per covered life for 2014, $33.00 per covered life for 2015, and a proposed $21.60 per covered life for 2016); and the second remittance due by November 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) reflecting the second payment of the bifurcated contribution (that is, $10.50 reinsurance fee per covered life for 2014, $11.00 per covered life for 2015, and a proposed $5.40 per covered life for 2016).

Under § 153.405(c)(1), HHS must notify the contributing entity of the reinsurance contribution amount allocated to reinsurance payments and administrative expenses to be paid for the applicable benefit year following submission of the annual enrollment count. We clarify that this notification will occur when the contributing entity enters the gross annual enrollment count into the Pay.gov form and the form auto-calculates the contribution amount owed. No separate notification or invoice will be sent to a contributing entity, unless a discrepancy in data or payment has been identified after the form is submitted. In addition, we propose to delete § 153.405(c)(2), to be consistent with HHS permitting flexibility for a contributing entity (or the TPA or ASO contractor on its behalf) to remit the entire contribution in one payment, rather than requiring a bifurcated payment. Notification of the reinsurance contribution amount related to the allocation for reinsurance payments, administrative expenses, and payments to the U.S. Treasury for the applicable benefit year will also be made through the automatic calculation of this amount when a contributing entity (or the TPA or ASO contractor on its behalf) completes the reinsurance contribution submission process and submits the Form through Pay.gov.

We also propose to amend and redesignate § 153.405(c)(3) to (c)(2) to clarify that a contributing entity must remit its contribution payment for the applicable benefit year to occur no later than January 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) if making a combined payment or the first payment of the bifurcated payment, and no later than November 15, 2015, 2016, or 2017, as applicable (or, if such date is not a business day, the next applicable business day) if making the second payment of the bifurcated payment. However, we note that the form must be completed and the reinsurance contribution payment(s) must be *scheduled* no later than November 15, 2014, 2015, or 2016, as applicable, to successfully comply with the deadline set forth in § 153.405(b) and complete the reinsurance contribution submission process through Pay.gov. The reinsurance contribution payments must be scheduled by this deadline regardless of whether the contributing entity (or the TPA or ASO contractor on its behalf) is remitting a single combined payment or two payments under the bifurcated schedule.

We note that under certain circumstances, if a contributing entity elects to follow the bifurcated schedule, then the contributing entity would be required to submit two separate forms through Pay.gov. However, in this circumstance, the annual enrollment count reported on both forms must be the same. This is consistent with § 153.405(b) and previous guidance, which provide that no later than November 15 of benefit year 2014, 2015, or 2016, as applicable, a contributing entity must submit an annual enrollment count of the number of covered lives of reinsurance

[10] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Reinsurance-contributions-process-FAQ-5-22-14.pdf.*

contribution enrollees one time for the applicable benefit year to HHS.

Finally, we propose to amend § 153.405(g)(4)(1)(i) and (ii), which require a plan sponsor who maintains multiple group health plans to report to HHS the average number of covered lives calculated, the counting method used, and the names of the multiple plans being treated as a single group health plan as determined by the plan sponsor. A plan sponsor will continue to be required to determine this information, but will only need to report to HHS the average number of covered lives calculated and the other data elements required through the Pay.gov reinsurance contribution submission process. Under § 153.405(h), plan sponsors should retain this additional information (that is, the counting method used and the names of the multiple plans being treated as a single group health plan), as this information may be requested to assess the plan sponsor's compliance with the reinsurance contribution requirements, if necessary. We seek comment on these proposals.

e. Consistency in Counting Methods for Health Insurance Issuers (§ 153.405(d))

As noted in the 2014 Payment Notice (78 FR15462), the counting methods for the transitional reinsurance program are designed to align with the methods permitted for purposes of the fee to fund the Patient-Centered Outcomes Research Trust Fund (PCORTF). The PCORTF Final Rule (77 FR 72729) requires consistency in the use of counting methods for calculating covered lives for the duration of the year. In response to stakeholder questions, to promote administrative efficiencies, and to minimize the potential for strategic reporting of enrollment counts for reinsurance purposes, we propose to amend § 153.405(d) to similarly require a contributing entity that is a health insurance issuer to use the same counting method to calculate its annual enrollment count of covered lives of reinsurance contribution enrollees in a State (including both the individual and group markets) for a benefit year even if the fully insured major medical plans for which reinsurance contributions are required enroll different covered lives. If a health insurance issuer has multiple major medical plans covering different lives in different States, the issuer may use different counting methods for all major medical plans in each State (including both the individual and group markets). We note that this consistency requirement, if finalized as proposed, would be required for the 2015 and 2016 benefit years. As noted in an FAQ issued on October 21, 2014,[11] we also encourage this approach for the 2014 benefit year. This proposal would not prevent an issuer from using different counting methods for different benefit years. We do not propose a similar requirement for self-insured group health plans because we believe in many instances, a plan sponsor's multiple group health plans may be administered by different entities, making uniformity of counting method potentially more difficult. We seek comment on this proposal, including with respect to whether such uniformity of counting method is more difficult for self-insured group health plans.

f. Snapshot Count and Snapshot Factor Counting Methods (§§ 153.405(d)(2) and (e)(2))

Under § 153.400(a)(1), reinsurance contributions are generally required for major medical coverage that is considered to be part of a commercial book of business, but contributions are not required to be paid more than once with respect to the same covered life. Reinsurance contributions are generally calculated based on the number of covered lives covered by a plan or coverage that provides major medical coverage. The reinsurance contribution required from a contributing entity is calculated by multiplying the number of covered lives (determined under a permitted counting method set forth in § 153.405(d) through § 153.405(g)) during the applicable calendar year for all applicable plans and coverage of the contributing entity by the applicable contribution rate for the respective benefit year.

We seek to clarify how two of the counting methods set forth in §§ 153.405(d)(2) and (e)(2) are to be used in those situations when a plan terminates or is established in the middle of a quarter to effectuate the principle that contributions are required to be paid once with respect to the same covered life. Under the snapshot count method, described at § 153.405(d)(2), to determine the number of covered lives for the purposes of reinsurance contributions, the issuer or self-insured group health plan must add the total number of lives covered on any date (or more dates, if an equal number of dates are used for each quarter) during the same corresponding month in each of the first 3 quarters of the benefit year, and divide that total by the number of dates on which a count was made. Under the snapshot factor method, described at § 153.405(e)(2), to determine the number of covered lives for the purposes of reinsurance contributions, the self-insured group health plan must add the total number of lives covered on any date (or more dates, if an equal number of dates are used for each quarter) during the same corresponding month in each of the first 3 quarters of the benefit year (provided that the date used for the second and third quarters must fall within the same week of the quarter as the corresponding date used for the first quarter), and divide that total by the number of dates on which a count was made, except that the number of lives covered on a date is calculated by adding the number of participants with self-only coverage on the date to the product of the number of participants with coverage other than self-only coverage on the date and a factor of 2.35. For each of these counting methods, the same months must be used for each quarter (for example, January, April, July), and the date used for the second and third quarter must fall within the same week of the quarter as the corresponding date used for the first quarter.

We understand that a health insurance plan or coverage may be established, terminated, or change funding mechanisms (that is, from fully insured to self-insured or self-insured to fully insured), in the middle of a quarter. In these circumstances, it is possible that the new plan or coverage would not have covered lives enrolled in the plan or coverage for the entire quarter. If this occurs, a contributing entity could, due to its selection of dates, be required to pay an amount significantly greater or lesser than the amount that would be due based on its average count of covered lives over the course of the 9-month counting period. To avoid this result, we clarify that, if the plan or coverage in question had enrollees on any day during a quarter and if the contributing entity elects to (and is permitted to) use either the snapshot count or snapshot factor method, it must choose a set of counting dates for the 9-month counting period such that the plan or coverage has enrollees on each of the dates, if possible. However, the enrollment count for a date during a quarter in which the plan or coverage was in existence for only part of the quarter can be reduced by a factor reflecting the amount of time during the quarter for which the plan or coverage was not in existence. This approach is intended to accurately capture the amount of time during the quarter for which major medical coverage that is part of a commercial book of business and subject to

[11] Available at: *https://www.regtap.info/,* FAQ #6037.

reinsurance contributions was provided to enrollees, while not requiring contributions to be paid more than once with respect to the same covered life. For example, a contributing entity that has a plan that terminates on August 31st (that is, 62 days into the third quarter) would not be permitted to use September 1st as the date for the third quarter under the snapshot count or snapshot factor methods because this would not properly reflect the number of covered lives of reinsurance contribution enrollees under the plan in the third quarter of the benefit year. However, it would be entitled to reduce its count of covered lives during that quarter by 30/92, the proportion of the quarter during which the plan had no enrollment. This reduction factor would only be applicable for the snapshot count and snapshot factor methods set forth in §§ 153.405(d)(2) and (e)(2), respectively, as all of the other permitted counting methods automatically account for partial year enrollment.

g. Uniform Reinsurance Contribution Rate for 2016

Section 153.220(c) provides that HHS is to publish in the annual HHS notice of benefit and payment parameters the uniform reinsurance contribution rate for the upcoming benefit year. Section 1341(b)(3)(B)(iii) of the Affordable Care Act specifies that $10 billion for reinsurance contributions are to be collected from contributing entities in 2014 (the reinsurance payment pool), $6 billion in 2015, and $4 billion in 2016. Additionally, sections 1341(b)(3)(B)(iv) and 1341(b)(4) of the Affordable Care Act direct that $2 billion in funds are to be collected for contribution to the U.S. Treasury in 2014, $2 billion in 2015, and $1 billion in 2016. Finally, section 1341(b)(3)(B)(ii) of the Affordable Care Act allows for the collection of additional amounts for administrative expenses. Taken together, these three components make up the total dollar amount to be collected from contributing entities for each of the 2014, 2015, and 2016 benefit years under the uniform reinsurance contribution rate.

As discussed in the 2014 and 2015 Payment Notices, each year, the uniform reinsurance contribution rate will be calculated by dividing the sum of the three amounts (the reinsurance payment pool, the U.S. Treasury contribution, and administrative costs) by the estimated number of enrollees in plans that must make reinsurance contributions:

$$Uniform\ Reinsurance\ Contribution\ Rate = \frac{Reinsurance\ payment\ pool + Treasury\ contribution + Administrative\ costs}{Estimate\ of\ enrollees\ in\ plans\ required\ to\ make\ reinsurance\ contributions}$$

As discussed in greater detail below, we are proposing to collect $32 million for administrative expenses for the 2016 benefit year. Therefore, the total amount to be collected would be approximately $5.032 billion. Our estimate of the number of enrollees in plans that must make reinsurance contributions yields an annual per capita contribution rate of $27 for the 2016 benefit year.

(1) Allocation of Uniform Reinsurance Contribution Rate

Section 153.220(c) provides that HHS is to establish in the annual HHS notice of benefit and payment parameters for the applicable benefit year the proportion of contributions collected under the uniform reinsurance contribution rate to be allocated to reinsurance payments, payments to the U.S. Treasury, and administrative expenses. In the 2014 and 2015 Payment Notices, we stated that reinsurance contributions collected for the 2014 and 2015 benefit years would be allocated pro rata to the reinsurance payment pool, administrative expenses, and the U.S. Treasury, up to $12.02 billion for 2014 and up to $8.025 billion for 2015. However, we amended this approach in the 2015 Market Standards Rule,[12] such that, if reinsurance collections fall short of our estimates for a particular benefit year, we will allocate reinsurance contributions collected first to the reinsurance payment pool, with any remaining amounts being then allocated to the U.S. Treasury and administrative expenses, on a pro rata basis. We propose to follow a similar approach for the 2016 benefit year, such that if reinsurance contributions fall short of our estimates, contributions collected will first be allocated to the reinsurance payment pool, with any remaining allocated on a pro rata basis to administrative expenses and payments to the U.S. Treasury. We note that consistent with the statement in the 2015 Payment Notice (79 FR 13777), if we collect more than the statutorily required amount in the 2016 benefit year we propose to use any excess contributions for reinsurance payments for the current benefit year by increasing the coinsurance rate for the 2016 benefit year up to 100 percent before rolling over any remaining funds to the next year. Additionally, we anticipate expending all reinsurance contributions collected for the 2016 benefit year for 2016 requests for reinsurance payments rather than reserving any of the excess funds rolled over or collected for the 2016 benefit year in future years. However, because allowing excess funds to roll over for the 2017 benefit year could help stabilize 2017 premiums, we seek comment on rolling over any excess funds to the 2017 benefit year as an alternative to this approach.

(2) Administrative Expenses

In the 2015 Payment Notice, we estimated that the Federal administrative expenses of operating the reinsurance program would be $25.4 million, based on our estimated contract and operational costs. We propose to use the same methodology to estimate the administrative expenses for the 2016 benefit year. These estimated costs would cover the costs related to contracts for developing the uniform reinsurance payment parameters and the uniform reinsurance contribution rate, collecting reinsurance contributions, making reinsurance payments, and conducting account management, data collection, program integrity and audit functions, operational and fraud analytics, training for entities involved in the reinsurance program, and general operational support. To calculate our proposed reinsurance administrative expenses for 2016, we divided HHS's projected total costs for administering the reinsurance programs on behalf of States by the expected number of covered lives for which reinsurance contributions are to be made for 2016.

We estimate this amount to be approximately $32 million for the 2016 benefit year. This estimate increased for the 2016 benefit year due to increased

[12] 79 FR 20557–59.

audit and data validation contract costs. We believe that this amount reflects the Federal government's significant economies of scale, which helps to decrease the costs associated with operating the reinsurance program. Based on our estimate of covered lives for which reinsurance contributions are to be made for 2016, we are proposing a uniform reinsurance contribution rate of $0.17 annually per capita for HHS administrative expenses. We provide details below on the methodology we used to develop the 2016 enrollment estimates.

Similar to the allocation for 2015, for the 2016 benefit year, we allocated the administrative expenses equally between contribution and payment-related activities. Because we anticipate that our additional activities in the 2016 benefit year, including our program integrity and audit activities, will also be divided approximately equally between contribution and payment-related activities, we again propose to allocate the total administrative expenses equally between these two functions. Therefore, as shown in Table 9, we expect to apportion the annual per capita amount of $0.17 of administrative expenses as follows: (a) $0.085 of the total amount collected per capita for administrative expenses for the collection of contributions from contributing entities; and (b) $0.085 of the total amount collected per capita for administrative expenses for reinsurance payment activities, supporting the administration of payments to issuers of reinsurance-eligible plans.

TABLE 9—BREAKDOWN OF ADMINISTRATIVE EXPENSES

[Annual, per capita]

| Activities | Estimated expenses |
|---|---|
| Collecting reinsurance contributions from health insurance issuers and certain self-insured group health plans | $0.085 |
| Calculation and disbursement of reinsurance payments | 0.085 |
| Total annual per capita expenses for HHS to perform all reinsurance functions | 0.17 |

If HHS operates the reinsurance program on behalf of a State, HHS would retain the annual per capita fee to fund HHS's performance of all reinsurance functions, which would be $0.17. If a State establishes its own reinsurance program, HHS would transfer $0.085 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.085 to offset HHS's costs of collecting contributions. We note that the administrative expenses for reinsurance payments will be distributed to those States that operate their own reinsurance program in proportion to the State-by-State total requests for reinsurance payments made under the uniform reinsurance payment parameters.

h. Uniform Reinsurance Payment Parameters for 2016

Our goal in setting the reinsurance payment parameters is to achieve the greatest impact on rate setting, and therefore premiums, through reductions in plan risk, while minimizing interference with the current commercial reinsurance market. Section 1341(b)(2)(B) of the Affordable Care Act directs the Secretary, in establishing standards for the transitional reinsurance program, to include a formula for determining the amount of reinsurance payments to be made to issuers for high-risk individuals that provides for the equitable allocation of funds. In the Premium Stabilization Rule, we provided that reinsurance payments to eligible issuers will be made for a portion of an enrollee's claims costs paid by the issuer (the coinsurance rate, meant to reimburse a proportion of claims while giving issuers an incentive to contain costs) that exceeds an attachment point (when reinsurance would begin), subject to a reinsurance cap (when the reinsurance program stops paying claims for a high-cost individual). The coinsurance rate, attachment point, and reinsurance cap together constitute the uniform reinsurance payment parameters.

Given the smaller pool of reinsurance contributions to be collected for the 2016 benefit year, we are proposing that the uniform reinsurance payment parameters for the 2016 benefit year be established at an attachment point of $90,000, a reinsurance cap of $250,000, and a coinsurance rate of 50 percent. We estimate that these uniform reinsurance payment parameters will result in total requests for reinsurance payments of approximately $4 billion for the 2016 benefit year. We believe setting the coinsurance rate at 50 percent and increasing the attachment point allows for the reinsurance program to help pay for nearly the same group of high-cost enrollees as was the case for the 2014 and 2015 benefit years, while still encouraging issuers to contain costs. We believe that maintaining the reinsurance cap for the 2016 benefit year while ensuring that the coinsurance rate sufficiently compensates issuers for high-risk individuals will make it easier for issuers to estimate the effects of reinsurance. We believe that these uniform reinsurance payment parameters will support the reinsurance program's goals of promoting nationwide premium stabilization and market stability while providing issuers incentives to continue to effectively manage enrollee costs. We seek comment on this proposal.

As discussed in the 2014 and 2015 Payment Notices, to assist with the development of the uniform reinsurance payment parameters and the premium adjustment percentage index, HHS developed the Affordable Care Act Health Insurance Model (ACAHIM). The ACAHIM generates a range of national and State-level outputs for 2016, using updated assumptions reflecting more recent data, but using the same methodology described in the 2014 and 2015 Payment Notices.[13]

Specifically, the ACAHIM uses the Health Intelligence Company, LLC (HIC) database from calendar year 2010, with the claims data trended to 2016 to estimate total medical expenditures per enrollee by age, gender, and area of residence. The expenditure distributions are further adjusted to take into account plan benefit design, or ''metal'' level (that is, ''level of coverage,'' as defined in § 156.20) and other characteristics of individual insurance coverage in an Exchange. To describe a State's coverage market, the ACAHIM computes the pattern of enrollment using the model's predicted number and composition of participants in a coverage market. These estimated

[13] See the proposed 2014 Payment Notice (77 FR 73160) and the proposed 2015 Payment Notice (78 FR 72344) for more information on the ACAHIM methodology.

expenditure distributions were the basis for the uniform reinsurance payment parameters.

i. Uniform Reinsurance Payment Parameters for 2015

In the 2015 Market Standards Rule,[14] we stated that we intended to propose to lower the 2015 attachment point from $70,000 to $45,000 for the 2015 benefit year. We believe that lowering the attachment point to $45,000 would allow the reinsurance program to make more payments for high-cost enrollees in individual market reinsurance-eligible plans without increasing the contribution rate. We do not propose to adjust the 2015 coinsurance rate of 50 percent or reinsurance cap of $250,000. We seek comment on this proposal.

j. Deducting Cost-Sharing Reduction Amounts From Reinsurance Payments

We propose to modify the methodology finalized in the 2015 Payment Notice (79 FR 13780) regarding the deduction of cost-sharing reduction amounts from reinsurance payments. Under § 156.410, if an individual is determined eligible to enroll in an individual market Exchange QHP and elects to do so, the QHP issuer must assign the individual to a standard plan or cost-sharing plan variation based on the enrollment and eligibility information submitted by the Exchange. Issuers of individual market Exchange QHPs will receive cost-sharing reduction payments for enrollees that have effectuated coverage in cost-sharing plan variations. To avoid double payment by the Federal government, we indicated in the 2014 Payment Notice (78 FR 15499) that the enrollee-level claims data submitted by an issuer of a reinsurance-eligible plan should be net of cost-sharing reductions provided through a cost-sharing plan variation (which are reimbursed by the Federal government).

In the 2015 Payment Notice (79 FR 13780), we explained the methodology HHS will use to deduct the amount of cost-sharing reductions paid on behalf of an enrollee enrolled in a QHP in an individual market through an Exchange. For each enrollee enrolled in a QHP plan variation,[15] we will subtract from the QHP issuer's total plan paid amounts for the enrollee in a reinsurance-eligible plan the difference between the annual limitation on cost sharing for the standard plan and the annual limitation on cost sharing for the plan variation. For policies with multiple enrollees, such as family policies, we stated we would allocate the difference in annual limitation in cost sharing across all enrollees covered by the family policy in proportion to the enrollees' QHP issuer total plan paid amounts.

We also stated that for an enrollee who is assigned to different plan variations during the benefit year, we would calculate the adjustment for cost-sharing reductions based on the annual limitation on cost sharing applicable to the plan variation in which the enrollee was last enrolled during the benefit year, because cost sharing accumulates over the benefit year across plan variations of the same standard plan.

We are proposing to modify this policy; we propose that if an enrollee is assigned to different plan variations during the benefit year, we would calculate the adjustment for cost-sharing reductions based on the difference between the annual limitation on cost sharing for the standard plan and the average annual limitation on cost sharing in the plan variations (including any standard plan), weighted by the number of months the enrollee is enrolled in each plan variation during the benefit year. This approach will also permit us to allocate the difference in annual limitations in a family policy to individual family members when a member exits or enters the policy mid-year, or if there are other changes in circumstances that impact the cost-sharing reductions provided to enrollees covered by the family policy. We are not proposing any changes to the approach finalized in the 2015 Payment Notice with respect to the QHP issuer's plan paid amounts for purposes of calculating reinsurance payments for an Indian in a limited cost-sharing plan variation. We seek comment on this proposed modification, as well as alternative approaches to deducting CSR amounts from reinsurance payments.

4. Provisions for the Temporary Risk Corridors Program

a. Application of the Transitional Policy Adjustment in Early Renewal States

On November 14, 2013, the Federal government announced a transitional policy under which it will not consider certain health insurance coverage in the individual or small group markets that is renewed for a policy year starting after January 1, 2014, under certain conditions to be out of compliance with specified 2014 market rules, and requested that States adopt a similar non-enforcement policy.[16] HHS extended this transitional policy on March 5, 2014, permitting issuers to renew transitional policies through policy years beginning on or before October 1, 2016.[17] In the 2015 Payment Notice, HHS implemented an adjustment to the risk corridors formula for the 2014 benefit year to help further mitigate any unexpected losses attributable to the effects of the transitional policy for QHP issuers in a State that adopts the transitional policy. Under § 153.500, we will effectuate this adjustment to the risk corridors formula for each of the individual and small group markets by increasing the profit margin floor (from 3 percent of after-tax profits) and the allowable administrative costs ceiling (from 20 percent of after-tax profits) to help offset losses that might occur under the transitional policy as a result of increased claims costs not accounted for when setting 2014 premiums. Because we believe that the Statewide effect on this risk pool would increase with an increase in the percentage enrollment in transitional plans in the State, we stated that we would vary the State-specific percentage adjustment to the risk corridors formula with the percentage of member-months enrollment in these transitional plans in the State.[18]

In response to stakeholder questions, we propose to clarify that the transitional adjustment applies only with respect to plans under the transitional policy—that is, plans that renew after January 1, 2014 for which HHS and the applicable State are not enforcing market rules. We would further clarify that member-months of enrollees in early renewal plans will not be counted towards the risk corridors transitional policy adjustment (that is, unless and until the plan becomes a transitional plan in a transitional State upon renewal in 2014).[19] We believe

[14] 79 FR 30259.

[15] Except for limited cost-sharing plan variations, for which we stated we would not reduce the QHP issuer's plan paid amounts.

[16] Letter to Insurance Commissioners, Center for Consumer Information and Insurance Oversight, November 14, 2013. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF*.

[17] Insurance Standards Bulletin Series—Extension of Transitional Policy through October 1, 2016, Center for Consumer Information and Insurance Oversight, March 5, 2014. Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/commissioner-letter-11-14-2013.PDF*.

[18] As stated in the 2015 Payment Notice, HHS will calculate the amount of the adjustment that applies to each State based on the State's member-month enrollment count for transitional plans and non-transitional plans in the individual and small group markets.

[19] Title 45 Part 153, Section 530 of the Code of Federal Regulations (CFR) sets forth the data requirements for this information collection. A notice was published in the **Federal Register** on September 5, 2014, providing the public with a 60-

Continued

that this approach for counting member months towards the risk corridors transitional adjustment is consistent with the intent of the transitional policy adjustment set forth in the 2015 Payment Notice because issuers could have been able to account for the risk of early renewals in their 2014 rate setting. We request comment on this approach.

b. Risk Corridors Payments for 2016

To provide greater clarity on how risk corridors payments will be made, we issued a bulletin on April 11, 2014, titled ''Risk Corridors and Budget Neutrality,'' which described how we intend to administer risk corridors in a budget neutral way over the 3-year life of the program.[20] Specifically, we stated that if risk corridors collections in the first or second year are insufficient to make risk corridors payments as prescribed by the regulations, risk corridors collections received for the next year will first be used to pay off the payment reductions issuers experienced in the previous year in a proportional manner, up to the point where issuers are reimbursed in full for the previous year, and remaining funds will then be used to fund current year payments. If any risk corridors funds remain after prior and current year payment obligations have been met, we stated that they will be held to offset potential insufficiencies in risk corridors collections in the next year. Our April 11, 2014 bulletin stated that we would establish in future guidance how we would calculate risk corridors payments in the event that cumulative risk corridors collections do not equal cumulative risk corridors payment requests.

We now propose that if, for the 2016 benefit year, cumulative risk corridors collections exceed cumulative risk corridors payment requests, we would make an adjustment to our administrative expense definitions (that is, the profit margin floor and the ceiling for allowable administrative costs) to account for the excess funds. That is to say, if, when the risk corridors program concludes, cumulative risk corridors collections exceed both 2016 payment requests under the risk corridors formula and any unpaid risk corridors amounts from previous years,[21] we would increase the administrative cost ceiling and the profit floor in the risk corridors formula by a percentage calculated to pay out all collections to QHP issuers. The administrative cost ceiling and the profit floor would be adjusted by the same percentage.

We propose to determine the percentage adjustment to the administrative cost ceiling and profit margin floor by evaluating the amount of excess risk corridors collections (if any) available after risk corridors payments for benefit year 2016 have been calculated. As stated in our bulletin on risk corridors budget neutrality, after receiving charges from issuers for the 2016 benefit year, we would first prioritize payments to any unpaid risk corridors payments remaining from the 2015 benefit year. We would then calculate benefit year 2016 risk corridors payments for eligible issuers based on the 3 percent profit floor and 20 percent allowable administrative cost ceiling, as required by regulation. If, after making 2015 payments and calculating (but not paying) risk corridors payments for benefit year 2016, we determine that the aggregate amount of collections (including any amounts collected for 2016 and any amounts remaining from benefit years 2014 and 2015) exceed what is needed to make 2016 risk corridors payments, we would implement an adjustment to the profit floor and administrative cost ceiling to increase risk corridors payments for eligible issuers for benefit year 2016. We would examine data that issuers have submitted for calculation of their 2016 risk corridors ratios (that is, allowable costs and target amount) and determine, based on the amount of collections available, what percentage increase to the administrative cost ceiling and profit floor could be implemented for eligible issuers while maintaining budget neutrality for the program overall. Although all eligible issuers would receive the same percentage adjustment, the amount of additional payment made to each issuer would vary based on the issuer's allowable costs and target amount. Once HHS has calculated the adjustment and applied it to eligible issuers' risk corridors formulas, it would make a single risk corridors payment for benefit year 2016 that would include any additional, adjusted payment amount.

Because risk corridors collections are a user fee to be used to fund premium stabilization under risk corridors and because we intend to implement the risk corridors program in a budget neutral manner, we propose to limit this adjustment to excess amounts collected. We propose to apply this adjustment to allowable administrative costs and profits for the 2016 benefit year only to plans whose allowable costs (as defined at § 153.500) are at least 80 percent of their after-tax premiums, because issuers under this threshold would generally be required to pay out MLR rebates to consumers.[22] In the past, we have sought to align the definitions we use for the risk corridors program, including those of ''allowable administrative costs'' and ''profits,'' with the manner in which these concepts are treated in the MLR program, to ensure that the programs are consistent in their effects. We note that for plans whose ratio of allowable costs to after-tax premium are below 80 percent, the 3 percent risk corridors profit margin and 20 percent allowable administrative cost ceiling would continue to apply. Furthermore, we propose that, to the extent that applying the proposed adjustment to a plan could increase its risk corridors payment and affect its MLR calculation, the MLR calculation will ignore these adjustments. This is consistent with our previous policy with respect to the adjustments to these definitions for 2014 and 2015 in the 2015 Payment Notice and the 2015 Market Standards Rule. We request comment on this approach.

As previously stated, we anticipate that risk corridors collections will be sufficient to pay for all risk corridors payments. HHS recognizes that the Affordable Care Act requires the Secretary to make full payments to issuers. In the unlikely event that risk corridors collections, including any potential carryover from the prior years, are insufficient to make risk corridors payments for the 2016 program year, HHS will use other sources of funding for the risk corridors payments, subject to the availability of appropriations.

day period to submit written comments on the information collection requirement associated with the Transitional Adjustment Reporting form.

[20] The Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight. ''Risk Corridors and Budget Neutrality''. April 11, 2014. Available at: *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf*.

[21] In our bulletin on ''Risk Corridors and Budget Neutrality'' dated April 11, 2014, we stated that if, in 2014 or 2015, requests for risk corridors payments exceed risk corridors collections, we would reduce risk corridors payments pro rata, but would make up those deficiencies to the extent collections exceed payment requests in later years.

[22] Because of some differences in the MLR numerator and the definition of allowable costs that applies with respect to the risk corridors formula, in a small number of cases, an issuer with allowable costs that are at least 80 percent of after-tax premium, may be required to pay MLR rebates to consumers.

5. Distributed Data Collection for the HHS-Operated Risk Adjustment and Reinsurance Programs

a. Good Faith Safe Harbor (§ 153.740(a))

In the second Program Integrity rule,[23] HHS finalized a good faith safe harbor policy which provided that civil money penalties (CMPs) will not be imposed for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements during 2014, if the issuer has made good faith efforts to comply with these requirements.[24] That safe harbor parallels a similar safe harbor for QHP issuers in FFEs under § 156.800.

We propose to amend § 153.740(a) to extend the safe harbor for non-compliance with the HHS-operated risk adjustment and reinsurance data requirements during the 2015 calendar year if the issuer has made good faith efforts to comply with these requirements. This proposal acknowledges that the distributed data collection requirements have been the subject of modifications through the 2014 calendar year, including the introduction of cloud-based virtual options for the distributed data environments. We note that good faith efforts could include notifying, communicating with, and cooperating with HHS with respect to issues that arise with the establishment and provisioning of the issuers' dedicated distributed data environment.

The extension of this good faith safe harbor will not affect HHS's ability to assess issuers of risk adjustment covered plans a default risk adjustment charge under § 153.740(b).[25] Additionally, we note that the good faith safe harbor does not apply to non-compliance with dedicated distributed data environment standards applicable during 2016, even if the non-compliance in the 2016 calendar year relates to data for the 2015 benefit year. Issuers of risk adjustment covered plans and reinsurance-eligible plans must establish dedicated distributed data environments in 2014 and begin loading data according to a quarterly schedule provided by HHS. The good faith safe harbor would apply, for example, to noncompliance with the 2015 benefit year schedule for loading data to the dedicated distributed data environment during the 2015 calendar year. However, the data loading schedule applicable to the 2015 benefit year for risk adjustment and reinsurance data extends into the 2016 calendar year (the final loading deadline is April 30, 2016, which will enable HHS to calculate risk adjustment payments and charges and reinsurance payments for the 2015 benefit year by June 30, 2016). The good faith safe harbor would not extend to non-compliance with any 2016 calendar year obligations, even if those 2016 obligations apply for 2015 benefit year data. We seek comment on this proposal.

b. Default Risk Adjustment Charge (§ 153.740(b))

In the second Program Integrity Rule and the 2015 Payment Notice, HHS indicated that a default risk adjustment charge will be assessed if an issuer does not establish a dedicated distributed data environment or submits inadequate risk adjustment data. However, we did not establish how the money collected from the default charge will be allocated among risk adjustment covered plans.

We are proposing to allocate collected per member per month default charge funds proportional to each plan's relative revenue requirement, the product of *PLRS*IDF*GCF* (Plan Liability Risk Score * Induced Demand Factor * Geographic Cost Factor) relative to the market average of these products, across all risk adjustment covered plans in the market in the State. This approach would allocate funds proportionally to a plan's enrollment, adjusted for factors such as health risk, actuarial value, and geographic cost differences. This approach would also allocate the default charge funds in accordance with plans' expected revenue requirements as calculated in the transfer formula. By contrast, an approach that allocates risk adjustment default charge funds in accordance with enrollment or premiums, for example, would favor plans with lower metal levels, low risk selection, or lower geographic costs.

This allocation would occur only in risk adjustment markets with at least one noncompliant plan, and these steps would be used to calculate each compliant plan's allocation of the default charges collected from the noncompliant plan(s). We would calculate risk transfers among the compliant plans only and exclude all data from noncompliant plans. Using the same inputs of the compliant plans as used in the transfer formula, we would calculate the distribution of default charges paid by noncompliant plans among the compliant plans using the following formula:

$$DC_i = \text{total default charges collected} \times s_i \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum(s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)}\right]$$

Where:

$DC_i$ is the total amount of default charges allocated to plan *i;*

''Total default charges collected'' is the sum, in dollars, collected from all noncompliant plans (aggregate dollars, that is, *not* on a per member per month basis); Other terms are as defined in the usual risk transfer calculations, and restricted to compliant plans only ($s_i$ = plan *i*'s share of State enrollment; $PLRS_i$ = plan *i*'s plan liability risk score, $IDF_i$= plan *i*'s induced demand factor, $GCF_i$ = plan *i*'s geographic cost factor); and

*i* indexes compliant plans, and the summation in the denominator is over compliant plans only.

We seek comment on this approach.

c. Information Sharing (§ 153.740(c))

In § 153.740, we established the enforcement remedies available to HHS for an issuer of a risk adjustment covered plan or a reinsurance-eligible plan's failure to comply with HHS-operated risk adjustment and reinsurance data requirements. Consistent with the policy set forth at § 156.800(d), as finalized in the 2015 Market Standards Rule,[26] we propose adding paragraph (c) to clarify that HHS may consult and share information about issuers of a risk adjustment

[23] Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs and Market Standards, 78 FR 65046 (October 30, 2013).

[24] We note that HHS also clarified in a March 28, 2014 FAQ that CMPs would not be imposed on an issuer for non-compliance during the 2014 calendar year, if the issuer made good efforts to comply with these requirements. *See,* FAQ 1212, published March 28, 2014. *https://www.regtap.info/faq_viewu.php?id=1212.*

[25] According to 45 CFR 153.740(b), ''If an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to the required data in such environment in accordance with § 153.610(a), § 153.700, § 153.710, or § 153.730 such that HHS cannot apply the applicable Federally certified risk adjustment methodology to calculate the risk adjustment payment transfer amount for the risk adjustment covered plan in a timely fashion, HHS will assess a default risk adjustment charge.''

[26] 79 FR 30240.

covered plan or a reinsurance-eligible plan with other Federal and State regulatory and enforcement entities to the extent that the consultation and information is necessary for HHS to determine whether an enforcement remedy against the issuer of the risk adjustment covered plan or reinsurance-eligible plan under § 153.740 is appropriate. For example, HHS may consult other Federal and State regulatory and enforcement entities to identify issuers within a State who have failed to establish a dedicated distributed data environment. No personally identifiable information would be transferred as part of such a consultation. We seek comment on this proposal.

*F. Part 154—Health Insurance Issuer Rate Increases: Disclosure and Review Requirements*

1. General Provisions

This section includes proposals related to the rate review program under part 154. Unless otherwise specified, the amendments in this part would apply beginning with rates filed during the 2015 calendar year for coverage effective on or after January 1, 2016. We seek comment on whether the proposal provides States and issuers sufficient time to transition to the new rate review timeframe.

a. Definitions (§ 154.102)

Section 154.102 sets forth definitions used for purposes of the rate review provisions in part 154. In this proposed rule, we propose to add a definition ''plan'' and to amend the definitions of ''individual market,'' ''small group market,'' ''rate increase'' and ''State.'' We propose that these definitions would become effective for rate filings submitted during the 2015 calendar year for coverage effective January 1, 2016.

We propose that the term ''plan'' have the meaning given the term in § 144.103. For a discussion of the proposed amendments related to the term ''plan,'' see section III.A.1.a of this preamble.

We propose amending the terms ''individual market'' and ''small group market'' to also have the meaning given such terms in § 144.103. Under that section, the term ''individual market'' means the market for health insurance coverage offered to individuals other than in connection with a group health plan. The term ''small group market'' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer. By incorporating the definition of small group market in § 144.103, we are also incorporating the definition of small employer in § 144.103. We are also incorporating all aspects of the individual market and small group market definitions as described in § 144.102, including § 144.102(c), with respect to coverage provided through associations. These proposed changes will more fully harmonize the applicability of the rate review provisions with the rating reforms under the Affordable Care Act, including the premium rating and single risk requirements.

We propose amending the term ''rate increase'' to mean any increase of the rates for a specific product or plan within a product offered in the individual or small group market. This change is for consistency with our proposal in § 154.200, discussed below, to require the consideration of rate increases at the plan level as opposed to the product level when determining whether a rate increase is subject to review.

We lastly propose amending the definition of ''State'' to exclude the U.S. territories of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The change reflects HHS's determination, described in more detail in section III.A.1.b of this preamble, that certain provisions of the PHS Act enacted in title I of the Affordable Care Act that apply to health insurance issuers are appropriately governed by the definition of ''State'' set forth in that title. This proposed amendment would codify the approach that the rate review provisions (section 2794 of the PHS Act) do not apply to health insurance issuers in the U.S. territories.[27]

2. Disclosure and Review Provisions

a. Rate Increases Subject to Review (§ 154.200)

In § 154.200, we propose to make technical corrections to the text of paragraphs (a)(1) and (2) to clarify that rate increases are applicable to a 12-month period that begins on January 1 rather than September 1 as currently specified in those paragraphs. The proposed corrections are necessary to align the text of the rate review regulation with rate effective dates under § 156.80, which requires a single risk pool index rate to be established and effective for a State market by January 1 of each calendar year.

In paragraph (c), we propose to modify the standard for determining whether a rate increase is subject to review. Under the current regulations, a rate increase in the individual or small group market is subject to review if the rate increase is 10 percent or more, or the increase meets or exceeds an applicable State-specific threshold established in accordance with § 154.200. The percent increase is calculated as the average increase for all enrollees with coverage under the product weighted by premium volume.

We propose to amend paragraph (c) to require the consideration of rate increases at the plan level (as that term is proposed to be defined in § 154.102) as opposed to the product level when determining whether the increase is subject to review. Under this approach, if an increase in the plan-adjusted index rate (as described in the single risk pool provision at § 156.80) for any plan within a product in the individual or small group market meets or exceeds the applicable threshold, the product (including all plans within the product) would be subject to review to determine whether the rate increase is unreasonable. The rate increase would trigger review even if the average increase for the product itself did not meet or exceed the applicable threshold.

We believe considering the impact of rate increases at the plan level is the appropriate level of aggregation when determining whether an increase is subject to review, because consumers are affected by rate increases at the plan level. This approach would ensure that all rate increases at or above the specified threshold in the individual or small group market are reviewed by the applicable State or CMS to determine whether the rate increase is unreasonable. This will further help protect consumers against unreasonable rate increases, eliminating the possibility that a plan could experience a significant rate increase and still avoid review because the average increase for the product does not meet or exceed the applicable threshold.

We seek comment on this proposal, including on the benefits and costs to States of carrying out the plan-level trigger for review.

b. Submission of Rate Filing Justification (§ 154.215)

Under § 154.215, health insurance issuers are required to submit a Rate Filing Justification for all products in the issuer's single risk pool, on a form and in a manner prescribed by the Secretary, when any product in the individual or small group market is subject to a rate increase. This

[27] *See e.g.,* Letter to Virgin Islands on the Definition of State (July 16, 2014). Available at: *http://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Francis.pdf.*

requirement was finalized in the 2014 Market Rules to carry out the Secretary's responsibility, in conjunction with the States, under PHS Act section 2794(b)(2)(A) to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange beginning in 2014.

We explained in the preamble to the 2014 Market Rules this provision requires the completion of a Rate Filing Justification for all proposed rate increases, whether or not the rate increase meets or exceeds the subject to review threshold (78 FR 13420). To better reflect the intent of this requirement, we are proposing to modify the text of paragraph (a) of § 154.215 to expressly state that ''all'' proposed rate increases includes a rate increase with respect to ''any plan within a product'' in the individual or small group market that is subject to a rate increase. This clarification would become effective with the effective date of the final rule.

c. Timing of Providing the Rate Filing Justification (§ 154.220)

Section 154.220 provides that if a State requires a proposed rate increase to be filed with the State prior to implementation of the increase, the health insurance issuer must send CMS and the applicable State the Rate Filing Justification on the date the issuer submits the proposed rate increase to the State. For all other States, the health insurance issuer must send CMS and the applicable State the Rate Filing Justification prior to the implementation of the rate increase.

There is currently wide variation in State submission timelines and practices for reviewing proposed rate increases. Some States require that all rates must be filed at the same time. Others require rate filings after the date the QHP submissions are required to be made, creating a situation in which QHPs must file rates before non-QHPs. Some States have not adopted specific rate filing timeframes but instead rely on ''file and use'' laws, which provide that a rate (or rate increase) may go into effect as soon as it is filed with the State. Others prohibit posting of final rates until the date that the coverage begins.

We propose to modify § 154.220 to establish a uniform timeline by which health insurance issuers must submit a completed Rate Filing Justification to CMS and, when applicable, to the State. We propose that a health insurance issuer must submit the Rate Filing Justification by the earlier of the following: (1) The date by which the State requires that a proposed rate increase be filed with the State; or (2) the date specified by the Secretary in guidance. We are considering specifying in future guidance a deadline to coincide with the end of the QHP application window for the FFE for issuers to complete and submit the Rate Filing Justification for proposed rate increases in the individual and small group markets for both QHPs and non-QHPs. We seek comments on this date.

The proposed approach would assure that all rate increases in every relevant State market for both QHPs and non-QHPs are filed by a consistent time each year. This would improve predictability and transparency, reduce the opportunity for anti-competitive behavior, and establish a more meaningful opportunity for consumers and other stakeholders to comment on proposed rate increases before rates are finalized. It would also ensure that State and Federal regulators have adequate time for review prior to implementation of a rate increase. We note that States would have flexibility to impose earlier rate filing deadlines to meet their specific State needs.

We seek comment on all aspects of this proposal.

d. CMS's Determinations of Effective Rate Review Programs (§ 154.301)

Section 154.301 sets forth criteria for evaluating whether a State has an Effective Rate Review Program in the individual and small group markets. If a State meets the criteria to have an Effective Rate Review Program, CMS adopts the State's determination as to whether a rate increase that is subject to review is unreasonable. If a State does not meet the criteria to have an Effective Rate Review Program, then CMS conducts the review and makes a determination about whether a rate increase is unreasonable.

We propose to amend § 154.301(b) to specify the timeframe and manner for a State with an Effective Rate Review Program to provide public access to information about proposed and final rate increases if the State elects to make such information available to the public.

In paragraph (b)(1)(i), we propose that, for proposed rate increases subject to review, the State must provide access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's web address for such information) and have a mechanism for receiving public comments on those proposed rate increases.[28] If a State elects to post information about proposed rate increases on its Web site, the information would be required to be posted no later than the date specified by the Secretary in guidance. We are considering specifying in future guidance a deadline of 10 business days after receipt of all rate filings in the relevant State market for information to be posted about proposed rate increases that are subject to review. We seek comment on this proposed deadline.

In paragraph (b)(1)(ii), we propose that, for all final rate increases, the State must provide access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's web address for such information). This would include information about rate increases that both meet or exceed the review threshold and those not subject to review. The information would be required to be posted no later than the first day of the annual open enrollment period. States could make additional information available to the public or make the information available earlier than this deadline at their option. We seek comment on this proposed deadline.

In paragraph (b)(2), we propose that if a State intends to make the information about proposed rate increases in paragraph (b)(1)(i) available to the public prior to the date specified by the Secretary, or if it intends to make the information about final rate increases in paragraph (b)(1)(ii) available to the public prior to the first day of the annual open enrollment period, the State must notify CMS in writing, no later than 30 days prior to the date it intends to make the information public, of its intent to do so and the date it intends to make the information public. This information will enable CMS to better coordinate and manage public expectations regarding the availability of the rate information, increasing transparency nationally into the rate-setting process.

Finally, we propose in paragraph (b)(3) that the State must ensure the information it posts on its Web site under proposed paragraphs (b)(1)(i) and (b)(1)(ii) (or in addition to the information required under those paragraphs) is made available to the public at a uniform time for all proposed or final rate increases, as applicable, in the relevant market segment and without regard to whether

[28] Pursuant to § 154.215(h)(2), CMS posts on its Web site the information contained in Parts I and III of each Rate Filing Justification that is not a trade secret or confidential commercial or financial information as defined in HHS's Freedom of Information Act regulations, 45 CFR 5.65.

coverage is offered through or outside an Exchange. These provisions would provide consumers with timely access to information about proposed and final rate increases in States that elect to make such information available to the public. They would also promote fair market competition between issuers in the Exchange and non-Exchange markets and further enhance transparency of the rate-setting process.

We are considering establishing as a condition of an Effective Rate Review Program that the State post on its Web site information about proposed and final rate increases, rather than providing the option to simply provide CMS's web address for such information. We seek comment on this proposal. We also seek comments on the timeframes for making proposed and final rate information available to the public, including how the timeframes may interact with current State rate review practices and might affect the State's workload.

*G. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act*

1. General Provisions

a. Definitions (§ 155.20)

In § 155.20, we propose to amend the definitions of ''applicant,'' ''enrollee,'' and ''qualified employee.'' First, the proposed amendments to applicant, enrollee, and qualified employee would specify that a qualified employer could elect to offer coverage through a SHOP to its former employees that may include retirees, as well as former employees to whom an employer might be obligated to provide continuation coverage under applicable State or Federal law. Second, the proposed amendments specify that a qualified employer could also elect to offer coverage through the SHOP to dependents of employees or former employees. Third, the proposed amendments specify that business owners may enroll in SHOP coverage provided that at least one employee enrolls. We propose to amend these definitions to make it clear that SHOPs may allow small group enrollment practices that were in place before the Affordable Care Act to continue, to preserve continuity for issuers and employers, and to reduce the administrative complexity involved with transitioning to SHOP coverage for qualified employers.

We propose to amend the definition of ''applicant'' with respect to the group market so that it would include not only an employer or employee seeking eligibility for enrollment in a QHP through the SHOP, but also a former employee seeking eligibility for enrollment in a QHP through the SHOP. We are also proposing to amend the definition of applicant so that it would reflect that an employer, employee, or former employee could seek eligibility to enroll his or her dependents in a QHP through the SHOP, if the qualified employer offers dependent coverage through the SHOP.

We propose to define ''qualified employee'' as any employee or former employee of a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP for himself or herself and, if the qualified employer offers dependent coverage through the SHOP, for his or her dependents.

We note that we would not consider dependents to be applicants or qualified employees—rather, dependents' eligibility to participate in SHOP is linked to the eligibility of the qualified employee. Similarly, we would not consider business owners (including sole proprietors, owners of more than 2 percent of an S corporation or of more than 5 percent of a C corporation, partners owning more than 5 percent of a partnership, or members owning more than 5 percent of a limited liability company (LLC), or working spouses, domestic partners, and other family members of these types of business owners) to be qualified employees. Consistent with current market practice, these types of business owners may, however, enroll in coverage through the SHOP if at least one employee has enrolled in such coverage through the SHOP. We also note that under our interpretation of the definition of employee at § 155.20, a qualified employer may not offer SHOP coverage exclusively to former employees. A qualified employer must have at least one employee who enrolls in order for the coverage to be issued through the SHOP to a former employee.

We propose to amend the definition of ''enrollee'' so that the term would include not only qualified individuals and qualified employees (as that term would be amended as proposed in this rulemaking), but also dependents of qualified employees. The proposed amendments to enrollee would also establish that business owners and their dependents could also enroll in coverage through the SHOP, provided that at least one employee enrolls in coverage through the SHOP. Including these individuals in the definition of enrollee would mean that where these individuals are permitted to enroll in coverage through the SHOP, the SHOP and QHPs must provide them with the same rights and privileges as qualified employees who are enrollees, such as timely notice of changes in coverage as described in subpart H of part 155 and § 156.285. We note that this has no impact on the tax treatment of premiums paid by the business owner for coverage for themselves and their dependents.

While we have attempted to ensure that the modifications of these definitions are consistent with the intended usage of these terms throughout subpart H, we seek comment on all aspects of the proposed modifications to these definitions, including comments on any perceived unintended consequences resulting from the proposed modifications of these terms, and comments on whether other provisions of the Exchange rules in part 155 and 156 would also need to be amended to implement the changes proposed in these definitions. We note that these definitions apply only with respect to the provisions of 45 CFR, and should not be read as interpreting these terms for any purposes under Title I of ERISA.

2. General Functions of an Exchange

a. Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

Section 155.205(c) sets forth standards applicable to consumer assistance tools and programs of Exchanges for providing meaningful access to information for individuals with disabilities and individuals with limited English proficiency. Currently, these provisions also apply through § 155.230(b) to applications, forms, and notices used or provided by the Exchange, and through a cross-reference to § 155.230(b) in § 156.250, to QHP issuer applications and notices. Information provided as part of any consumer assistance functions under § 155.205(d) and (e), including the Navigator program described in § 155.210, must meet the standards of § 155.205(c). In addition, if an Internet Web site of an agent or broker (referred to in this section as a ''web-broker'') is used by a consumer to complete a QHP selection, that Web site must disclose and display all QHP information provided by the Exchange or directly by QHP issuers consistent with the requirements of § 155.205(c), under § 155.220(c)(3)(i). We propose to amend § 155.205(c) to specify the oral interpretation services that are required for certain entities subject to § 155.205(c). Specifically, with respect to Exchanges, QHP issuers, and web-brokers only, we propose that the requirement to provide oral

interpretation services under § 155.205(c)(2)(i) would include making available telephonic interpreters in at least 150 languages. We propose this specific standard so that in every Exchange consumers with limited English proficiency would have greater access to essential information provided by Exchanges, web-brokers, and QHP issuers when shopping for and accessing health coverage. In addition, this proposed standard would detail for Exchanges, web-brokers, and QHP issuers how they must provide meaningful access to information to individuals with limited English proficiency. We also propose amendments to § 156.250 that are discussed below, and that would require QHP issuers to provide all information that is critical for obtaining health insurance coverage or access to health care services through the QHP, including applications, forms, and notices, to qualified individuals, applicants, qualified employers, qualified employees, and enrollees in accordance with the standards described in § 155.205(c), including the provision of telephonic interpretive services in at least 150 languages.

We are proposing to limit the applicability of the proposed 150 languages standard to Exchanges, web-brokers, and QHP issuers. These groups, in many cases, already maintain a call center with language line capacity in 150 or more languages, which we believe to be the industry standard for language line services. We do not propose that this standard would apply to Navigators and non-Navigator assistance personnel because the smaller non-profit organizations that frequently make up the bulk of these consumer assistance entities have limited resources. For example, small entities and individuals are encouraged to apply for Navigator grants in the FFEs, particularly by partnering with other entities or individuals to form a consortium, and these entities frequently lack the infrastructure to support telephonic interpreter services in multiple languages.

We solicit comment on all aspects of this proposal. In particular, we seek specific comment on whether Navigators and non-Navigator assistance personnel should be required to meet the proposed standard, whether directly or through referral, such as through a referral to the Exchange call center. We also seek specific comment on whether requiring web-brokers to provide telephonic interpretive services in 150 languages would have an adverse impact on them, as well as on whether there are alternative means that should be provided to web-brokers by which they can meet their existing obligations to provide oral interpretation services (such as through referral to the Exchange call center).

We also solicit specific comments on whether we should consider more or different language accessibility standards in § 155.205(c). For instance, some stakeholders have suggested ideas such as requiring written translations in the languages spoken by the applicable State's top ten Limited English Proficiency (LEP) groups or spoken by 10,000 persons or greater, whichever yields the greater number of languages; oral interpretation in as many languages as are generally available by telephonic interpreter services (which we understand is at least 150 languages); taglines (short statements informing individuals of the availability of language access services)in the top 30 non-English languages spoken nationwide on documents required by State or Federal law or containing information that is critical to obtaining health insurance coverage or access to health care services through a QHP; Web site content translated in each non-English language spoken by an LEP population that reaches 10 percent of the State population; and a uniform requirement that written translations, taglines on notices and Web site content, and oral interpretation services must be provided in the top 15 languages spoken by LEP individuals in the United States. We note that taglines in 15 languages are generally contained in all standard notices sent by the FFE. We solicit comments on these suggestions.

We also solicit comment on whether we should require more specific accessibility standards under other requirements under § 155.205(c), such as the requirement to provide written translations for individuals with limited English proficiency, and auxiliary aids and services to individuals with disabilities, and taglines indicating the availability of language services or auxiliary aids and services. We remind relevant covered entities of the obligations they might have under other Federal laws to meet existing effective communication requirements for individuals with disabilities, as such obligations are independent of the responsibilities they may have under § 155.205(c), § 155.230(b), § 156.200(e), and § 156.250. Finally, we solicit comment on whether this proposal would present implementation challenges for Exchanges, web-brokers, and QHP issuers if it becomes effective before the beginning of the open enrollment period in the individual market for the 2016 benefit year.

b. Standards Applicable to Navigators and Non-Navigator Assistance Personnel Carrying Out Consumer Assistance Functions Under §§ 155.205(d) and (e) and 155.210 in a Federally-Facilitated Exchange and to Non-Navigator Assistance Personnel Funded Through an Exchange Establishment Grant (§ 155.215)

In the 2015 Market Standards Rule, we added regulatory language at § 155.215(h), which states in relevant part that ''all non-Navigator assistance personnel funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees.'' We have since recognized that this wording could create confusion about whether the requirement applies to the non-Navigator entity receiving funding through an Exchange Establishment grant, or whether it applies to each individual providing non-Navigator assistance. CMS currently interprets the provision as applying only to non-Navigator assistance personnel entities, such that only the entity must maintain a physical presence in the Exchange service area, consistent with our application of the requirement to non-Navigator assistance personnel in an Exchange operated by HHS under its authority under § 155.105(f). To make this policy clear, we propose to amend § 155.215(h) to limit it to entities, so it would read ''all non-Navigator entities funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees.'' We believe that this amendment strikes an appropriate balance in allowing individuals providing non-Navigator assistance subject to § 155.215 to provide assistance via the telephone, Internet, or through other remote means, particularly in circumstances in which remote assistance would be more effective or practical than face-to-face assistance, while also ensuring that the organization with which they are affiliated is in a position to understand and meet the specific needs of the communities they serve and to facilitate consumer protection efforts, as applicable, in their State. If the non-Navigator is not affiliated with a larger entity, we would consider the individual to be the entity specified in

the amended language under proposed § 155.215(h). We are also proposing to add the title ''Physical presence'' to paragraph (h) for improved clarity.

c. Standards for HHS Approved Vendors of Federally-Facilitated Exchange Training for Agents and Brokers (§ 155.222)

Section 1312(e) of the Affordable Care Act directs the Secretary of HHS to establish procedures under which a State may allow agents and brokers to enroll individuals and employers in any QHP in the individual or small group market offered through an Exchange, and to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs sold through an Exchange. Under § 155.220, we established procedures to support the State's ability to permit agents and brokers to assist individuals, employers or employees with enrollment in QHPs offered through an Exchange, subject to applicable Federal and State requirements. As described at § 155.220(d), an agent or broker that enrolls qualified individuals through an Exchange, or assists individuals in applying for advance payments of the premium tax credit or cost-sharing reductions, must comply with the terms of the agreement between the agent or broker and the Exchange. Under the terms of this general agreement, agents and brokers must register with the Exchange, and must receive training in the range of QHP options and insurance affordability programs. In addition, all agents and brokers must execute the applicable privacy and security agreement(s) required by § 155.260(b).

For plan years 2014 and 2015, the procedures established under section 1312(e) of the Affordable Care Act involved HHS implementation of FFE training of agents and brokers. HHS also provided technical support and help desk services to agents and brokers with questions related to that training. In this rule, for 2016 and future plan years, we propose changing the procedures related to FFE agent and broker training so that the certain training and information verification functions could also be provided by HHS-approved vendors. Under this proposal, HHS would provide an additional avenue by which agents and brokers could complete the training requirements necessary to work with consumers seeking coverage through the FFE. HHS would recognize the successful completion of an Exchange training program from an HHS-approved vendor as sufficient to satisfy the requirement to receive training in the range of QHP options and the insurance affordability programs. We propose that to become an HHS-approved vendor, the organization must demonstrate that it meets the standards in § 155.222(b), under an approval process established by HHS. We further propose that no training program would be recognized unless it included an information verification component under which the vendor confirms the identity and applicable State licensure of the person who is credited with successful completion of the training program. Organizations interested in becoming HHS-approved vendors must have HHS approval by the applicable deadline. In our proposed standards for HHS-approved vendors of an alternative training and information verification process, we seek to make FFE training and registration process easier for agents and broker, and attract greater agent and broker participation in the FFEs through partnership with vendors.

In § 155.222(a), we propose an application and approval process for vendors seeking recognition as HHS-approved vendors for FFE training and information verification for agents and brokers. As part of an approved training and information verification program, we propose that the vendor must require agents and brokers to complete identity proofing, provide identifying information, and successfully complete the required curriculum. We propose that only HHS-approved vendors that meet the designated standards will have their training and information verification programs recognized. We believe that under this approach, we will be able to leverage the experience, contacts, and networks of approved vendors while ensuring that the training and information verification programs adhere to uniform standards for content, format, and delivery. We propose that vendors be approved for one-year terms, and that vendors seeking to continue their recognition as HHS-approved vendors for FFE agent and broker training and information verification the following year must be re-approved through a process to be determined by HHS. If this proposal is finalized, we anticipate developing vendor application forms. We seek comment on the proposed approach outlined above. We also seek comment on what additional components a training program should include in order to qualify for HHS approval (for example, facilitating agent and broker creation of FFE accounts).

In paragraph (b), we propose the standards that a vendor must meet to be approved by HHS to offer FFE training and information verification to agents and brokers. These standards are based on the approval criteria for Enrollee Satisfaction Survey vendors at § 156.1105. We believe that the establishment of these standards will help ensure that vendors are approved using an objective methodology, and that approved vendors will successfully carry out the agent and broker FFE training and information verification and safeguard the data related to these functions. We seek comment on these proposals.

In paragraph (b)(1) we propose that the vendor submit a complete and accurate application by the deadline established by HHS. We propose that, as part of the application, the vendor must demonstrate prior experience with successfully conducting online training and identity proofing, as well as providing technical support to a large customer base. HHS would only approve vendors with no current or past regulatory, enforcement, or legal actions taken against the vendor by a State or Federal regulator in the last 3 years, beginning from the application or renewal application deadline under this section.

We propose in paragraph (b)(2) that the vendor be required to adhere to HHS specifications for content, format, and delivery of training and information verification. Training includes developing and hosting FFE courses, exams, and curriculums for agents and brokers. HHS would require vendors to have their training approved for continuing education units accepted by State regulatory entities.

In paragraph (b)(3) we propose that vendors be required to collect, store, and share with HHS all data from agent and broker users of the vendor's training and information verification in a manner specified by HHS, and protect the data in accordance with applicable privacy and security laws and regulations. HHS would expect vendors to be able to securely receive and transfer large data files in formats commonly used in the information technology industry.

In paragraph (b)(4), we propose that the vendor be required to execute an agreement with HHS, in a form and manner to be determined by HHS, which requires the vendor to comply with HHS guidelines for interfacing with HHS data systems, the implementation of the training and information verification processes, and the use of all data collected. In addition to executing the agreement, vendors would be required to comply with all applicable State and Federal laws, including applicable privacy and security standards. HHS would require that the vendor adopt a fee structure that is generally consistent with the fee

structure for comparable trainings offered by the vendor to comparable audiences.

In paragraph (b)(5), we propose that the vendor be required to permit any individual who holds a valid license or equivalent State authority to sell health insurance products to access the vendor's training and information verification process. HHS is considering whether vendors should be permitted to offer the training to other members of the public who are interested in learning about the Exchanges.

In paragraph (c), we propose that once HHS has completed the approval process for vendors for a given year, HHS would publish a list of approved entities on an HHS Web site. In paragraph (d), we propose that HHS may monitor and audit approved vendors and their records related to the FFE training and information verification functions to ensure the approved vendors' ongoing compliance with the standards outlined in paragraph (b). We propose that if HHS determines that the approved vendor is no longer in compliance with standards under paragraph (b), HHS may remove the vendor from the list described in this section, and may direct the vendor to cease performing the training and information verification functions described in this subpart. We propose that the vendor may invoke the appeals process proposed in paragraph (e) if its approval has been revoked. We seek comment on this process.

In paragraph (e), we propose an appeals process for a vendor whose application is denied, or whose approval to offer training and information verification is revoked. Specifically, we propose that such a vendor may appeal HHS's decision by notifying HHS in writing within 15 days of receipt of the notification by HHS of not being approved or having its approval revoked, and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) and (if applicable) the terms of their agreement with HHS. HHS will review the submitted documentation and make a final determination within 30 days from receipt of the submission of the additional documentation. A vendor that gains approval via the appeals process would be included in the approved list, described in paragraph (c). We seek comment on this proposed appeals process.

3. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

a. Annual Eligibility Redetermination (§ 155.335)

The current re-enrollment provisions codified at § 155.335(j) prioritize re-enrollment with the same issuer in the same or a similar plan with the goal of maximizing continuity of coverage and care. However, because premiums may change significantly from one year to the next, the plans that are most competitively priced in one year may not continue to be the most competitively priced in subsequent years. For this reason, default enrollment in the same or similar plan may sometimes encourage consumers to remain in plans that are significantly more expensive than the lowest cost plans in the market. Because we believe that many consumers place a high value on low premiums when selecting a plan, we believe that consumers could benefit from alternative re-enrollment hierarchies.

In particular, we are exploring implementing in the FFE an approach under which an enrollee, at the time of initial enrollment, would be offered a choice of re-enrollment hierarchies and could opt into being re-enrolled by default for the subsequent year into a low-cost plan (such as the QHP of the same metal level with the lowest premium in the enrollee's service area, or one of the three such QHPs with the lowest premiums by random allocation), rather than his or her current plan or the plan specified in the current re-enrollment hierarchy. This alternative enrollment hierarchy could be triggered if the enrollee's current plan's premium increased from the prior year, or increased relative to the premium of other similar plans (such as plans of the same metal tier), by more than a threshold amount, such as 5 percent or 10 percent. As is the case under the existing approach, a consumer would retain the option to take action to enroll in a different plan during open enrollment if he or she wished to do so. We are considering applying an alternative hierarchy for the first time when re-enrolling consumers for the 2017 coverage year. On this timeline, consumers could opt in to the alternative hierarchy during open enrollment in 2015 (or during special enrollment periods occurring during 2016).

We seek comment on such an approach, including with respect to how to ensure that consumers understand the risk of being default re-enrolled in a plan with a significantly different provider network, benefits, cost-sharing structure, or service area; what premium growth in the current plan (or what growth relative to other similar plans) would trigger re-enrollment into a low-cost plan, and how to determine which enrollees get assigned to which plans, if random enrollment into one of the three lowest cost QHPs of the metal level in the enrollee's service area is implemented. We also seek comment on how these types of default re-enrollment procedures have functioned in other programs and settings, and what lessons can be drawn from those experiences. Finally, we seek comment on whether such approaches may influence issuers' pricing decisions, such as by causing them to price more competitively in order to retain or attract enrollees who have opted to be re-enrolled into a low-cost plan.

We are also considering providing this flexibility to State-based Exchanges to implement alternative re-enrollment hierarchies such as the one described above, beginning in 2016, at their option. We believe that providing this flexibility could offer an opportunity to gather valuable information about alternative re-enrollment structures and share lessons learned across Exchanges in hopes of improving the re-enrollment process and the consumer experience.

We seek comment on whether to permit State-based Exchanges the flexibility to implement these alternative re-enrollment hierarchies beginning with 2016 open enrollment, whether to provide flexibility to SBEs to establish other hierarchies, and whether to adopt any such alternatives in the FFE for 2017 open enrollment.

4. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

a. Enrollment of Qualified Individuals Into QHPs (§ 155.400)

We propose to amend § 155.400(e) to explicitly provide for an Exchange to establish a standard policy for setting deadlines for payment of the first month's premium. We recognize that decisions regarding payment of the first month's premium have traditionally been business decisions made by issuers, subject to State rules. However, we believe that having uniform deadlines for all issuers for payment of a first month's premium to effectuate enrollments could benefit issuers and consumers by ensuring a consistent operational procedure.

In the Federally-facilitated Exchanges, we are considering payment deadlines tied to the coverage effective date for

regular effective dates (meaning coverage effective the first day of the following month for plan selections made between the first and fifteenth of the month, and coverage effective the first day of the second month following a plan selection made between the 16th and the end of the month). Some options we are considering would be to provide consumers until the coverage effective date, or the day before the coverage effective date, to make their first month premium payment. Alternatively, we could provide consumers additional time after the coverage effective date to make their premium payment. For example, we could provide 5 days, 10 days, or 30 days after the coverage effective date, or something in between. We seek comment on the period of time following the coverage effective date an issuer could be required or permitted to accept a first month's premium payment for that coverage.

With respect to effective dates other than regular effective dates, meaning retroactive or accelerated coverage effective dates resulting from enrollment under certain special enrollment periods (including birth and marriage), resulting from the resolution of appeals, or resulting from amounts newly due for prior coverage based on issuer corrections of under-billing, we are considering a premium payment deadline of 10–15 business days from when the issuer receives the enrollment transaction.

We seek comment on which proposed premium payment deadlines give issuers an acceptable amount of time to send an invoice and allow for timely payment by the consumer, and give consumers sufficient time to make the payment. It is our expectation that QHP issuers will send the consumer the bill within one to two business days after receiving the enrollment transaction to accomplish this goal. We also seek comment on how such a policy would likely affect issuer operations and consumers' ability to obtain coverage.

We note that because this rulemaking will likely not be finalized until after open enrollment for 2015, any such deadlines would not be applicable for that open enrollment period. We anticipate providing flexibility to issuers on premium payment deadlines for this open enrollment period to account for the timing of default re-enrollments this year.

b. Annual Open Enrollment Period (§ 155.410)

In § 155.410, we propose to amend paragraph (e), which provides the dates for the annual open enrollment period in which qualified individuals and enrollees may apply for or change coverage in a QHP. We propose to restructure paragraph (e) by placing the current provision regarding the 2015 benefit year in paragraph (e)(1) and the proposed requirement for all benefit years beginning on or after 2016 in paragraph (e)(2). Specifically, in paragraph (e)(2), we propose that for benefit years beginning on or after January 1, 2016, the annual open enrollment period begins on October 1 and extends through December 15 of the calendar year preceding the benefit year. We also propose to redesignate the annual open enrollment coverage effective date provisions in paragraphs (f) and (f)(1) through (3) as (f)(1) and (f)(1)(i) through (iii), and to add a new (f)(2), which would specify that, for enrollments made under any annual open enrollment periods for benefit years beginning on or after January 1, 2016, coverage would be effective on January 1 of the year following the open enrollment period. For example, for any enrollment completed under the open enrollment period between October 1 and December 15, 2015, coverage would be effective on January 1, 2016.

We propose this time period and coverage effective date for several reasons. First, because of increasing consumer familiarity with the Exchange, we believe that the proposed open enrollment period, which is shorter than prior open enrollment periods, will still provide consumers sufficient time to enroll or change coverage in a QHP. Second, the proposed open enrollment period does not cross calendar years, which we anticipate will reduce consumer confusion regarding effective dates for coverage because all coverage would be effective on January 1 of the following year. This will be less complicated for Exchanges and issuers to implement. Finally, we anticipate that the proposed open enrollment period will provide consumers with sufficient time to review changes to their current plans, take advantage of consumer assistance resources, and compare plans and complete plan selection as needed. We note the annual open enrollment period and coverage effective dates will also apply to non-grandfathered policies in the individual market outside the Exchange through the cross-reference at § 147.104(b)(1)(ii). We seek comment on this proposal, including whether the open enrollment period should end earlier in December to ensure sufficient time for issuers and Exchanges to accommodate current enrollees switching plans or being enrolled through the default re-enrollment hierarchy for coverage effective January 1.

c. Special Enrollment Periods (§ 155.420)

In § 155.420, we make certain proposals relating to special enrollment periods. We propose to revise paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iv), and add paragraphs (b)(2)(v), (b)(2)(vi), and (b)(2)(vii), which pertain to effective dates for special enrollment periods; to amend paragraphs (c)(2)(i) and (c)(2)(ii), which pertain to availability and length of special enrollment periods, and to revise paragraphs (d)(1)(ii), (d)(1)(v), (d)(2), (d)(4), and remove paragraph (d)(10), which pertain to specific types of special enrollment periods. We also propose to delete the option for consumers to choose a coverage effective date of the first of the month following the birth, adoption, placement for adoption, or placement in foster care. We seek comment on these proposed changes, including whether we should retain the ability for consumers to choose the first of the month following the birth, adoption, placement for adoption, or placement in foster care in addition to providing for regular coverage effective dates.

In paragraph (b)(2)(i), we propose to change one of the options for coverage effective dates in the case of birth, adoption, placement for adoption, or placement in foster care. Currently, a consumer may choose between the date of the birth, adoption, placement for adoption, or placement in foster care; and, if permitted by the Exchange, the first of the month following the birth, adoption, placement for adoption, or placement in foster care. We continue to require the Exchange to allow for coverage to be effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, but propose to permit the Exchange to allow a qualified individual or enrollee to elect a regular coverage effective date in accordance with paragraph (b)(1) of this section. We seek comment on this proposal.

We propose to amend paragraphs (b)(2)(iv) and (c)(2). The proposed change to (c)(2) would become effective January 1, 2016, and would allow consumers advanced access to the special enrollment period where a qualified individual or enrollee, or his or her dependent, gains access to new QHPs due to a permanent move under (d)(7). Prior to January 1, 2016, consumers who gain access to new QHPs as described under (d)(7) would continue to select a QHP in accordance with paragraph (c)(1). The proposed

changes to (b)(2)(iv) also would allow these persons to have a coverage effective date of the first day of the month following the move if plan selection is made before or on the day of the loss of coverage. If plan selection is made after the loss of coverage, the Exchange must ensure that coverage is effective in accordance with the regular effective dates under paragraph (b)(1) or on the first day of the following month, at the option of the Exchange. Current regulations require consumers to complete their permanent move before they are granted a special enrollment period, creating potential gaps in coverage. This amendment would help prevent such gaps. We seek comment on this proposal.

In addition, we propose to add new paragraphs (b)(2)(v) and (b)(2)(vi), which pertain to effective dates for coverage that must be obtained under court orders, including child support orders, and the death of an enrollee or his or her dependent. In paragraph (b)(2)(vi), we propose to require an Exchange to make coverage effective the first day the court order is effective to minimize any gap in coverage the individual may experience. We would allow Exchanges to provide consumers with a choice for regular effective dates under paragraph (b)(1) of this section to minimize duplicative coverage the child may have. We seek comment on this proposal, and other polices that would provide consumers who must obtain coverage for an individual under a court order the most protective effective date.

In paragraph (b)(2)(vi), we propose to require that an Exchange ensure coverage is effective the first day of the month following a death of the enrollee or his or her dependent, and at the option of the Exchange and the consumer, allow for regular effective dates under paragraph (b)(1) of this section. The effective date of the coverage under this special enrollment period is intended to work in conjunction with the effective date for termination due to death provided in § 155.430(d)(7). When a consumer dies in the middle of the month, and the enrollment group is no longer valid, our expectation is that issuers would continue coverage for the enrollment group through the end of the month. The alternative would be to align the effective date of coverage with the date of death which would require proration of premiums and advance payments of the premium tax credit. We seek comment on which proposal is most beneficial to the consumer.

We propose to combine paragraphs (c)(2)(i) and (c)(2)(ii) to a new paragraph (c)(2) to simplify the regulatory text. In addition, we propose to allow consumers to report a permanent move 60 days in advance of the move for the purposes of receiving special enrollment period to reduce the likelihood of a gap in coverage. We understand this requirement may not be operationally feasible for the 2015 benefit year and, as such, propose to not require Exchanges to meet this requirement prior to January 1, 2016.

We seek comment on these proposed amendments.

We propose to amend paragraph (d)(1)(ii) which provides a special enrollment period for individuals enrolled in non-calendar year individual health insurance coverage when their policy year ends in 2014. We propose that this special enrollment period be available with respect to a qualified individual or his or her dependent who, in any year, has coverage under a group health plan or an individual plan with a plan or policy year that is not offered on a calendar year basis. We recognize that group health plans as well as grandfathered and transitional individual market plans are not required to be offered on a calendar year basis and may, therefore, come up for renewal outside of the annual open enrollment period for the individual market. This special enrollment period would give individuals enrolled in such plans the opportunity to enroll in an individual market QHP through the Exchange when their plan renews without having to wait until the next available open enrollment period. We seek comments on this proposal.

We propose to amend paragraph (d)(2) to include new paragraphs (i) and (ii). Paragraph (i) is changed from the original paragraph (d)(2) to include situations where a court order requires a qualified individual to cover a dependent or other person. We are adding this provision to allow for situations where a qualified individual is required to cover a dependent or other person who either was not previously covered under the qualified individual's health plan, or where a dependent voluntarily terminates coverage, in order to be added to the qualified individual's health plan and therefore, would not qualify for a special enrollment period under paragraph (d)(1)(i) of this section. We seek comment on this addition.

We propose to amend paragraph (d)(2) to add a new paragraph (ii) to allow enrollees who experience a loss of a dependent or lose dependent status through legal separation, divorce, or death to be determined eligible for a special enrollment period. The special enrollment period will be available to all enrollees who lose a dependent or are no longer considered a dependent on the application. Currently, depending on the circumstances surrounding the divorce, legal separation, or death, the applicant may be determined eligible for a special enrollment period. This amendment would ensure that when an applicant experiences a life event that changes their familial structure such that their current plan no longer fits their needs, they are able to switch plans. We seek comment on the proposed amendments.

We propose to amend paragraph (d)(4), which allows a special enrollment period where enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous, and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange, to also include situations where a non-Exchange entity is providing enrollment assistance. Concurrently, we propose to strike paragraph (d)(10) which provides a separate special enrollment period for non-Exchange entity misconduct. We believe this modification, which would allow the Exchange to correct its own errors as well as errors of non-Exchange entities, will give the Exchange the authority to remedy these errors. For purposes of this section, non-Exchange entities include, all those entities listed at 78 FR 65064 as possible non-Exchange entities in the final rulemaking for § 155.420(d)(10): Agents and brokers assisting consumers in an Exchange under § 155.220, certified application counselors, as described in § 155.225, and navigators as described in § 155.210, issuer application assisters as described in § 155.415; a QHP as described in § 155.20, or non-Navigator assistance personnel as authorized by §§ 155.205(d) and (e) and 155.215. The current special enrollment period for misconduct of non-Exchange entities provided in paragraph (d)(10) of this section is limited to those situations where the consumer either: (1) Was not enrolled in a QHP; (2) was not enrolled in the QHP selected by the individual; or (3) is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions. During our first year of operations, we have learned that errors can arise involving non-Exchange entities that would be most sufficiently addressed by modifying paragraph (d)(4) of this section, as discussed above, to allow the Exchange to take appropriate action to

correct or eliminate the effects of misconduct or error on behalf of a non-Exchange entity. We seek comment on this proposal.

We propose to amend paragraph (d)(6) to create a special enrollment period for a qualified individual in a non-Medicaid expansion State who was previously ineligible for advance payments of the premium tax credit solely because the qualified individual had a household income below 100 percent FPL, who was ineligible for Medicaid during that same timeframe, and experiences a change in household income that makes the individual newly eligible for advance payments of the premium tax credit. Prior to the change in household income, such an individual had no option for affordable health insurance coverage, and we believe it is appropriate to provide an opportunity for enrollment when changed circumstances make coverage accessible to them. We seek comments on this proposal.

We also seek comments on other situations that may warrant a special enrollment period, particularly situations specific to the initial years in which consumers have an opportunity to purchase coverage through an Exchange.

d. Termination of Coverage (§ 155.430)

Under our current rules, § 155.430(b)(1) requires an Exchange to permit an enrollee to terminate his or her coverage in a qualified health plan (QHP) following appropriate notice to the Exchange or the QHP. We propose to amend this paragraph by adding a sentence to clarify that, to the extent the enrollee has the right to cancel the coverage under applicable State laws, including ''free look'' cancellation laws—that is, laws permitting cancellation within a certain period of time, even following effectuation of the enrollment, the enrollee may do so, in accordance with the requirements of such laws. Furthermore, we propose to amend § 155.430(d)(2) to add a new paragraph (d)(2)(v) allowing a retroactive termination effective date when an enrollee initiates the termination, if specified by applicable State laws, such as ''free look'' provisions.

We also invite comments on further standardization that may be needed with § 147.106.

Additionally, we propose to amend § 155.430(b)(1) by removing the language requiring the appropriate notice to the Exchange or QHP since the notice requirement is addressed in § 155.430(d) and this would give greater flexibility for other enrollee initiated terminations where appropriate notice is not defined. For example, in the case of death, we state that the last day of coverage is the date of death, but we do not require a specific amount of notice of death to the Exchange or QHP.

We also propose to explicitly state that the requirement for Exchanges to ensure appropriate actions are taken in connection with retroactive terminations, currently set forth in paragraph (d)(6) regarding special enrollment periods, applies to all retroactive terminations, including valid cancellations of coverage under a ''free look'' law. To do so, we propose to move the applicable language to a new paragraph (d)(8). We also propose to add reconciliation of Exchange user fees to the list of items Exchanges would need to address. Under that requirement, the Exchange will ensure that appropriate actions are taken to make necessary adjustments to advance payments of the premium tax credit, cost-sharing reductions, Exchange user fees, premiums, and claims, while to adhering to any State law. For example, this would mean that the QHP issuer would be required to return any premium paid by the enrollee, and to refund to HHS any advance payment of the premium tax credit or cost-sharing reductions paid for that enrollee for the period after the termination effective date (and the Exchange would refund any user fee paid on behalf of the enrollee for the period after the termination effective date). We note that, under our proposal, the enrollee would not become eligible to receive a special enrollment period as a direct result of the ''free look'' cancellation.

We also propose to add a new paragraph (b)(1)(iii) which would require Exchanges to establish processes for a third party to report the death of a consumer. We propose that, as part of these processes, an Exchange must allow a third party, including a consumer's authorized representative, to report the death of a consumer for purposes of initiating termination of the deceased consumer's enrollment. To substantiate a report of the death of an enrollee, the Exchange may, but is not required to, request documentation. This process will provide more flexibility for consumers to initiate the termination of Exchange enrollment of an enrollee who has not selected an authorized representative. We seek comment on this proposal.

Sections 2702 and 2703 of the PHS Act, as added by the Affordable Care Act, and their implementing regulations at §§ 147.104 and 147.106, generally require health insurance issuers offering non-grandfathered group or individual health insurance coverage to guarantee the availability and renewability of the coverage unless an exception applies. QHPs offered through the Exchange or SHOP are health insurance coverage in the individual and small group markets, respectively. Accordingly, QHPs are subject to market-wide requirements in title XXVII of the PHS Act, including guaranteed availability and guaranteed renewability.

Under guaranteed availability requirements, an issuer may not refuse to accept individuals or employers who apply for such coverage unless an exception applies. Under guaranteed renewability requirements, an issuer must offer to renew or continue in force coverage at the option of the individual or employer and may not non-renew or discontinue the individual's or employer's coverage unless an exception applies. There are several exceptions to these requirements,[29] but whether a consumer is determined to be a qualified individual or qualified employer for purposes of enrollment through the Exchange is not one of them. For these reasons, we have interpreted the guaranteed availability requirements to mean that a QHP offered through the Exchange generally must be available outside the Exchange.[30] We have similarly interpreted the guaranteed renewability requirements to mean that a QHP offered through the Exchange generally must be renewable outside the Exchange.[31]

[29] The statutory exceptions to guaranteed availability include special rules for network plans, limited network capacity, and limited financial capacity. The statutory exceptions to guaranteed renewability include non-payment of premiums, fraud, violation of participation or contribution rules, termination of coverage, movement outside service area, association membership ceases.

[30] *See e.g.,* ''Frequently Asked Questions on Health Insurance Market Reforms and Marketplace Standards,'' May 16, 2014. Available at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Final-Master-FAQs-5-16-14.pdf*). *See also* ''Frequently Asked Question on Qualified Health Plans and Guaranteed Availability Standards,'' June 3, 2014. Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq_on_qhps_and_guaranteed_availability_6314.pdf.*

[31] We note that an exception to the requirement that QHP must be guaranteed available and renewable outside the Exchange arises from the statutory permission for QHPs offered through the Exchange or SHOP to omit coverage of the pediatric dental EHB where a stand-alone dental plan offering the pediatric dental EHB is offered through the Exchange or SHOP. This is not similarly permitted when the plan is offered outside the Exchange or SHOP. This results in certain QHPs only being legally available in the market when offered through the Exchange or SHOP. If the QHP omits coverage of the pediatric dental EHB, the issuer would not be required to offer, renew, or continue enrollment in the QHP outside the Exchange, but could do so, at the enrollee's option,

We have identified certain aspects of the Exchange and SHOP regulations, particularly relating to termination of coverage, that could be interpreted as being inconsistent with the guaranteed availability right of consumers to purchase QHPs outside the Exchanges, and with the guaranteed renewability right of consumers to retain QHP coverage outside the Exchange. For example, the Exchange regulations list several circumstances under which the Exchange ''may initiate termination of an enrollee's coverage in a QHP, and must permit a QHP issuer to terminate such coverage.'' [32] Among these listed circumstances are cases in which ''[t]he enrollee is no longer eligible for coverage in a QHP through the Exchange,'' and in which ''[t]he QHP . . . is decertified.'' [33] While these two situations would make the individual ineligible to enroll in a QHP through the Exchange, and therefore ineligible for the premium tax credit or cost-sharing reductions, issuers cannot necessarily terminate coverage under the guaranteed renewability provisions.

To better align with market-wide guaranteed availability and guaranteed renewability requirements, we propose to amend the Exchange regulations in parts 155 and 156 that could be construed as limiting coverage in a QHP to coverage through the Exchange. For example, we intend to revise certain references to ''termination of coverage,'' so that they refer to termination of an individual's enrollment status as a qualified individual receiving coverage ''through the Exchange,'' not termination of the coverage altogether, where applicable. Specifically, we intend in the final rule to modify the following provisions that may be viewed as inconsistent with our interpretations of guaranteed availability and guaranteed renewability: §§ 155.430, 155.735, 156.270, 156.285, and 156.290. We anticipate there may be other provisions of the Exchange and SHOP regulations for which conforming amendments may also be necessary. These amendments would become effective with the effective date of the final rule.

We seek comment on these proposals.

5. Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

a. Eligibility Standards for Exemptions (§ 155.605)

In § 155.605, we propose amendments to two hardship exemptions and a correction to a cross-reference. First, we propose to amend § 155.605(g)(3) to provide a hardship exemption to an individual who is not a dependent of another taxpayer and whose gross income is less than the individual's minimum threshold for filing a Federal income tax return. We expect that the Internal Revenue Service (IRS) and the Department of the Treasury will publish guidance allowing individuals who are eligible for this exemption to claim it on their tax returns without obtaining a hardship exemption certificate number from the Exchange. It is further anticipated that the IRS and the Department of the Treasury will provide that individuals who are eligible for this exemption are not required to file Federal income tax returns to claim the exemption. We expect that the IRS and the Department of Treasury will finalize these policies in time for consumers filing 2014 Federal income taxes. We anticipate that this proposed change will affect a small group of people, and will greatly simplify the process for claiming this exemption on a Federal tax return. We seek comment on this proposal.

Second, we propose amending § 155.605(g)(6)(i) to correct the citation to 42 CFR 447.50 by changing it to 42 CFR 447.51, which cross-references the Medicaid definition for Indian.

Third, we propose new paragraph § 155.605(g)(6)(iii) that will align the exemption process for members of Federally-recognized Tribes and those individuals who are eligible for services through the Indian Health Service (IHS), a Tribal health facility, or an Urban Indian organization (ITU). Under current regulations, members of Federally-recognized Tribes may apply for an exemption from the shared responsibility payment directly with the Exchange, or they may claim the exemption when they file their tax returns without applying for an exemption from the Exchange. However, those who are applying for a hardship exemption based on their eligibility to receive services from an ITU are required to submit an exemption application to the Exchange. These varying application requirements cause confusion for American Indian and Alaska Native families. The proposed amendment will provide individuals who are eligible for services through an ITU with the same exemption process available to tribal members by permitting them to claim the exemption on their Federal income tax returns without obtaining an exemption certificate number. We expect that the IRS and the Department of Treasury will finalize policies to accommodate this proposal for consumers filing 2014 Federal income taxes. We seek comment on this proposal.

b. Required Contribution Percentage (§ 155.605)

Under section 5000A of the Code, an individual must have minimum essential coverage for each month, qualify for an exemption, or make a shared responsibility payment with his or her Federal income tax return. Section 5000A of the Code and section 1311(d)(4)(H) of the Affordable Care Act authorizes the Secretary to determine individuals' eligibility for exemptions, including the hardship exemption. Under section 5000A(e)(1) of the Code, an individual is exempt if the amount that he or she would be required to pay for minimum essential coverage (required contribution) exceeds a particular percentage (the required contribution percentage) of his or her actual household income for a taxable year. In addition, under § 155.605(g)(2) an individual is exempt if his or her required contribution exceeds the required contribution percentage of his or her projected household income for a year. Finally, under § 155.605(g)(5) certain employed individuals are exempt if, on an individual basis, the cost of self-only coverage is less than the required contribution percentage but the aggregate cost of self-only coverage through employers exceeds the required contribution percentage and no family coverage is available through an employer at a cost less than the required contribution percentage.

The required contribution percentage for 2014 is 8 percent under section 5000A(e)(1)(A) of the Code. Section 5000A(e)(1)(D) of the Code and 26 CFR 1.5000A–3(e)(2)(ii) provide that for plan years after 2014, the required contribution percentage is the percentage determined by the Secretary that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period. In the 2015 Market Standards Rule, we established a method for determining the excess of the rate of premium growth over the rate of income growth each year, and published the 2015 rate. We stated that future adjustments would be published annually in the HHS

if the issuer is ''reasonably assured'' that the enrollee has obtained such coverage through an Exchange-certified stand-alone dental plan. Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, 78 FR at 12834, 12853 (February 25, 2013).

[32] 45 CFR 155.430(b)(2); with respect to SHOP coverage *see also* 45 CFR 156.285, 156.270, 155.735.

[33] 45 CFR 155.430(b)(2)(i) and part of (b)(2)(iv).

notice of benefit and payment parameters.

Under the method previously established, the rate of premium growth over the rate of income growth for 2016 is determined by (x) one plus the premium growth between the preceding year (in this case, 2015), and 2013, carried out to ten significant digits, divided by (y) one plus the rate of income growth between the preceding year (2015), and 2013, carried out to ten significant digits.[34] The result of this calculation is carried out to ten significant digits and multiplied by the required contribution percentage specified in section 5000A(e)(1)(A) of the Code (8.00 percent). The result is then rounded to the nearest hundredth of a percent, to yield the required contribution percentage for 2016.

Under the methodology described above, the total rate of premium growth for the two-year period from 2013–2015 is 1.0831604752, or 8.3 percent. We describe the methodology for obtaining this number below in § 156.130(e). In the 2015 Market Standards rule, we also established a methodology for calculating the rate of income growth for the purpose of calculating the annual adjustment to the required contribution percentage.

The measure of income growth is based on projections of per capita Gross Domestic Product (GDP) used for the National Health Expenditure Accounts (NHEA), which is calculated by the CMS Office of the Actuary. Accordingly, using the NHEA data, the rate of income growth for 2016 is the percentage (if any) by which the most recent projection of per capita GDP for the preceding calendar year ($56,660 for 2015) exceeds the per capita GDP for 2013, ($53,186), carried out to ten significant digits. The total rate of income growth for the two-year period from 2013–2015 is estimated to be 1.0653179408 or 6.5 percent. We note that the 2013 per capita GDP used for this calculation has been updated to reflect the latest NHEA data.

Thus, the excess of the rate of premium growth over the rate of income growth for 2013–2015 is 1.0831604752/1.0653179408, or 1.0167485534, or 1.7 percent. This results in a required contribution percentage for 2016 of 8.00*1.0167485534, or 8.13 percent, when rounded to the nearest one-hundredth of one percent.

[34] We defined premium growth for this measure as the same annually adjusted measure of premium growth used below in this rule to establish the annual maximum and reduced maximum limitations on cost sharing for plan benefit designs. That is, the premium adjustment percentage.

6. Exchange Functions: Small Business Health Options Program (SHOP)

a. Standards for the Establishment of a SHOP (§ 155.700)

We propose to amend § 155.700(b) such that the previous definition of ''group participation rule'' would conform with the terminology we propose to use in § 155.705(b)(10). Specifically, we propose to modify the term to refer to a ''group participation rate,'' which is a minimum percentage of all eligible individuals or employees of an employer that must be enrolled.

b. Functions of a SHOP (§ 155.705)

Section 155.705 was amended in the 2015 Market Standards Rule. In § 155.705, we propose to redesignate paragraph (b)(4)(ii)(B) as new paragraph (b)(4)(ii)(C), redesignate paragraph (b)(4)(ii)(A) as new paragraph (b)(4)(ii)(B), add new paragraph (b)(4)(ii)(A), and amend paragraphs (b)(4)(i)(B), (b)(7), and (b)(10).

In the proposed amendment to paragraph (b)(4)(i)(B) and proposed new (b)(4)(ii)(A), we propose to permit the SHOP to assist a qualified employer in the administration of continuation coverage in which former employees seek to enroll through the SHOP. The proposed amendment to paragraph (b)(4)(i)(B) would modify the requirement that the total amount of all premiums due from a given qualified employer must be collected from the qualified employer by the SHOP. This is because, at new paragraph (b)(4)(ii)(A), we propose that where a qualified employer is offering Federal or State continuation coverage [35] under 29 U.S.C. 1161 *et seq.* or any applicable State law, and where a SHOP has entered into an agreement with a qualified employer to provide this service, the SHOP may assist the employer in administration of such coverage by billing for and collecting premiums for the continuation coverage directly from the former employee, rather than the employer, if the qualified employer elects to have the SHOP carry out this function. The SHOP would then remit the premium payments to the issuers offering the continuation coverage. We propose this policy to reduce the burden on small businesses related to the administration of continuation coverage in which former employees seek to enroll through the SHOP. A qualified employer may find it difficult to harmonize the timeline for the collection of continuation coverage premiums and the timeline for the collection of premiums in the SHOP. Permitting the SHOP to collect continuation coverage premiums directly from the former employee ensures that both the employer and the former employee may fully exercise their payment grace periods while reducing the likelihood of complex billing problems. We are not proposing that SHOPs, including the Federally-facilitated SHOP, take on other functions related to the administration of continuation coverage, such as administration of required notices. Additionally, in light of the administrative complexities associated with administering payments for State-mandated continuation coverage across all States with an FF–SHOP, we propose that an FF–SHOP may elect to limit this service to the billing and collection of premiums related to Federally mandated (''COBRA'') continuation coverage.

We also note that the IRS has promulgated specific standards regarding payments for COBRA continuation coverage at 26 CFR 54.4980B–8. We note that where such standards and any other applicable COBRA standards in 26 CFR part 54 are more protective than the standards the SHOP has established for administration of payment (such as, for example, grace periods) the IRS rules must apply. We seek comment on all aspects of this proposal, including the interaction of the FF–SHOP's payment grace periods and termination policies at § 155.735 with the COBRA rules IRS has codified in 26 CFR part 54.

We are considering whether to permit the Federally-facilitated SHOP to accept premium payment using a credit card, and seek comment on whether to do so. Currently, qualified employers participating in the Federally-facilitated SHOP may only pay premiums to the Federally-facilitated SHOP using a check or bank draft. While HHS has received comments from stakeholders urging it to permit qualified employers to pay premiums using a credit card, we seek comment on the extent to which employers would utilize this option. These stakeholders stated, and we agree, that it may be more convenient for a small employer to pay by credit card than by check or bank draft. Additionally, we note that an employer that finances its premium payment with a credit card may be able to better align its premium payments with its monthly receipts. We seek comment on all aspects of this potential policy, including how many FF–SHOP employers expect to use credit cards for payment, whether they would use this

[35] Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) (''COBRA''), or applicable State law.

method of payment every month or only for their initial payment, and what credit and debit cards the FF–SHOP should consider accepting.

We also propose to revise paragraph (b)(7) to align the SHOP regulations with the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93), which repealed requirements related to deductible maximums for employer-sponsored coverage at section 1302(c)(2) of the Affordable Care Act. This proposal would remove the only reference in the SHOP regulations to the requirements of Affordable Care Act section 1302(c)(2).

In paragraph (b)(10), we propose to modify the calculation of minimum participation rates in the SHOP. We propose that a SHOP (both a State-based and a Federally-facilitated SHOP) that elects to establish a minimum participation rate would be required to establish a single, uniform rate that applies to all groups and issuers in the SHOP, rather than establishing general rules about minimum participation rates or a threshold over which the minimum percentage may not be raised. Therefore, if the SHOP authorizes a minimum participation rate, such a rate would have to be based on the rate of employee participation in the SHOP and in coverage through another group health plan; governmental coverage such as Medicare, Medicaid, or TRICARE; coverage sold through the individual market; or in other minimum essential coverage, and not on the rate of employee participation in any particular QHP or QHPs of any particular issuer. If this proposal is finalized, State-based SHOPs would be expected to conform to it by its effective date.

In section (b)(10)(i), we propose to amend existing language about employees ''accepting coverage under the employer's group health plan'' to instead refer to employees ''accepting coverage offered by a qualified employer'' to better account for employee choice.

We also propose to amend section (b)(10) regarding how the minimum participation rate would be calculated in the SHOP and how it would be calculated in the Federally-facilitated SHOP. In many States, when an issuer calculates the group's minimum participation rate, the issuer includes employees who enroll in coverage through sources other than the group health plan being insured. Essentially, under this approach, ''participation'' is interpreted to refer to participation in health coverage, rather than participation in the specific coverage offered through the SHOP. For this reason, we propose to calculate the minimum participation rate as the number of full-time employees accepting coverage offered by the qualified employer through the SHOP plus the number of full-time employees who are enrolled in coverage through another group health plan, in governmental coverage (such as Medicare, Medicaid or TRICARE), in coverage sold through the individual market, or in other minimum essential coverage, divided by the number of full-time employees offered coverage through the SHOP. Additionally, we believe that references to coverage offered ''through another group health plan'' would also include coverage offered in connection with an employee organization and joint board comprised of equal employer and employee representatives (multiemployer plan). Because minimum participation rates were designed to reduce the likelihood that a significant percentage of employees might wait to get coverage until they are sick, this policy objective would be met with respect to employees having any existing coverage, not just coverage under their employer's group health plan.

The effect of this approach to calculating minimum participation rates would be an increased likelihood the group would meet the issuer's minimum participation rate even if a significant proportion of the group's employees enroll in other coverage. While the Federally-facilitated SHOP's minimum participation rate was established to accommodate the variety of minimum participation rates that exist across States, it relied upon a uniform definition of who was included in the rate's calculation that did not include certain other forms of coverage in which an employee might enroll. Therefore, this proposal would align the Federally-facilitated SHOP's minimum participation rate methodology with the current practice of issuers in many States. We note that certain types of coverage, such as excepted benefits, were, and would continue to be, excluded from other permissible coverage used in the calculation of the minimum participation rate because the coverage provided through the purchase of an excepted benefit is not the type of coverage purchased through the SHOP and subject to the minimum participation requirement. We seek comment on whether this definition of which employees would be included in the calculation should be extended beyond the SHOP to the entire small-group market in order to create uniformity among issuer practices and prevent further gaming by issuers through their use of non-standard definitions for other acceptable coverage.

c. Eligibility Standards for SHOP (§ 155.710)

In § 155.710, we propose to amend paragraph (e) to specify that where an employer has offered dependent coverage, a qualified employee would be eligible to enroll his or her dependents in coverage through the SHOP.

d. Enrollment of Employees Into QHPs Under SHOP (§ 155.720 and § 156.285)

In § 155.720, we propose to amend the list structure of paragraph (b) by replacing the ''; and'' in (b)(6) with a period, and adding an ''and'' at the end of (b)(5). We also propose to remove paragraph (b)(7),which requires all SHOPs to establish effective dates for employee coverage in the SHOP. Current § 155.720(b)(7) would be redundant if the proposed requirements to establish effective dates under § 155.725 are finalized as proposed.

We propose to amend paragraph (e) to refer to enrollees and not qualified employees, and would also remove a reference in this section to § 156.260(b) in keeping with the proposed amendments to § 155.725 regarding coverage effective dates that are described below. We continue to believe that a QHP issuer's notice to an enrollee of the coverage effective date provides important confirmation to the enrollee that his or her enrollment has been processed. This amendment would also establish that issuers must provide this notice to anyone who enrolled in coverage through the SHOP under the proposed amendments to the definitions of qualified employee and enrollee advanced in this rulemaking, if those amendments are finalized as proposed, including dependents (including a new dependent of the employee, when the dependent separately joins the plan), former employees of a qualified employer, and certain business owners. We note that the notices required under this proposal could be incorporated into existing notifications that QHPs provide to their new customers, for example in a welcome document. We also propose a conforming amendment to § 156.285(c) to ensure that QHP issuers participating in the Federally-facilitated SHOP would provide notice to a new enrollee of the enrollee's effective date of coverage.

e. Enrollment Periods Under SHOP (§ 155.725 and § 156.285)

We propose to amend paragraphs (a), (g), (h), and (j)(5) of § 155.725 and

§ 156.285(b)(1) and (b)(4) to provide clarity regarding the effective dates for coverage that all SHOP Exchanges must establish. We are continuing to evaluate whether other provisions of our regulations would require conforming amendments to reflect these proposals, and welcome comment on this topic as well as on these proposals generally. First, we propose to remove the reference at current § 155.725(a)(1) to the start of the initial open enrollment period for 2014 coverage, and the reference in current § 155.725(a)(2) to § 156.260. The start of the initial open enrollment period for 2014 coverage occurred in the past and thus the reference to it is no longer relevant. We propose to remove the reference to effective dates under § 156.260 because we are proposing to specify effective dates in § 155.725 or to more directly cross-reference the appropriate effective date.

Second, we propose to amend § 155.725(h) so that SHOPs would need only to establish effective dates for employees enrolling in coverage during the initial group enrollment and the employee annual open enrollment period, rather than for special enrollment periods, because SHOPs must ensure that effective dates for employees enrolling during special enrollment periods are consistent with the effective dates specified in § 155.420(b). We propose to provide this flexibility during the initial and annual open enrollment periods in order to provide SHOPs with the ability to encourage issuers to accommodate coverage effective dates for a group as soon as possible under local market conditions. However, we propose to continue to keep effective dates for special enrollment periods standardized to ensure a minimum standard for special enrollment periods and because there are existing mechanisms within § 155.420(b) for a SHOP to achieve earlier effective dates for special enrollment periods. At proposed paragraph (h)(2), we would also codify the effective dates for coverage in the Federally-facilitated SHOP for enrollments during initial and annual open enrollment periods. Specifically, we are proposing to include language in the SHOP regulations specifying the same effective dates that were previously adopted for the Federally-facilitated SHOP under our interpretation of the cross reference in § 156.285(b)(4) to § 156.260, which in turn cross-references § 155.410(c). Former § 155.720(b)(7) conflicted with these cross references, such that while § 155.720(b)(7) could have been interpreted to permit each SHOP to establish its own rules for effective dates for coverage, these cross references appeared to require the use of effective dates determined based on § 155.410(c). The effective dates proposed for the Federally-facilitated SHOP in this rulemaking are the effective dates HHS interpreted as applicable to the Federally-facilitated SHOP under the former rule. However, we note that the dates set forth in § 155.725(h)(2) would apply only to the Federally-facilitated SHOP and State-based SHOPs would be free to establish their own effective dates for initial and annual open enrollment.

Third, we propose several amendments to paragraph § 155.725(g) regarding enrollment for newly qualified employees. A newly qualified employee is an employee who becomes eligible to participate in the employer's group health plan outside of a qualified employer's initial or annual enrollment period; for example, because he or she was hired outside of those periods. We are moving current paragraph (g) to proposed paragraph (g)(1), and are proposing amendments to the existing language to make explicit our interpretation of current paragraph (g), which is that a newly qualified employee becomes eligible for an enrollment period that begins on the first day of becoming a newly qualified employee regardless of whether the employee is subject to a waiting period. The current rule text could also be read to mean that a newly qualified employee's coverage would begin on the first day of becoming a qualified employee, and this proposal will make it clear that this is not our interpretation of the provision. Thus, in the case of a newly hired employee offered coverage by an employer, the employee's enrollment period would begin on the date of his or her hiring. Additionally, we propose that the duration of a newly qualified employee's enrollment period be at least 30 days. We propose a minimum of 30 days because we believe that a shorter period would not provide an employee sufficient time to compare QHPs where employee choice is offered. Where the employee is subject to a waiting period in excess of 45 days, we propose that the duration of the employee's enrollment period extend until 15 days before what would be the conclusion of the waiting period if the employee selected a plan on the first day of becoming eligible. We propose this to permit an employee in an extended waiting period more time to select a plan. We note that if an employee waits to choose a plan until the end of such an extended enrollment period, this could have the effect of further delaying the effective date of coverage, consistent with § 147.116(a).

We also propose to add a new paragraph (g)(2) in § 155.725 to provide that the effective date for a newly hired employee would be determined using the same rule for initial and open enrollments that would be established by the SHOP under proposed § 155.725(h). Thus, in the Federally-facilitated SHOP, coverage effective dates for newly qualified employees would be established according to § 155.725(h)(2): plan selections made between the first and the fifteenth day of any month would be effective the first day of the following month, and plan selections made between the 16th and the last day of any month would be effective the first day of the second following month. A newly qualified employee may also be subject to a waiting period under § 147.116, however, and in such cases the effective date may be on the first day of a month that is later than the month in which coverage would take effect under the usual rules established by the SHOP under § 155.725(h). However, in no case could the effective date fail to comply with the limitations on waiting period durations at § 147.116 of this subchapter. For example, in the case of an employee who was hired and offered coverage on March 1, where the employer has a waiting period of 60 days, the earliest coverage effective date under proposed § 155.725(g)(2) would be May 1. If the newly qualified employee selects a plan on March 5, the coverage would be effective May 1.

We seek comment on all aspects of this proposal, including on the interactions between a waiting period and the effective date, adverse selection concerns, and ease of administration.

Fourth, we propose to amend paragraph § 155.725(j)(5) to make it more clear that the effective dates for special enrollment periods in the SHOP should be determined according to § 155.420(b).

Fifth, we propose to harmonize § 156.285(b)(1) and (4) with the proposed amendments to effective dates described above, to specify that QHP issuers must abide by the effective dates established under § 155.725 and must enroll qualified employees in accordance with the qualified employer's initial and annual enrollment periods in § 155.725.

We also propose to amend § 155.725(b) to harmonize rolling enrollment in the SHOP with the regulations applicable to guaranteed availability in States with merged

individual and small group markets. Section 147.104(b)(2) requires that all individual or small group health insurance coverage sold in a State with merged individual and small group risk pools be offered on a calendar year basis, meaning that it must end on December 31 of the year in which the policy was issued. Section 155.725(b), in contrast, requires that SHOPs permit qualified employers to purchase coverage for a small group at any point throughout the calendar year, and that SHOPs ensure that a participating group's plan year lasts for 12 months beginning with the first effective date of coverage. Section 155.725(b) was intended to ensure that qualified employers can offer health insurance through the SHOP at any point during the year while receiving a guaranteed rate 12 months following the purchase of coverage, consistent with the current practice in the small group market. We now propose to harmonize these two provisions, by proposing that SHOP plans in a State with merged risk pools would terminate on December 31st of the year in which they were issued, even if certain qualified employers' plan years would thus be shorter than 12 months. This proposal would not affect a small employer's ability to enroll in coverage at any point in the year. Instead, it would standardize the renewal date of such a plan in a State with merged risk pools at the beginning of each calendar year.

We also propose to modify paragraph (i) to permit a SHOP to elect to renew a qualified employer's offer of coverage where the employer has taken no action during its annual election period to modify or withdraw the prior year's offer of coverage. The qualified employer's offer would not be automatically renewed under this proposal if the employer is no longer eligible to participate in the SHOP—for example, because it no longer operates a business within the State served by the SHOP or no longer has at least one employee. Renewal would also not be automatic if the employer is offering a single QHP and that QHP will no longer be available through the SHOP. We are proposing this modification at the request of State-based SHOPs that desire to conform to existing small group market practice regarding automatic annual renewal of coverage for an employer group. A SHOP would not be required to implement this rule.

Finally, we also propose to add paragraph (k) to make clear that SHOP coverage may not be effectuated if the policy may not be issued to the employer because the group fails to meet an applicable minimum participation rate.

f. Termination of Coverage (§ 155.735 and § 156.285)

In § 155.735, we propose to amend paragraph (c)(2)(ii) to specify that in the Federally-facilitated SHOP, a termination of coverage due to non-payment of premiums would be effective on the last day of the month for which the Federally-facilitated SHOP received full payment. Prior to this proposal, the effective date of such a termination was not specified in the rule.

In paragraph (c)(2)(iii), we propose to specify that, in the Federally-facilitated SHOP, a qualified employer whose coverage was terminated for non-payment of premiums could be reinstated in its prior coverage only once per calendar year. We propose that the number of reinstatements for a given qualified employer be counted on a calendar year basis, rather than on a plan year basis, for ease of administration. The purpose of this proposal is to discourage employers in the Federally-facilitated SHOP from repeatedly failing to make timely payments for health insurance coverage. We note that any employer whose group's coverage is terminated under this proposal could reapply to the Federally-facilitated SHOP by submitting a new application. However, the enrollment based on the new application would be a new plan, not a reinstatement into the plan that was terminated based on non-payment, and therefore amounts paid toward the deductible and annual limitations on cost-sharing would not be carried over from the previous plan, and information submitted on the original application, including basic information about the employer group and the employee roster, would not carry over to the new application.

In paragraphs (d)(1)(iii) and (g) of § 155.735 and in § 156.285(d)(1)(ii), we propose to amend certain existing notice requirements by transferring them from QHP issuers to the SHOP. Under current § 156.285(d)(1)(ii), a QHP issuer must notify an enrollee and a qualified employer if the enrollee or employer is terminated due to a loss of eligibility, due to a qualified employer's non-payment of premiums, due to a rescission of coverage for fraud or misrepresentation of material fact in accordance with § 147.128, or because the QHP issuer elects not to seek recertification with the Exchange for its QHP. We propose to transfer two of these notice requirements to the SHOP. At § 155.735(g)(1), we propose that the SHOP be required to provide notice to the enrollee if an enrollee is terminated due to non-payment of premium or a loss of eligibility for participation in the SHOP, including when an enrollee loses eligibility due to a qualified employer's loss of eligibility. We also propose at § 155.735(g)(2) that the SHOP be required to provide notice to qualified employers for termination due to nonpayment of premiums or where applicable, due to loss of the employer's eligibility. This provision would generally apply to terminations for loss of an employer's eligibility when the employer lost eligibility for a reason other than the employer reporting information to the SHOP that resulted in the loss of eligibility. For example, this provision would apply where the SHOP learned through an employee appeals process that the employer refused to provide coverage to all full-time employees, which is a condition of the qualified employer's eligibility under § 155.710(b)(2). Typically, we expect employers to lose eligibility voluntarily because they have informed the SHOP that they no longer intend to offer coverage to all full-time employees or because they no longer have a business location in the SHOP's service area. Where the employer is actively informing the SHOP that it no longer meets the SHOP eligibility requirements, we believe providing notification to the employer of the loss of eligibility would be unnecessary.

HHS is proposing to shift these notice requirements to the SHOP because HHS believes the SHOP would be in a better position to provide notices to enrollees and qualified employers with respect to terminations for loss of eligibility and nonpayment of premiums. The SHOP will have better information regarding the timing of non-payment and why an enrollee or employer lost his or her eligibility than a QHP issuer.

Through the proposed amendments to the definition of ''enrollee'' discussed above, we also propose to expand the class of people who would receive notices under the proposed amendments to § 155.735 and § 155.285(d)(1)(ii). Thus, for example, notice would be given by the SHOP under these amendments to a dependent of a qualified employee who is enrolled in coverage through the SHOP when the dependent loses coverage.

Through proposed amendments to § 156.285(d)(1)(ii) and § 155.735(d)(1)(iii), we also propose that QHP issuers in the SHOP would continue to be required to provide notice to qualified employers and enrollees when an enrollee's coverage is terminated due to a rescission in

accordance with § 147.128, and when an enrollee's coverage is terminated due to an election by a QHP issuer not to seek recertification with the Exchange for its QHP. We are proposing to amend § 155.735(d)(1)(iii), which currently refers to terminations of SHOP coverage due to a QHP's termination or decertification, by adding a reference to terminations of SHOP coverage due to the non-renewal of a QHP's certification. By proposing to include a cross-reference to § 155.735(d)(1)(iii) in § 156.285(d)(1)(ii), we also propose to expand the notice a QHP issuer must provide regarding the discontinuation of a product in which a qualified employee is enrolled to include circumstances where the QHP is terminated or is decertified as described in § 155.1080. In HHS's view, QHP issuers are best positioned to provide meaningful notice when coverage is terminated due to a rescission in accordance with § 147.128 or when the QHP is terminated, decertified, or its certification is not renewed.

We also propose that each notice required under § 155.735 (g) and the proposed amendments to § 156.285(d)(1)(ii) would have to be provided by the SHOP or QHP issuer promptly and without undue delay. We propose this timeframe because we believe it provides flexibility to SHOPs and issuers when such notices may be sent either electronically or by mail. We would consider an electronic notice that was sent no more than 24 hours after the SHOP or QHP issuer determined coverage was to be terminated to have been provided ''promptly and without undue delay.'' In the case of paper notices, we would consider notices that were mailed no later than 48 hours after the SHOP determined coverage was to be terminated to have been provided ''promptly and without undue delay.''

7. Exchange Functions: Certification of Qualified Health Plans

a. Certification Standards for QHPs (§ 155.1000)

In § 155.1000, we propose to add paragraph (d) to harmonize QHP certification with rolling enrollment in the SHOP. Under § 155.725(b), an employer may start participating in the SHOP at the beginning of any month in the calendar year. Such coverage lasts for 12 months, unless earlier terminated.[36] This means that groups enrolled in the SHOP might have coverage that does not begin and end on a calendar year basis. A QHP that is certified on a calendar year basis is not, however certified to cover an employer group after the calendar year of its certification ends, even if the group's plan year extends into the next calendar year. Therefore, we propose that if a SHOP certifies QHPs on a calendar year basis, the certification must be in effect for the duration of any employer's plan year that began in the calendar year for which the plan was certified. Under this approach, the certification could be in effect beyond the end of the calendar year of the QHP's certification if the plan year of an employer group enrolled in the QHP ended later than the end of that calendar year. In no case in which a SHOP certified QHPs on a calendar year basis would the certification be in effect after December of the year following the calendar year for which the plan was certified.

*H. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges*

1. General Provisions

a. Definitions (§ 156.20)

For the reasons described in section III.A.1 of this preamble, we propose to amend § 156.20 to add a definition of ''plan,'' which would have the meaning given the term in § 144.103 as proposed to be amended in this rulemaking.

b. FFE User Fee for the 2016 Benefit Year (§ 156.50)

Section 1311(d)(5)(A) of the Affordable Care Act contemplates an Exchange charging assessments or user fees to participating health insurance issuers, or otherwise generating funding to support its operations. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. If a State does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the Affordable Care Act directs HHS to operate an Exchange within the State. Accordingly, at § 156.50(c), we specified that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month that is equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE.

OMB Circular No. A–25R establishes Federal policy regarding user fees, and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. As in benefit years 2014 and 2015, issuers seeking to participate in an FFE in benefit year 2016 will receive two special benefits not available to the general public: (1) The certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP. These special benefits are provided to participating issuers through the following Federal activities in connection with the operation of FFEs:

- Provision of consumer assistance tools.
- Consumer outreach and education.
- Management of a Navigator program.
- Regulation of agents and brokers.
- Eligibility determinations.
- Enrollment processes.
- Certification processes for QHPs (including ongoing compliance verification, recertification and decertification).
- Administration of a SHOP Exchange.

OMB Circular No. A–25R further states that user charges should generally be set at a level so that they are sufficient to recover the full cost to the Federal government of providing the service when the government is acting in its capacity as sovereign (as is the case when HHS operates an FFE). Accordingly, we propose to set the 2016 user fee rate for all participating FFE issuers at 3.5 percent. The user fee rate assessed on FFE issuers is the same as the 2015 user fee rate. In addition, we intend to seek an exception to OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit. We seek this exception to ensure that the FFE can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage as advanced by § 156.50(d). We seek comments on this proposal.

2. Essential Health Benefits Package

a. State Selection of Benchmark (§ 156.100)

We propose to amend paragraph (c) of § 156.100 to delete the language regarding the default base-benchmark plan in the U.S. territories of Guam, the U.S. Virgin Islands, American Samoa,

[36] As discussed in section III.G.7.d of this proposed rule, under amendments proposed in this rulemaking, SHOP plans in States that have merged their individual and small group markets would terminate on December 31st of the year in which they were issued, even if the plan year would thus be shorter than 12 months.

and the Northern Mariana Islands. The change reflects HHS's determination, described in more detail in section III.A.1.b of this proposed rule, that certain provisions of the PHS Act enacted in title I of the Affordable Care Act that apply to health insurance issuers are appropriately governed by the definition of ''State'' set forth in that title. Therefore, the rules regarding EHB (section 2707 of the PHS Act) do not apply to health insurance issuers in the U.S. territories. We are also proposing to make a technical change to this section by replacing ''defined in § 156.100 of this section'' with ''described in this section.'' We note that this has no effect on Medicaid and CHIP programs and that Alternative Benefit Plans will still have to comply with the essential health benefit requirements. We seek comments on these proposals.

b. Provision of EHB (§ 156.115)

Section 1302(b)(1) of the Affordable Care Act provides that the Secretary is to define the essential health benefits (EHB) that must be covered under section 1302(a)(1) by issuers under non-grandfathered small employer and individual market insurance plans. The Secretary's definition must include 10 enumerated benefit categories, and result in a benefit package with a ''scope'' that is equal to that under a ''typical'' employer plan ''as determined by the Secretary.'' In our initial regulations defining EHB, we adopted a benchmark plan approach, codified at § 156.100 and § 156.110, under which each State can elect to base the EHB that must be covered in that State on one of several specified ''benchmark'' plans (for example the largest health plan by enrollment in any of the three largest small group insurance products).

The benchmark plan selected by the State may be modified in certain ways permitted under the regulations, and must be modified to comply with requirements specified in the regulations. For example, we require under § 156.115(a)(3) that the benefit design of the plan must comply with the mental health parity requirements under the Mental Health Parity and Addiction Equity Act, even where those requirements would not otherwise apply. In this proposed rule, we are proposing certain new EHB requirements that would have to be met in order for an issuer to be considered to be offering EHB.

One of the 10 categories of benefits that must, under section 1302(b)(1)(G) of the Act, be included under the Secretary's definition of EHB is ''[r]ehabilitative and habilitative services and devices.'' If a benchmark plan does not include habilitative services, § 156.110(c)(6) of the current EHB regulations requires the issuer to cover habilitative services as specified by the State under § 156.110(f) or, if the State does not specify, then the issuer must cover habilitative services in the manner specified in § 156.115(a)(5). Section 156.115(a)(5) states that a health plan may provide habilitative coverage by covering habilitative services benefits that are similar in scope, amount, and duration to benefits covered for rehabilitative services or otherwise determine which services are covered and report the determination to HHS. In some instances, those options have not resulted in comprehensive coverage for habilitative services. Therefore, we propose amending § 156.115(a)(5) to establish a uniform definition of habilitative services that may be used by States and issuers. In addition, we propose to remove § 156.110(c)(6) because that provision gives issuers the option to determine the scope of habilitative services.

We believe that adopting a uniform definition of habilitative services would minimize the variability in benefits and lack of coverage for habilitative services versus rehabilitative services. Defining habilitation services clarifies the difference between habilitative and rehabilitation services. Habilitative services, including devices, are provided for a person to attain, maintain or prevent deterioration of a skill or function never learned or acquired due to a disabling condition. Rehabilitation services, including devices, on the other hand, are provided to help a person regain, maintain or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition.

We seek comment on whether we should maintain the current policy, define habilitative services as described below or permit the use of one or more other specified definitions.

The proposed definition comes from the Glossary of Health Coverage and Medical Terms: [37] ''health care services that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.''

[37] *http://www.cms.gov/CCIIO/Resources/Files/Downloads/uniform-glossary-final.pdf.*

We considered and invite comment on whether we should require certain specified services to be included as habilitative services.

We are not proposing any changes to § 156.110(f). Several States have made such a determination following benchmark selection for the 2014 plan year, and we wish to continue to defer to States on this matter as long as the State definition complies with EHB policies including non-discrimination. Therefore, under the proposed amendments, if the base-benchmark plan does not include coverage of habilitative services, the State may determine which services are included in that category, as stated in § 156.110(f). If the State does not supplement missing habilitative services or does not supplement in an EHB-compliant manner, issuers should cover habilitative services as defined in § 156.115(a)(5)(i).

We also propose to revise current § 156.115(a)(5)(ii) to provide that plans required to provide EHB cannot impose limits on coverage of habilitative services that are less favorable than any such limits imposed on coverage of rehabilitative services. Since the statutory category includes both rehabilitative and habilitative services and devices, we interpret the statute to require coverage of each. Therefore, issuers that previously excluded habilitative services, but subsequently added them, would be required under our proposal to impose separate limits on each service rather than retaining the rehabilitative services visit limit and having habilitative services count toward the same visit limit. Because we are proposing to establish a uniform definition of habilitative services in new § 156.115(a)(5)(i), we are also proposing to delete § 156.110(c)(6), which would remove the option for issuers to determine the scope of the habilitative services. In § 156.110 we make a technical change to amend the list structure of paragraph (c) by replacing the ''and'' in (c)(5) with a period and adding an ''and'' at the end of (c)(4).

In the preamble of the EHB Rule, we stated that pediatric services should be provided until at least age 19 (78 FR 12843). States, issuers, and stakeholders have requested clarification on this standard. To provide this clarification, we propose amending § 156.115(a) to add paragraph (a)(6), specifying that EHB coverage for pediatric services should continue until the end of the plan year in which the enrollee turns 19 years of age. This is proposed as a minimum requirement.

This age limit is consistent with section 1201 of the Affordable Care

Act,[38] which phased in the prohibition on preexisting conditions exclusions by first prohibiting them for children under age 19, as well as the age limit for eligibility to enroll in CHIP. In addition, as noted in the EHB Rule, this proposed policy aligns with Medicaid (78 FR 12843), which requires States to cover children up to age 19 with family incomes up to 100 percent of the Federal Poverty Level (FPL) as a mandatory eligibility category. We propose the end of the plan year in which one attains age 19 is best for continuity of care. We seek comment on this proposed standard.

c. Collection of Data To Define Essential Health Benefits (§ 156.120)

In the Essential Health Benefits Bulletin,[39] we first stated our intent to define EHB based on a benchmark plan. We outlined ten possible options, including four different plan benchmark types, from which a State could select its benchmark plan. We finalized this benchmark approach in the EHB Rule at §§ 156.100 and 156.110 of our regulations.

In the Patient Protection and Affordable Care Act; Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans final rule (EHB Data Collection Rule),[40] we required issuers in each State that offered the three largest health insurance products by enrollment as of March 31, 2012 to submit certain data to HHS by September 4, 2012. These data, gathered from 2012 plans, were used to determine, for each State, the benefits and limitations of the three largest small group products by enrollment, which were potential benchmark plans.

The EHB Rule unintentionally deleted § 156.120, which included the data submission requirement. We are proposing to allow each State to select a new base-benchmark plan for the 2017 plan year. We would allow States to choose a 2014 plan that meets the requirements of § 156.110 as the new base-benchmark plan, so that issuers can design substantially equal EHB-compliant products for the 2017 plan year. We believe that this would ultimately create efficiencies for issuers in designing plans. Specifically, the use of updated base-benchmark plans should minimize confusion because most 2014 plans are compliant with § 156.110 and the various market reform requirements that became applicable for plan and policy years beginning in 2014. Those 2014 market reform requirements include removal of annual and lifetime dollar limits on EHBs and compliance with the Mental Health Parity and Addiction Equity Act of 2008.

If a category of base-benchmark plans under § 156.100(a)(1)–(4) does not include a plan that that meets the requirements of § 156.110, we are considering permitting the State to select a base-benchmark plan that does not meet the requirements of § 156.110 in that category. However, States would still need to supplement their base-benchmark plan to ensure that all 10 categories of benefits are covered in a benchmark plan. We seek comment on this issue, including alternate ways of addressing situations in which a State has few potential base-benchmark plans that meet the requirements of § 156.110 from which to choose.

We now propose to re-codify part of § 156.120, in a manner similar to that which appeared in our regulations prior to the effective date of the EHB Rule. We propose to require a State that chooses a new benchmark plan in the State or, if a State does not choose a new benchmark plan, the issuer of the default benchmark plan must provide benchmark plan data as of a date specified by HHS. We anticipate collection of new benchmark plan data for the 2017 plan year and the data discussed in § 156.120(b), including administrative data and descriptive information pertaining to all health benefits in the plan, treatment limitations, drug coverage, and exclusions. We believe that this information is already included in the issuer's form filing that the issuer submitted to the State regulator. The definitions previously adopted for the terms health benefits, health insurance product, health plan, small group market, State and treatment limitations are still applicable. We seek comment on this proposal.

d. Prescription Drug Benefits (§ 156.122)

Another category of benefits that must be covered under the Secretary's definition of EHB is ''prescription drugs'' under section 1302(b)(1)(F). While we generally implemented this part of the definition by deferring to the scope of coverage under a benchmark plan, we imposed specific additional requirements under § 156.122. For example, under current § 156.122(a)(2), we require that an issuer's drug list be submitted to the Exchange, the State, or United States Office of Personnel Management (OPM) as appropriate. Under this section, we are proposing several revisions to the EHB prescription drug benefit requirements.

First, we are proposing to retain § 156.122(a)(2) with one modification to change ''drug list'' to ''formulary drug list'' for uniformity purposes for this section. We are also proposing to renumber this paragraph from § 156.122(a)(2) to § 156.122(a)(1).

Under our current regulations at § 156.122(a)(1) that we are proposing to replace, EHB plans are required to cover the greater of one drug per United States Pharmacopeia (USP) category or class or the same number of drugs in each USP category and class as the State's EHB benchmark plan. To implement this requirement, we worked with issuers, States, the NAIC, and other stakeholders to facilitate the use of the USP classification system based on USP Model Guidelines Version 5.0. We also provided a tool for States and issuers to count clinically distinct drugs and categorize them into the USP system.

The intention of § 156.122(a)(1) was to require comprehensive coverage and establish a common organizational tool for plans to report drug coverage. However, we have found that issuers have often had difficulty developing formularies that conform to the USP drug category and class system. Because the USP system was developed for the Medicare population, some drugs that are likely to be prescribed for the larger EHB population were not reflected. There were also many operational challenges associated with the drug count standard: Newly approved drugs were not counted; some drugs were counted in multiple USP classes; discontinued drugs had to be manually removed from the counting tool; and issuers had to submit justifications to explain their inability to meet the benchmark count due to system issues. We also found that the drug count review did not encourage the inclusion of newly-approved drugs and did not provide an incentive for issuers to cover innovative products or other products that would not be counted using this counting standard. For these reasons, we are proposing an alternative to the above drug count standard, which we discuss below. We are also seeking comment on a second alternative that

[38] Section 1201 of the Affordable Care Act added section 2704 of the PHS Act, which prohibited preexisting condition exclusions. Section 1255 of the Affordable Care Act states that the provisions of section 2704 of the PHS Act, as they apply to enrollees who are under 19 years of age, shall become effective for plan years beginning on after September 23, 2010.

[39] Essential Health Benefits Bulletin (December 16, 2011), *available at: http://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf.*

[40] Patient Protection and Affordable Care Act; Data Collection to Support Standards Related to Essential Health Benefits; Recognition of Entities for the Accreditation of Qualified Health Plans, 77 FR 42658 (July 20, 2013) (codified at 45 CFR part 156).

could be adopted in lieu or in combination with our proposal below.

We are proposing to replace the drug count standard with a requirement in § 156.122(a)(2) that plans adopt a pharmacy and therapeutics (P&T) committee and use that committee to ensure that the plan's formulary drug list covers a sufficient number and type of prescription drugs. We are proposing P&T committee standards that must be met for the prescription drug coverage to be considered EHB. We believe that the use of a P&T committee in conjunction with the other standards that we are proposing would help ensure that an issuer's formulary drug list covers a broad array of prescription drugs. The Medicare Part D Prescription Drug Program (Medicare Part D), the NAIC and other stakeholders have defined standards by which a P&T committee should function.[41] We are interested in comments regarding these standards and whether we should adopt them in lieu of or in addition to the standards we are proposing. If this proposal is finalized, plans that are required to cover EHB would cover drugs based on a qualitative rather than merely quantitative perspective, which we believe will provide enrollees with a more robust formulary drug list.

We propose to specify P&T committee standards on membership, meetings, and establishment and development of a formulary drug list. For P&T committee membership, we propose requiring the P&T committee to include members from a sufficient number of clinical specialties to adequately represent the needs of enrollees. For instance, we would expect that the P&T committee members include experts in chronic diseases and in the care of individuals with disabilities. We propose that the majority of members be practicing physicians, practicing pharmacists and other practicing health care professionals. We also solicit comments on whether the types of other practicing health care professionals should be more narrowly defined to only include other practicing health care professionals who can prescribe drugs. Additionally, we propose to require that members of the P&T committee that have a conflict of interest with respect to the issuer or a pharmaceutical manufacturer would be permitted to sit on the P&T committee but would be prohibited from voting on matters for which the conflict exists. In addition to these requirements, we would also propose that at least 20 percent of the P&T committee's membership must have no conflict of interest with respect to either the issuer or to any pharmaceutical manufacturer. Under these standards, a member who holds more than one health care license, for example, as a nurse practitioner and a pharmacist, would only count as one person. We also solicit comments on the percentage of committee members that should have no conflict of interest, and the proposed requirement that the members of the P&T committee with conflicts of interest should be permitted to sit on the P&T committee but would be prohibited from voting on matters for which the conflict exists. We considered requiring a set number of participants to be independent and have no conflicts of interest, but we were concerned that absent a limitation on the total number committee members, requiring a specific number of committee members to be independent and not have a conflict of interest would have a variable impact, depending on the size of the P&T committee. We are also proposing that the P&T committee would be responsible for defining a reasonable definition of conflict of interest and for managing the conflicts of interest of its committee members. As part of this standard, the P&T committee would require its P&T committee members to sign a conflict of interest statement revealing economic or other relationships with entities, including the issuer and any pharmaceutical manufacturers, affected by drug coverage decisions that could influence committee decisions. We solicit comments on this proposed standard, including the implementation of this conflict of interest standard, whether there are additional conflict of interest standards that should apply and what would constitute a conflict of interest. In particular, we seek comments on what could be considered a permissible relationship with respect to the issuer or a pharmaceutical manufacturer. If this provision is finalized, we would consider providing further guidance regarding conflict of interest.

We also propose that the P&T committee must meet at least quarterly, and maintain written documentation of all decisions regarding formulary drug list's development and revision. With respect to formulary drug list establishment and management, we are proposing that the P&T committee must develop and document procedures to ensure appropriate drug review and inclusion on the formulary drug list, as well as make clinical decisions based on scientific evidence, such as peer-reviewed medical literature, and standards of practice, such as well-established clinical practice guidelines. The P&T committee must consider the therapeutic advantages of prescription drugs in terms of safety and efficacy when selecting formulary drugs and making recommendations with respect to their formulary tier. The P&T committee must review both newly FDA-approved drugs and new uses for existing drugs. We also propose that a P&T committee must ensure that an issuer's formulary drug list covers a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all disease states and does not substantially discourage enrollment by any group of enrollees.

Lastly, we propose to require that issuers' formularies provide appropriate access to drugs that are included in broadly accepted treatment guidelines and which are indicative of and consistent with general best practice formularies in widespread use. Broadly accepted treatment guidelines and general best practices could be based on industry standards or other appropriate guidelines that are issued by expert organizations that are current at the time. For instance, broadly accepted treatment guidelines could include guidelines provided in the National Guideline Clearinghouse (NGC), which is a publicly available database of evidence-based clinical practice guidelines and related documents.[42] As a result of this proposed policy, we would expect that a health plan's formulary drug list would ensure that appropriate access is being afforded to drugs in widely accepted national treatment guidelines and which are indicative of general best practices at the time. Given our proposal to use broadly accepted treatment guidelines and best practices, we would also expect that plans' formulary drug lists be similar to those formulary drug lists then currently in widespread use. We also note that States have primary responsibility for enforcing EHB requirements and if finalized, States would be responsible for the oversight and enforcement of the P&T committee standards. Currently, for QHPs, we have provided States with tools to review formulary drug lists and if these provisions are finalized, we could consider developing additional tools

[41] Medicare Part D plans are required to maintain P&T committees by the Social Security Act § 1860D–4(b)(3)(G) codified at 42 CFR § 423.120(b), 42 CFR § 423.272(b)(2). NAIC has a Model Act entitled Health Carriers Prescription Drug Benefit Management Model Act (July 2003) that includes P&T Committee provisions at: *http://www.naic.org/store/free/MDL-22.pdf.*

[42] *http://www.ahrq.gov/professionals/clinicians-providers/guidelines-recommendations/index.html.*

and resources to assist States in reviewing formulary drug lists. We seek comment on these proposed revisions to § 156.122(a), including the oversight and enforcement of these standards, and whether other standards are needed for P&T committees.

As an alternative to, or in combination with, the above-proposed P&T committee requirements, we are also considering whether to replace the USP standard with a standard based on the American Hospital Formulary Service (AHFS). AHFS is a widely used formulary reference system in the private insurance market and is often used for developing formularies for the population being covered by EHB. The AHFS system is a 4-tier hierarchical drug classification system that is updated and published annually by the American Society of Health-System Pharmacists. These tiers are grouped based on similar pharmacologic, therapeutic, and chemical characteristics. Compared to the USP system, the AHFS system is more gradual and has more classifications than the USP system. We believe that using the AHFS system that incorporates these additional classifications would better ensure that a broader distribution of drugs would be required to be covered to the meet the drug count standard than in the current USP system where there are fewer categories and classes. Because we believe that many issuers are already familiar with the AFHS system, we would expect that the impact from switching from the USP system would be minimal, and we have received comments from stakeholders recommending that we consider using AHFS as an alternative to USP.

We seek comment on the proposed P&T committee standard and whether we should consider adopting AHFS or another drug classification system, as well as on any other standards that may be appropriate for this purpose. We are particularly interested in comments on how to use AHFS to develop a minimum standard for issuers to meet. For instance, for the AHFS system, we could switch the current minimum standard that requires coverage of at least the greater of one drug in every USP category and class or the same number of drugs in each USP category and class as the State's EHB-benchmark plan to require at least the greater of one drug in each AHFS class and subclass or the same number of drugs in each AHFS class and subclass as the State's EHB-benchmark plan.

If we were to finalize a P&T committee process in combination with a drug count standard based on either the AHFS system or the USP system, we would expect the health plan would establish and maintain its formulary drug list in compliance with the P&T committee standards, and in addition, the resulting health plan's formulary drug list would also need to comply with the drug count standard. However, we seek comment on how the drug count system could be used in combination with a P&T committee approach, such as specifying that the formulary drug list is generally being designed by the P&T committee, but that it must also include at least one drug in each AHFS class and subclass or USP category and class.

We could also continue to use the existing USP drug count standard, and update the USP drug count system to use a more current version. States and issuers are now familiar with the USP drug count standard, having used it to develop formularies for the 2014 and 2015 plan years. One of the advantages of the USP system is that it is publicly available, in comparison to the AHFS, which must be licensed.

We also recognize that a requirement to transition to a P&T committee standard or another drug count standard will require lead time for States, issuers and pharmacy benefit managers to implement. Therefore, we are proposing to implement § 156.122(a)(2) starting with the 2017 plan year. We seek comments on this proposed timing of implementation.

Section 156.122(c) currently requires issuers of EHB plans to have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the plan. We believe this requirement is necessary to ensure that an issuer provides the level of drug coverage to cover the EHB category of prescription drugs. This requirement, commonly referred to as the ''exceptions process,'' applies to drugs that are not included on the plan's formulary drug list, as opposed to the appeals process codified at § 147.136, which applies if an enrollee receives an adverse benefit determination for a drug that is included on the plan's formulary drug list. Under current § 156.122(c)(1) (effective in 2015), such procedures must include a process that allows an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request an expedited review based on exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a serious health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a non-formulary drug. A health plan must make its coverage determination on an expedited review request based on exigent circumstances, and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours after it receives the request. A health plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

We recognize the importance of the procedures under § 156.122(c) for enrollees, especially for those with unique and complex health conditions. The intention of the exceptions process is to better ensure enrollee access to clinically appropriate, non-formulary drugs prescribed for them. However, we believe that enrollees who are trying to gain access to a drug through the exceptions process laid out in current § 156.122(c) would benefit if we set clearer and more uniform standards for issuers that receive an exception request. We believe that these additional parameters are also needed to better ensure that enrollees can obtain drugs that we believe should be covered as prescription drugs under the definition of EHB. Specifically, we are proposing to build on the expedited exception process that we established for 2015 by proposing to also adopt similar requirements for the standard exception process. We are also proposing to adopt standards for a secondary external review process if the first exception request is denied by the plan (regardless of whether the exception is requested using the standard process or the expedited process).

Under proposed § 156.122(c), a health plan providing EHB must have certain exception processes in place that allow an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request and gain access to clinically appropriate drugs not otherwise covered by the health plan, and when an exception requested under one of these processes is granted, the plan must treat the excepted drug as EHB for all purposes, including accrual to the annual limitation on cost-sharing. Proposed § 156.122(c)(1) sets forth the standard exception process. Under this process, we are proposing that a health plan have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request a standard review of a decision for a drug is not covered by the plan. We propose that the health plan must make its coverage determination on a standard exception

request and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours after it receives the request. We are proposing to require a health plan that grants an exception based on the standard review process to provide coverage of the non-formulary drug for the duration of the prescription, including refills and are clarifying that in such a case the excepted drug would be considered EHB for all purposes, including for purposes of counting towards the annual limitation on cost sharing. As stated in the EHB Rule (78 FR 12845), plans are permitted to go beyond the number of drugs offered by the benchmark without exceeding EHB. Therefore, if the plan is covering drugs beyond the number of drugs covered by the benchmark, all of these drugs are EHB and must count towards the annual limitation on cost sharing.

The expedited exception process currently appears in our regulations at § 156.122(c)(1), and we are proposing to move that section to a new § 156.122(c)(2) and to replace ''Such procedures must include'' with ''A health plan must have'' in current paragraph (c)(1) (proposed as a new paragraph (c)(2)(i)).

In § 156.122(c)(3) we propose that if the health plan denies an exception request for a non-formulary drug, the issuer must have process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber, as appropriate) to request that an independent review organization review the exception request and the denial of that request by the plan. For this external exception review, we propose to apply the same timing that applied to the initial review. Thus, if the enrollee requested the drug under the proposed standard process and the request was denied, then the independent review organization would have to make its determination and the health plan would have to notify the enrollee or enrollee's designee and the prescribing physician (or other prescriber, as appropriate) no later than 72 hours after the time it receives the external exception review request. Likewise, if the initial exception request is for an expedited review and that request is denied by the plan, then the independent review organization must make its coverage determination and provide appropriate notification no later than 24 hours after the time it receives the external exception review request. We also propose that the independent review organization would have to be accredited by a nationally recognized private accrediting organization and the issuer could use the same independent review organization for the external review for the drug exception process that the plan may contract with under the final external review decision under § 147.136. We seek comment on this proposal, including whether permitting issuers to use the same independent review organization that it may use to conduct external reviews under § 147.136 would ensure consumers access to an independent review while minimizing the burden on States, plans, and issuers.

As discussed in the 2015 Market Standards Rule, we received comments from stakeholders supporting these types of requirements for the exception process under § 156.122(c) and these parameters reflect our previous guidance on § 156.122(c) under Appendix C of the 2014 Letter to Issuers on Federally-facilitated and State Partnership Exchanges (2014 Letter to Issuers).[43] We solicit comments on all of the proposed requirements, and whether any additional standards are needed for the exception process. Lastly, we are also proposing to apply the revised § 156.122(c) to the 2016 plan year, and solicit comments on this proposed timing.

Under § 156.122(d), we propose adding a requirement to the EHB prescription drug benefit that a health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, OPM, and the general public. We also solicit comment on whether the formulary tiering information should include cost sharing information, such as the enrollee's applicable pharmacy deductible (for example, $100), copayment (for example, $20), or cost sharing percentage for the enrollee (for example, 20 percent).

We are proposing that a formulary drug list is easily accessible when the general public is able to view the formulary drug list on the plan's public Web site through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number. The general public should be able to easily discern which formulary drug list applies to which plan if the issuer maintains multiple formularies, and the plan associated with each formulary drug list should be clearly identified on the plan's Web site. We are proposing this requirement to better ensure transparency of the EHB prescription drug benefit and to help consumers make more informed choices about their health care coverage.

As a result of this proposed requirement, we would expect the issuers' formulary drug list URL link to be up-to-date and we interpret up-to-date to mean that the formulary drug list URL must accurately list all of the health plan's covered drugs at that time. We solicit comments on this timing. Also, the formulary drug list URL link under this section should be the same direct formulary drug list URL link for obtaining information on prescription drug coverage in the Summary of Benefits and Coverage, in accordance with § 147.200(a)(2)(i)(K). We propose that this requirement would be effective beginning with the 2016 plan year. We solicit comments on these proposed requirements, including whether we should require that additional types of information be included in the formulary drug list.

As part of this proposed requirement that issuers' formulary drug list must be made available to the general public, we are also considering requiring issuers to make this information publicly available on their Web sites in a machine-readable file and format specified by HHS. The purpose of establishing machine-readable files with the formulary drug list data would be to provide the opportunity for third parties to create resources that aggregate information on different plans. We believe this option would increase transparency by allowing software developers to access this information and create innovative and informative tools to help enrollees better understand plans' formulary drug lists. As an alternative, we are also considering whether the formulary drug list information could be submitted to HHS though an HHS-designed standardized template, but we recognize that there may be challenges with keeping this type of template information updated. Thus, we specifically solicit comments on these options, including the technical requirements for developing a machine-readable file and format for a formulary drug list, as well as other technical considerations, such as processes and considerations that should be taken into account for the updating of this information under either of the options being considered.

Currently, issuers are permitted to elect the method for providing covered

[43] 2014 Letter to Issuers on Federally-facilitated and State Partnership Exchanges. *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf.*

drugs to enrollees, and may use a mail order pharmacy to do so. While this generally is more cost-effective and more convenient for enrollees than requiring the enrollee to visit a retail pharmacy to obtain prescription drugs, there are circumstances under which obtaining drugs via mail order may not be viable. For example, obtaining prescription drugs through mail order may not be a viable option when an individual does not have a stable living environment and does not have a permanent address. In those cases, individuals may not always have the ability to keep a mail order pharmacy delivery confidential. There are also cases in which a drug needs to be provided immediately (for example, antibiotics or pain relievers). In such cases, we do not believe that making drugs available only by mail order constitutes fulfilling the obligation under 1302(b)(1)(F) of the Affordable Care Act to provide prescription drug coverage as part of EHB. We also believe that making drugs available only by mail order would discourage enrollment by, and thus discriminate against, transient individuals and certain individuals who have conditions that they wish to keep confidential.

Accordingly, under § 156.122(e), we are proposing to add new requirements to the EHB prescription drug definition to require that enrollees be provided with the option to access their prescription drug benefit through retail (brick-and-mortar or non-mail order) pharmacies. If finalized, this requirement would mean that a health plan that is required to cover the EHB package cannot have a mail order only prescription drug benefit. This proposed requirement would still allow a health plan to charge a higher cost-sharing amount when obtaining the drug at an in-network retail pharmacy than he or she would pay for obtaining the same covered drug at a mail-order pharmacy. However, as a part of these requirements, we propose to clarify that this additional cost sharing for the covered drug would count towards the plan's annual limitation on cost sharing under § 156.130 and would need to be taken into account when calculating the actuarial value of the health plan under § 156.135. Additionally, issuers will still retain the flexibility under this proposed policy to charge a lower cost sharing amount when obtaining the drug at an in-network retail pharmacy too. While this proposal requires coverage of a drug at an in-network retail pharmacy, for plans that do not have a network, the enrollee should be able to go to any pharmacy to access their prescription drug benefit and those plans would, therefore, comply this proposed standard.

We also recognize as part of this proposed requirement that certain drugs have limited access requirements and cannot always be accessed through in-network retail pharmacies. For this reason, we are proposing that the health plan may restrict access to a particular drug when: (1) The FDA has restricted distribution of the drug to certain facilities or practitioners (including physicians); or (2) appropriate dispensing of the drug requires extraordinary special handling, provider coordination, or patient education that cannot be met by a retail pharmacy. For instance, certain drugs have a Risk Evaluation and Mitigation Strategies (REMS) that include Elements to Assure Safe Use that may require that pharmacies, practitioners or healthcare settings that dispense the drug to be specially certified and can limit access to the drugs to certain health care settings.[44] We propose that additional education or counseling alone would not qualify a drug to be restricted to limited distribution to a non-retail pharmacy within the overall pharmacy network. If the health plan finds it necessary to restrict access to a drug for either of the two reasons listed above, it must indicate this restricted access on the formulary drug list that we are proposing plans must make publicly available under § 156.122(d).

We are soliciting comments on these proposed requirements, including whether additional standards should be adopted to ensure enrollee access to the EHB prescription drug benefit, or whether additional exemptions to accessing drugs at in-network retail pharmacies should be permitted. We are proposing these requirements as market-wide standards to ensure the uniformity of the EHB prescription drug benefit and proposing to implement these requirements beginning with the 2017 plan year. However, we are soliciting comments on this timing and whether it should be implemented in 2016.

In addition to the proposed provisions above, we are also aware that new enrollees in plans that are required to cover EHB may be unfamiliar with what is covered on their new plan's formulary drug list, and how to use the plan's prescription drug exceptions process. Also, some enrollees whose drugs are covered by the plan's formulary may need to obtain prior authorization or go through step therapy in order to have coverage for the drug. Since new enrollees may need more immediate coverage for drugs that they have been prescribed and are currently taking, we urge issuers to temporarily cover non-formulary drugs (including drugs that are on an issuer's formulary but require prior authorization or step therapy) as if they were on formulary (or without imposing prior authorization or step therapy requirements) during the first 30 days of coverage. We encourage plans to adopt this policy to accommodate the immediate needs of enrollees, while allowing the enrollee sufficient time to go through the prior authorization or drug exception processes. We are considering whether requirements may be needed in this area.

e. Prohibition on Discrimination (§ 156.125)

Section 1302(b)(4) of the Affordable Care Act directs the Secretary to address certain standards in defining EHB, including elements related to balance, discrimination, the needs of diverse sections of the population, and denial of benefits. We have interpreted this provision as a prohibition on discrimination by issuers providing EHB. Within § 156.125, which implements these provisions, we finalized in the EHB Rule that an issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.

Since we finalized § 156.125, we have become aware of benefit designs that we believe would discourage enrollment by individuals based on age or based on health conditions, in effect making those plan designs discriminatory, thus violating this prohibition. Some issuers have maintained limits and exclusions that were included in the State EHB-benchmark plan. As we have previously stated in guidance, EHB-benchmark plans may not reflect all requirements effective for plan years starting on or after January 1, 2014. Therefore, when designing plans that are substantially equal to the EHB-benchmark plan, issuers should design plan benefits, including coverage and limitations, to comply with requirements and

[44] FDA requires a Risk Evaluation and Mitigation Strategies (REMS) for certain drugs to ensure that the benefits of a drug or biological product outweigh its risks. The following is FDA's list of currently approved REMS at: *http://www.fda.gov/drugs/drugsafety/postmarketdrugsafetyinformationforpatientsandproviders/ucm111350.htm.*

limitations that apply to plans beginning in 2014.[45]

We caution both issuers and States that age limits are discriminatory when applied to services that have been found clinically effective at all ages. For example, it would be arbitrary to limit a hearing aid to enrollees who are 6 years of age and younger since there may be some older enrollees for whom a hearing aid is medically necessary. Although we do not enumerate which benefits fall into each statutory EHB category, issuers should not attempt to circumvent coverage of medically necessary benefits by labeling the benefit as a ''pediatric service'', thereby excluding adults.

We also caution issuers to avoid discouraging enrollment of individuals with chronic health needs. For example, if an issuer refuses to cover a single-tablet drug regimen or extended-release product that is customarily prescribed and is just as effective as a multi-tablet regimen, we believe that, absent an appropriate reason for such refusal, such a plan design effectively discriminates against, or discourages enrollment by, individuals who would benefit from such innovative therapeutic options. As another example, if an issuer places most or all drugs that treat a specific condition on the highest cost tiers, we believe that such plan designs effectively discriminate against, or discourage enrollment by, individuals who have those chronic conditions.

As we indicated in the 2014 Letter to Issuers, we will notify an issuer when we see an indication of a reduction in the generosity of a benefit in some manner for subsets of individuals that is not based on clinically indicated, reasonable medical management practices.[46] We conduct this examination whenever an EHB plan reduces benefits for a particular group. Issuers are expected to impose limitations and exclusions based on clinical guidelines and medical evidence, and are expected to use reasonable medical management. Issuers may be asked to submit justification with supporting document to HHS or the State explaining how the plan design is not discriminatory.

Other nondiscrimination and civil rights laws may apply, including the Americans with Disabilities Act, section 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973 and State law. Compliance with § 156.125 is not determinative of compliance with any other applicable requirements and § 156.125 does not apply to the Medicaid and CHIP programs, including EPSDT, and Alternative Benefit Plans.

We also note that all non-grandfathered health insurance plans in the individual and small group market that are subject to the EHB requirements are also subject to the guaranteed renewability requirements under § 147.106, which allow issuers to make uniform modifications to a product only at the time of coverage renewal. For example, an EHB plan may not change cost sharing for a particular benefit mid-year.

f. Cost-Sharing Requirements (§ 156.130)

We propose to amend § 156.130 to clarify how the annual limitation on cost sharing applies to plans that operate on a non-calendar year, and to make a technical correction to the special rule for network plans. First, we propose to add a new § 156.130(b), which would provide that non-calendar year plans that are subject to the annual limitation on cost sharing in section 1302(c)(1) must adhere to the annual limitation that is specific to the calendar year in which the plan begins. That annual limitation amount would serve as the maximum for the entire plan year. We propose this requirement to clarify that non-calendar plans subject to § 156.130 are not permitted to reset the plan's annual limitation on cost sharing at the end of the calendar year when the end of the calendar year is not the end of the plan year. The purpose of this proposed change is to ensure that the enrollee should only be required to accumulate cost sharing that applies to one annual limit per plan year. We believe that this requirement ensures an important consumer protection and we solicit comments on this proposal.

Under section 1302(c)(3) of the Affordable Care Act, the term ''cost-sharing'' includes deductibles, coinsurance, copayments, or similar charges, and any other expenditure required of an individual that is a qualified medical expense (within the meaning of section 223(d)(2) of the Internal Revenue Code of 1986) for EHB covered under the plan. Expenditures that meet this definition of cost sharing must, under section 1302(c) of the Affordable Care Act, count toward the annual limitation on cost sharing incurred under a health plan that is required to cover EHB. The term ''cost-sharing'' does not include premiums, balance billing amounts for non-network providers, or spending for non-covered services. This definition was codified in § 155.20.

In this proposed rule, we propose to make a technical correction to the text of § 156.130(c) on the special rule for network plans to replace ''shall not'' with ''is not required to.'' This correction is in accordance with the Affordable Care Act Implementation FAQs (Set 18) that was prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury.[47] This proposed amendment is to clarify that issuers have the option to count the cost sharing for out-of-network services towards the annual limitation on cost sharing, but are not required to do so. This out-of-network cost sharing would not count toward the calculation of actuarial value under § 156.135(b)(4) or meeting a given level of coverage under § 156.140.

In addition to the above proposed changes to § 156.130, we also propose clarifying that the annual limitation on cost sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan that is other than self-only. In both of these cases, an individual's cost sharing for the EHB may never exceed the self-only annual limitation on cost sharing. For example, under the proposed 2016 annual limitation on cost sharing, if an other than self-only plan has an annual limitation on cost sharing of $10,000 and one individual in the family plan incurs $20,000 in expenses from a hospital stay, that particular individual would only be responsible for paying the cost sharing related to the costs of the hospital stay covered as EHB up to the annual limit on cost sharing for self-only coverage that is proposed to be $6,850 for 2016. However, for a plan with other than self-only coverage, as long as the plan applies an annual limitation on cost sharing that is at or below the annual limitation for self-only coverage (proposed to be $6,850 for 2016) for each individual in the plan and at or below the annual limitation for other than self-only coverage (which is proposed to be $13,700 for 2016), the issuer has flexibility on how to apply the plan's annual limitation on cost sharing between the individuals in the plan.

We seek comments on these requirements and clarifications. We also seek comments on whether other requirements and clarifications are

[45] Guide to Reviewing EHB Benchmark Plans—*http://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html#review* benchmarks.

[46] Letter to Issuers on Federally-facilitated and State Partnership Exchanges, April 5, 2013, page 15 and 2015 Letter to Issuers in the Federally-facilitated Marketplaces, March 14, 2014, page 29.

[47] *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs18.html.* (January 8, 2014).

needed regarding the annual limitation on cost sharing and its application.

g. Minimum Value (§ 156.145)

Section 1401(a) of the Affordable Care Act added a new section 36B to the Code, providing a premium tax credit for certain individuals with household incomes between 100 percent and 400 percent of the Federal poverty level who enroll in, or who have one or more family members enroll in an individual market QHP through an Exchange, and who are not otherwise eligible for MEC. An employer-sponsored plan is MEC, but for purposes of the premium tax credit under Code section 36B(c)(2)(C)(ii) an employee is generally treated as not eligible for MEC under an employer-sponsored plan unless the plan is affordable and provides minimum value (MV). An employer-sponsored plan provides MV only if the plan's share of the total allowed costs of benefits provided under the plan is greater than or equal to 60 percent of the costs. An employee who is eligible for coverage under an employer-sponsored plan that is both affordable and provides MV to the employee may not a receive premium tax credit under Code section 36B for coverage in a qualified health plan. If the employer coverage does not provide MV, the employee may be entitled to a premium tax credit even if the coverage is affordable.

Section 1513 of the Affordable Care Act added a new section 4980H to the Code providing for shared responsibility for employers regarding health coverage. An applicable large employer that does not offer coverage that is affordable and provides MV may be liable for an employer shared responsibility payment under section 4980H of the Code if one or more of its full-time employees receives a premium tax credit.

The MV standard of 60 percent of the total allowed costs of benefits provided under the plan is equivalent to the plan's share of total allowed costs required for a bronze level qualified health plan offered on an Exchange. Section 1302(d)(2)(C) of the Affordable Care Act provides that regulations promulgated by the Secretary of HHS under section 1302(d)(2), addressing actuarial value, apply ''in determining under *this title,* the Public Health Service Act, and the *Internal Revenue Code* . . . the *percentage of the total allowed costs of benefits provided* under a group health plan or health insurance coverage that are provided by such plan or coverage.'' (Emphasis added.) Accordingly, HHS regulations under section 1302(d) implementing actuarial value requirements, which an insurer offering essential health benefits (EHB) must meet in order for a non-grandfathered individual market or small group health insurance plan to be considered a bronze plan under section 1302(d)(1)(3) of the Affordable Care Act, also form the basis for determining the percentage of the total allowed costs of benefits provided for purposes of whether the value of coverage meets the MV standard under Code section 36B(c)(2)(C)(ii).

HHS published final regulations under section 1302(d)(2) on February 25, 2013 (78 FR 12834). The regulations at § 156.20 define the percentage of the total allowed costs of benefits as (1) the anticipated covered medical spending for EHB coverage paid by a health plan for a standard population, (2) computed in accordance with the plan's cost sharing, and (3) divided by the total anticipated allowed charges for EHB coverage provided to the standard population. HHS regulations at § 156.145(b)(2) apply this definition in the context of MV by taking into account benefits a plan provides that are included in any one of the state EHB benchmarks.

The IRS and Treasury Department published proposed regulations on May 3, 2013 (78 FR 25909), applying the HHS regulations in defining MV for employer-sponsored plans. The proposed regulations provide that the MV percentage is determined by dividing a plan's anticipated medical spending (based on the plan's cost-sharing) for plan benefits that are EHB covered under a particular EHB benchmark plan for the MV standard population by the total allowed charges for EHB coverage for the standard population and converting the result to a percentage. Proposed 26 CFR 1.36B–6(c). Taxpayers may apply the proposed regulations for taxable years ending before January 1, 2015.

The final HHS regulations and proposed Treasury regulations allow plans to determine the MV percentage by using the MV Calculator published by HHS. It has come to our attention that certain group health plan designs that provide no coverage of inpatient hospital services are being promoted, and that representations are being made, based on the MV Calculator, that these plan designs cover 60 percent of the total allowed costs of benefits provided under the plans and thus provide MV. We understand that these designs have been promoted as a way of both minimizing the cost of the plan to the employer (a consequence not only of excluding inpatient hospitalization benefits but also of making an offer of coverage that a substantial percentage of employees will not accept) and avoiding potential liability for employer shared responsibility payments. Employers adopting these plan designs seek, by offering coverage that is affordable to the employee and that purports to provide MV, to deny their employees the ability to obtain a premium tax credit that could result in the employer becoming subject to a section 4980H employer shared responsibility payment.

In Notice 2014–69 (2014–48 IRB, November 24, 2014), released on November 4, 2014, HHS and Treasury advised that regulations would be proposed providing that plans that fail to provide substantial coverage of inpatient hospital or physician services do not provide MV. Allowing these designs to be treated as providing MV not only would allow an employer to avoid the shared responsibility payment that the statute imposes when an employer does not offer its full-time employees adequate health coverage, but would adversely affect employees (particularly those with significant health risks) who understandably find this coverage unacceptable, by denying them access to a premium tax credit for individual coverage purchased through an Exchange. Plans that omit critical benefits used disproportionately by individuals in poor health will enroll far fewer of these individuals, effectively driving down employer costs at the expense of those who because of their individual health status are discouraged from enrolling.

That the MV standard may be interpreted to require that employer-sponsored plans cover critical benefits is evident in the structure of the Affordable Care Act, the context in which the grant of the authority to the Secretary to prescribe regulations under section 1302 was enacted, and the policy underlying the legislation. Section 1302(b) authorizes the Secretary of HHS to define the EHB to be offered by individual market and small group health insurance plans, provided that this definition ''include at least'' 10 specified categories of benefits, and that the benefits be ''equal to the scope of benefits provided under a typical employer plan.'' To ''inform this determination'' as to the scope of a typical employer plan, section 1302(b)(2)(A) provides that ''the Secretary of Labor shall conduct a survey of employer sponsored coverage to determine *the benefits typically covered by employers,* including multiemployer plans, and provide a report on such survey to the Secretary

[of HHS].'' [48] (Emphasis added.) These provisions suggest that, while detailed requirements for EHB in the individual and small group health insurance markets were deemed necessary, the benefits covered by typical employer plans providing primary coverage at the time the Affordable Care Act was enacted were seen as sufficient to satisfy the Act's objectives with respect to the breadth of benefits needed for health plan coverage and, in fact, to serve as the basis for determining EHB. They also suggest that any meaningful standard of minimum coverage may require providing certain critical benefits.

Employer-sponsored plans in the large group market and self-insured employers continue to have flexibility in designing their plans. They are not required to cover all EHB. Providing flexibility, however, does not mean that these plans should not be subject to minimum requirements. A plan that excludes substantial coverage for inpatient hospital and physician services is not a health plan in any meaningful sense and is contrary to the purpose of the MV requirement to ensure that an employer-sponsored plan, while not required to cover all EHB, nonetheless must offer coverage with minimum value at least roughly comparable to that of a bronze plan offered on an Exchange.

For these reasons, the Secretary has concluded that the provisions of section 1302(d)(2) of the Affordable Care Act—requiring that the regulations for determining the percentage of the total allowed costs of benefits that apply to plans that must cover all EHB also be applied as a basis for determining minimum value—reflect a statutory design to provide basic minimum standards for health benefits coverage through the MV requirement, without requiring large group market plans and self-insured plans to meet all EHB standards. Given the scope of benefits covered by typical employer plans, the MV requirement is properly viewed as a means of ensuring that employer-sponsored plans satisfy basic minimum standards while also accommodating flexibility in the design of those plans.

Employers have been able to claim that plans without coverage of inpatient hospital services provide MV under the current quantitative MV test by designing a benefit package that, based on standardized actuarial assumptions used in the MV calculator, offsets the absence of actuarial value derived from spending on inpatient hospital coverage with increased spending on other benefits. Accordingly, some plan designs may pass the current quantitative test without offering a critical benefit universally understood to be included in any minimally acceptable employer health plan coverage, and which the Department of Labor study determined was included in *all* employer plans it surveyed.

As noted previously, we have concluded that the quantitative test for MV is not exclusive. Accordingly, we propose to amend § 156.145 to require that, in order to provide minimum value, an employer-sponsored plan not only must meet the quantitative standard of the actuarial value of benefits, but also must provide a benefit package that meets a minimum standard of benefits. Specifically, we propose to revise § 156.145 to provide that, in order to satisfy MV, an employer plan must provide substantial coverage of both inpatient hospital services and physician services.

We seek comment on ways to determine whether a plan has offered ''substantial'' benefits for the purposes of this proposal.

We are not proposing to require that large employer or self-insured employer group health plans provide all EHB as defined under section 1302 of the Affordable Care Act. Rather, we are proposing only to require that, in order to provide MV, employer-sponsored plans provide substantial coverage of the two types of benefits that we believe were envisioned for health plan coverage meeting the MV standard. We have concluded that plans that omit these types of coverage fail to meet universally accepted minimum standards of value expected from, and inherent in the nature of, any arrangement that can reasonably be called a health plan intended to provide the primary health coverage for employees.

Consistent with Notice 2014–69, we propose that these changes to our regulations on MV will apply to employer-sponsored plans, including plans that are in the middle of a plan year, immediately on the effective date of the final regulations. However, because some employers adopted plans prior to publication of Notice 2014–69, we propose that the final regulations not apply before the end of the plan year (as in effect under the terms of the plan on November 3, 2014) to plans that before November 4, 2014, entered into a binding written commitment to adopt, or began enrolling employees into, the plan, so long as that plan year begins no later than March 1, 2015. For these purposes, a binding written commitment exists when an employer is contractually required to pay for an arrangement, and a plan begins enrolling employees when it begins accepting employee elections to participate in the plan. The Department of the Treasury and the IRS are expected to publish proposed regulations making clear that this delayed applicability date applies solely for purposes of Code section 4980H. At no time will any employee be required to treat a plan that fails to provide substantial coverage of inpatient hospital services or physician services as providing MV for purposes of eligibility for premium tax credit under Code section 36B. We seek comment on this proposed applicability date.

3. Qualified Health Plan Minimum Certification Standards

a. QHP Issuer Participation Standards (§ 156.200)

We propose to revise § 156.200(b)(7), to require that a QHP issuer comply with the standards under 45 CFR part 153 and not just the standards related to the risk adjustment program. This proposed revision would clarify that a QHP issuer maintains responsibility for its compliance and, under § 156.340, the compliance of any of its delegated or downstream entities with the standards set forth in 45 CFR part 153, not just those specifically pertaining to risk adjustment. We seek comment on this proposal.

b. Transparency in Coverage (§ 156.220)

The transparency in coverage standards established under section 1311(e)(3) of the Affordable Care Act, as implemented at § 155.1040(a) and § 156.220, require health insurance issuers that offer a QHP in accordance with a certification from an Exchange to provide specified information to HHS, the Exchange, and the State insurance commissioner and to make this information available to the public in ''plain language.'' In a frequently asked question dated April 29, 2013,[49] HHS clarified that, to comply with section 1311(e)(3), issuers offering QHPs certified by an Exchange would be required to begin submitting this information only after QHPs have been certified for one benefit year.[50] Because

[48] See Department of Labor. Special Report: Selected Medical Benefits: A Report from the Department of Labor to the Department of Health and Human Services. *http://www.bls.gov/ncs/ebs/sp/selmedbensreport.pdf.*

[49] Affordable Care Act Implementation Set 15, available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs15.html.*

[50] The FAQ also states that because section 2715A of the PHS Act simply extends the transparency provisions set forth in section 1311(e)(3) of the

Continued

a full year of claims data will be available, we anticipate the collection and public display of the required information listed in § 156.220 from QHP issuers offering coverage through Exchanges beginning in 2016. We seek comment on the form and manner of data collection that will be most useful to consumers selecting a QHP in an Exchange. Specifically, we seek comment on how HHS should further specify, in guidance, the data elements to be collected, the format that should be used, and the timeframe or schedule for submission. We also seek comment on mechanisms that issuers could use to submit the information to HHS and how to minimize duplication with information that issuers must already submit to HHS, States or other entities (for example, accreditation organizations). We seek comment on the manner in which HHS, the Exchanges and QHPs should publicly display the collected information. We also request comment related to whether State-based Exchanges should display the same information and in the same format and manner as in an FFE.

c. Network Adequacy Standards (§ 156.230)

In § 156.230, we established the minimum network adequacy criteria that health and dental plans must meet to be certified as QHPs, under the Secretary's authority in section 1311(c)(1)(B) of the Affordable Care Act. We propose modifying § 156.230(a) to specify that this section only applies to QHPs that use a provider network and that a provider network includes only providers that are contracted as in-network. This means that the general availability of out-of-network providers will not be counted for purposes of meeting network adequacy requirements.

We believe that networks that provide sufficient access to benefits are a priority for issuers and consumers. HHS continues to take great interest in ensuring strong network access, particularly for QHPs that must meet the standards in § 156.230. HHS is aware that the NAIC has formed a workgroup that is drafting a model act relative to network adequacy and will await the results of this workgroup before proposing significant changes to network adequacy policy. For 2016, HHS expects to continue the reasonable access standard adopted in the 2015 Letter to Issuers in the Federally-facilitated Marketplaces (2015 Letter to Issuers) [51] and assess the provider networks information submitted as part of the QHP certification process. We urge State-based Exchanges to employ the same standard when examining network adequacy.

In addition to the proposed provisions above, we are also cognizant that new enrollees in QHPs may need a transition period to switch to a provider that is in-network in their new plan. We encourage QHP issuers that use a network of providers to offer new enrollees transitional care for an ongoing course of treatment. We suggest that this begin with the effective date of coverage of a new enrollee and last for at least 29 days thereafter (for a minimum of 30 days). These benefits would extend to health care services furnished by any provider to the new enrollee, regardless of whether the provider is in the plan's network, as long as the enrollee received health services from that provider under an ongoing course of treatment in the 90 days prior to the effective date of coverage. Because different plans may have different provider networks, when an individual enrolls in a new health plan, he or she may be undergoing a course of treatment with a provider that is not in the new issuer's provider network. In such a case, it may take time for the new enrollee to select a new in-network provider and to meet with the new provider to ensure that there is no disruption in treatment. We encourage issuers to adopt this policy to accommodate the immediate needs of enrollees, while allowing the enrollee sufficient time to go through the process of selecting an in-network provider in their new plan. We are considering whether requirements may be needed in this area.

Under § 156.230(b), we propose changing the current text to read as (b)(1) and adding (b)(2) in order to strengthen the provider directory requirement. Specifically, we propose that a QHP issuer must publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS and OPM. As part of this requirement, we propose that a QHP issuer must update the directory information at least once a month, and that a provider directory will be considered easily accessible when the general public is able to view all of the current providers for a plan on the plan's public Web site through a clearly identifiable link or tab without having to create or access an account or enter a policy number. The general public should be able to easily discern which providers participate in which plan(s) and provider network(s) if the health plan issuer maintains multiple provider networks and the plan(s) and provider network(s) associated with each provider should be clearly identified on the Web site. We seek comment on this proposal, including with respect to how often updating should occur.

We also are considering requiring issuers to make this information publicly available on their Web sites in a machine-readable file and format specified by HHS. The purpose of establishing machine-readable files with this data would be to provide the opportunity for third parties to create resources that aggregate information on different plans. We believe this would increase transparency by allowing software developers to access this information and create innovative and informative tools to help enrollees better understand the availability of providers in a specific plan. As an alternative, we could also require that this information be submitted to HHS though an HHS-designed standardized template, but we recognize that there may be challenges with keeping this type of template information updated. Thus, we specifically solicit comments on these options, including the technical requirements for developing a machine-readable file and format for a provider directory, as well as other technical considerations, such as processes and considerations that should be taken into account for the updating of this information under either of the options being considered.

We are proposing these requirements to enhance transparency of QHP provider directories and to help consumers make more informed decisions about their health care coverage. We solicit comments on these proposed requirements, as well as with respect to how frequently provider data should be updated, and whether

Affordable Care Act to group health plans and health insurance issuers offering group and individual health insurance coverage, the Departments clarified that the reporting requirements under section 2715A of the PHS Act will become applicable to group health plans and health insurance issuers offering group and individual health insurance coverage no sooner than when the reporting requirements under section 1311(e)(3) of the Affordable Care Act become applicable. Nothing in these proposed regulations would apply any transparency reporting requirements related to section 2715A of the PHS Act, incorporated into section 715(a)(1) of ERISA and section 9815(a)(1) of the Code.

[51] 2015 Letter to Issuers in the Federally-facilitated Marketplaces, March 14, 2014, available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-final-issuer-letter-3-14-2014.pdf*.

additional types of information should be required to be included in the provider directory.

We also seek comment on the feasibility and merits of incorporating information on physical accessibility for individuals with disabilities, including accessibility information regarding facilities and equipment, or other information that would be important to enrollees and potential enrollees, as a part of network adequacy standards in the future.

d. Essential Community Providers (§ 156.235)

At § 156.235, we propose to strengthen the essential community provider (ECP) standard in accordance with section 1311(c)(1)(C) of the Affordable Care Act, which requires that a QHP's network include ECPs, where available, that serve predominantly low-income and medically-underserved populations. As established in section 1311(c)(1)(C) of the Affordable Care Act, ECPs include entities defined in section 340B(a)(4) of the PHS Act and providers described in section 1927(c)(1)(D)(i)(IV) of the Social Security Act as set forth by section 211 of Pub. L. 111–8. Additionally, we propose that ECPs may include not-for-profit or State-owned providers that would be entities described in section 340B of the PHS Act but do not receive Federal funding under the relevant section of law, as these providers satisfy the same 340B requirements and therefore meet the definition of ECPs by virtue of the following description in section 1311(c)(1)(C) of the Affordable Care Act—''such as health care providers defined in section 340B(a)(4) of the PHS Act and providers in section 1927(c)(1)(D)(i)(IV) of the Act.'' For the same reasons described above, we propose that such providers also include not-for-profit or governmental family planning service sites that do not receive a grant under Title X of the PHS Act. Other providers that provide health care to populations residing in low-income zip codes or Health Professional Shortage Areas could also be considered ECPs. We propose that the above proposals apply to plan years 2016 and thereafter.

While commercial health insurance issuers may have a limited history in working with ECPs, ECPs provide important access points in low-income and medically underserved communities. Based on our experience with QHP certification for 2014 and 2015, we have determined that specifying a quantitative standard will assist issuers in ensuring that, in future QHP certification years, they are providing sufficient consumer access to ECPs to satisfy the requirement in section 1311(c)(1)(C) of the Affordable Care Act. Therefore, we propose in new paragraph (a)(2)(i) of this section that, for QHP certification cycles beginning with the 2016 benefit year, a health plan seeking certification to be offered through an FFE must satisfy the general ECP standard described in paragraph (a)(1) of this section by demonstrating in its applications for QHP certification a sufficient percentage, as determined annually by HHS and specified in HHS guidance, of available ECPs in the plan's service area have a contractual agreement to participate in the plan's provider network. For purposes of this general ECP standard, multiple providers at a single location will count as a single ECP toward the issuer's satisfaction of the proposed ECP participation standard to ensure a sufficient number and geographic distribution of ECPs as required under § 156.235(a). Any update to the general ECP inclusion standards would be based on HHS's post-certification assessments of the adequacy of ECP participation and geographic distribution of such providers and evidence of contractual negotiation efforts provided by issuers in the ECP supplemental response forms.

In addition, we propose in paragraph (a)(2)(ii) of this section that, to satisfy the general ECP standard, the issuer of the plan seeking certification as a QHP in an FFE would be required to offer contracts for participation in the plan for which a certification application is being submitted to the following: (1) All available Indian health providers in the service area, applying the special terms and conditions necessitated by Federal law and regulations as referenced in the recommended model QHP addendum for Indian health providers developed by HHS; and (2) at least one ECP in each ECP category (see Table 10) in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type. We expect that issuers will offer contracts in good faith. A good faith contract should offer the same rates and contract provisions as other contracts accepted by or offered to similarly situated providers that are not ECPs.

TABLE 10—ECP CATEGORIES AND TYPES IN FFES

| Major ECP category | ECP provider types |
|---|---|
| Federally Qualified Health Centers (FQHC). | FQHC and FQHC ''Look-Alike'' Clinics,[52] Outpatient health programs/facilities operated by tribes, tribal organizations, programs operated by Urban Indian Organizations. |
| Ryan White Providers | Ryan White HIV/AIDS Providers. |
| Family Planning Providers | Title X Family Planning Clinics and Title X ''Look-Alike'' Family Planning Clinics.[53] |
| Indian Health Providers | Tribes, Tribal Organization and Urban Indian Organization Providers, Indian Health Service Facilities. |
| Hospitals | Disproportionate Share Hospital (DSH) and DSH-eligible Hospitals, Children's Hospitals, Rural Referral Centers, Sole Community Hospitals, Free-standing Cancer Centers, Critical Access Hospitals. |
| Other ECP Providers | STD Clinics, TB Clinics, Hemophilia Treatment Centers, Black Lung Clinics, Community Mental Health Centers, Rural Health Clinics and other entities that serve predominantly low-income, medically underserved individuals. |

We propose to add paragraph (a)(3) to this section to specify that if an issuer's QHP certification application to the FFE does not satisfy the ECP standard described in paragraph (a)(2) of this section, the issuer must include as part of its application a narrative justification describing how the provider network(s) of the plans for which certification applications have been submitted provides an adequate level of service for individuals residing in low-income zip codes or Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year. The narrative justification should include the following: The number of contracts

[52] For more information on FQHC ''Look-Alike'' Clinics, see *http://bphc.hrsa.gov/about/lookalike/index.html* and section 1861(a)(4) and section 1905(l)(2)(B) of the Social Security Act.

[53] For more information on Title X ''Look-Alike'' Clinics, see section 1927(c)(1)(D)(i)(IV) of the Social Security Act.

offered to ECPs for the benefit year; the number of additional contracts the issuer expects to offer for the benefit year and the timeframe of planned negotiations; the names of the ECP hospitals FQHCs, Ryan White providers, family planning providers, Indian health providers, and other ECPs to which the issuer has offered contracts, but with whom an agreement has not yet been reached; and contingency plans for how the issuer's provider network(s), as currently designed, will provide adequate care to enrollees who might otherwise be cared for by relevant ECPs. Through HHS's post-certification assessments, HHS may examine an issuer's progress toward satisfying the applicable ECP standard to ensure that the issuer continues to qualify for offering its plan on the Exchange, while OPM would retain this responsibility for issuers of multi-State plans, acting in coordination with HHS as may be appropriate.

We propose to redesignate current paragraph (a)(3) as paragraph (a)(4), in which we clarify that nothing in the requirements under paragraphs (a)(1) through (a)(3) of this section requires any QHP to provide coverage for any specific medical procedure provided by the ECP. We also propose to redesignate current paragraph (a)(2) as paragraph (a)(5).

We propose in paragraph (b)(1) that the alternate ECP standard described in § 156.235(a)(5) will apply to issuers that offer QHPs in any Exchange. Additionally, for plans seeking QHP certification in FFEs, we propose that a QHP issuer described in paragraph (a)(5) of this section be determined to have a sufficient number and geographic distribution of employed or contracted providers by demonstrating in its QHP application that the number of its providers in the following locations meets a percentage specified in HHS guidance, of the number of available ECPs in the service area: (i) Located within a Health Professional Shortage Areas; or (ii) located within five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the FPL. For purposes of this alternate ECP standard, multiple providers at a single location will count as one ECP toward the available ECPs in the plan's service area and toward the issuer's satisfaction of the proposed ECP participation standard to ensure a sufficient number and geographic distribution of ECPs as required under § 156.235(a). Any modification to the alternate ECP inclusion standard would be based on HHS's post-certification assessments of the adequacy of ECP participation and geographic distribution of such providers to ensure reasonable and timely access to such ECPs for low-income, medically underserved individuals.

Furthermore, we propose in new paragraph (b)(3) of this section that if a QHP certification application of a plan for the FFE does not satisfy the alternate ECP standard described in paragraph (b)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the issuer's provider network(s) provides an adequate level of service for low-income and medically underserved enrollees. When assessing whether an issuer has provided a satisfactory narrative justification under either the general or alternate ECP standard, as applicable, HHS will take into account factors and circumstances identified in the ECP Supplemental Response Form,[54] along with an explanation of how the issuer will provide access for individuals residing in low-income zip codes or Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year. Additionally, justifications that include verification of contracts offered in good faith, that include terms that a willing, similarly-situated, non-ECP provider would accept or has accepted, would be considered toward satisfaction of the ECP standard.

We propose in paragraph (c) of this section to remove the language defining ECPs as meeting the criteria on the initial date of the regulation's publication. We propose this change in recognition of the fact that the universe of ECPs, as well as the databases we use to delineate this universe, may vary over time for many reasons, including demographic and provider characteristics. We request comment on this proposed change.

We seek comment on these proposals.

e. Health Plan Applications and Notices (§ 156.250)

Existing § 156.250 establishes basic standards for the format of applications and notices provided by QHP issuers to enrollees. Specifically, QHP issuers must adhere to the readability and accessibility standards established for Exchange applications, forms, and notices in § 155.230(b). The referenced standard, in turn, requires QHP issuers to conform to the standards outlined in § 155.205(c), which provide that information must be provided in plain language and in a manner that is accessible and timely to individuals living with disabilities and individuals who are limited English proficient, and that individuals must be informed of the availability of such accessibility services. To improve the readability of this referenced standard, we propose to amend § 156.250 to replace the cross-reference to the Exchange application and notices provision at § 155.230(b) with a cross-reference to § 155.205(c). We also propose to change the title of the provision to ''Meaningful access to qualified health plan information'' for improved clarity. As discussed above, amendments to § 155.205(c) with respect to oral interpretation services are also being proposed.

As participants in one or more Exchanges, QHP issuers interact with qualified individuals, qualified employers, qualified employees, and applicants, in addition to enrollees. QHP issuers provide these individuals with a wide range of information that assists these individuals with accessing and understanding health coverage. We propose to extend the requirements of § 156.250 so that not only applications and notices to enrollees, but all information that is critical for obtaining health insurance coverage or access to health care services through the QHP to qualified individuals, applicants, qualified employers, qualified employees, and enrollees, is provided in a manner consistent with § 155.205(c). In addition, we propose that information would be deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer is required by State or Federal law to provide the document to a qualified individual, applicant, qualified employer, qualified employee, or enrollee. For example, because the summary of benefits and coverage (SBC) disclosure is required to be provided by law under section 2715 of the Public Health Service Act and its implementing regulations at § 147.200, a QHP issuer would be required to provide the SBC in a manner consistent with § 155.205(c). In addition, based on our proposed standard, we would consider information that is critical for obtaining health coverage or access to health care services to include: Applications; consent, grievance, appeal, and complaint forms; notices pertaining to the denial, reduction, modification, or termination of services, benefits, non-payment, or coverage; a plan's explanation of benefits or similar claim processing information; QHP ratings information; rebate notices;

[54] More information on the supplemental response can be found on the CCIIO Web site at: *http://www.cms.gov/cciio/programs-and-initiatives/health-insurance-marketplaces/qhp.html.*

correspondence containing information about eligibility and participation criteria; notices advising individuals of the availability of free language assistance; and letters or notices that require a signature or response from the qualified individual, applicant, qualified employer, qualified employee, or enrollee. We would not consider marketing materials that are available for advertising purposes only and not otherwise required by law to be critical for obtaining health insurance coverage or access to health care services through the QHP, and therefore an issuer would not be required to be make such materials accessible to individuals with disabilities or limited English proficiency. We seek comment on all aspects of this proposal, with a particular interest in whether the parameters set forth above are reasonable, whether there is other information that should be considered to be ''critical'' and thus subject to the requirements of § 155.205(c), and whether the term ''critical'' should be further defined in regulation text. Finally, we solicit comment on whether this proposal would present implementation challenges for QHP issuers if it becomes effective before the beginning of the open enrollment period in the individual market for the 2016 benefit year.

f. Enrollment Process for Qualified Individuals (§ 156.265)

Sections 155.240 and 155.400 explicitly authorize Exchanges to establish certain requirements related to premium payment for enrollment in QHPs through the Exchange. Section 156.265 currently only cross-references § 155.240. To clarify that both sets of requirements apply to QHPs, we propose that a QHP issuer must follow the premium payment process established by the Exchange in accordance with § 155.240 and the payment rules established in § 155.400(e).

g. Segregation of Funds for Abortion Services (§ 156.280)

Section 1303 of the Affordable Care Act and § 156.280 specify accounting and other standards for issuers of QHPs through the Exchange in the individual market that cover abortion services for which public funding is prohibited (also referred to as non-excepted abortion services). The statute and regulations establish that unless otherwise prohibited by State law, a QHP issuer may elect to cover such services. If an issuer elects to cover such services under a QHP sold through the individual market Exchange, the issuer must take certain steps to ensure that no premium tax credit or cost-sharing reduction funds are used to pay claims for abortion services for which public funding may not be used.

We are providing guidance on an individual market Exchange issuer's responsibilities with respect to requirements related to QHP coverage of abortion services for which public funding is prohibited. HHS works with stakeholders, including States and issuers, to help them fully understand and follow the statutes and regulations governing the provision of health insurance coverage under a QHP through the Exchange. As is the case with many provisions in the Affordable Care Act, States and State insurance commissioners are the entities primarily responsible for implementing and enforcing the provisions in section 1303 of the Affordable Care Act related to individual market QHP coverage of non-excepted abortion services. OPM may issue guidance related to these provisions for multi-State plan issuers.

Under section 1303(b)(2)(B) of the Affordable Care Act, as implemented in § 156.280(e)(2)(i), individual market Exchange issuers must collect a separate payment from each enrollee, for an amount equal to the AV of the coverage for abortions for which public funding is prohibited. However, section 1303 of the Affordable Care Act and § 156.280 do not specify the method an issuer must use to comply with the separate payment requirement. This provision may be satisfied in a number of ways. Several such ways include, but are not limited to: sending the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-excepted abortion services; sending a separate monthly bill for these services; or sending the enrollee a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge. Section 1303 of the Affordable Care Act permits, but does not require a QHP issuer to separately identify the premium for non-excepted abortion services on the monthly premium bill in order to comply with the separate payment requirement. A consumer may pay the premium for non-excepted abortion services and for all other services in a single transaction, with the issuer depositing the funds into the issuer's separate allocation accounts as required by section 1301(b)(2)(C) of the Affordable Care Act, as implemented in § 156.280(e)(2)(ii) and 156.280(e)(3).

Section 1303(b)(2)(D) of the Affordable Care Act, as implemented in § 156.280(e)(4), establishes requirements for individual market Exchange issuers with respect to how much they must charge each QHP enrollee for coverage of abortions for which public funding is prohibited. A QHP issuer must estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage of non-excepted abortion services. In making this estimate, a QHP issuer may not estimate the basic cost of coverage for non-excepted abortion services to be less than one dollar per enrollee, per month. This means that an issuer must charge each QHP enrollee a minimum premium of one dollar per month for coverage of non-excepted abortion services.

4. Health Insurance Issuer Responsibility With Respect to Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions

a. Premium Adjustment Percentage (§ 156.130)

Section 1302(c)(4) of the Affordable Care Act directs the Secretary to determine an annual premium adjustment percentage, which is used to set the rate of increase for three parameters detailed in the Affordable Care Act: the maximum annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage by individuals for minimum essential health coverage the Secretary may use to determine eligibility for hardship exemptions under section 5000A of the Code, and the assessable payment amounts under section 4980H(a) and (b) of the Code (finalized at 26 CFR 54.4980H in the ''Shared Responsibility for Employers Regarding Health Coverage,'' published in the February 12, 2014 **Federal Register** (79 FR 8544)). Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and that this percentage will be published annually in the HHS notice of benefit and payment parameters.

We established a methodology for estimating average per capita premium for purposes of calculating the premium adjustment percentage in the 2015 Payment Notice.

Under that methodology, the premium adjustment percentage is calculated based on the projections of average per enrollee employer-sponsored insurance (ESI) premiums from the NHEA, which is calculated by the CMS Office of the Actuary.

Accordingly, using the ESI data, the premium adjustment percentage for 2016 is the percentage (if any) by which the most recent NHEA projection of per enrollee ESI premiums for 2015 ($5,744) exceeds the most recent NHEA projection of per enrollee ESI premiums for 2013 ($5,303).[55] Therefore, the proposed premium adjustment percentage for 2016 is 8.316047520 percent. We note that the 2013 premium used for this calculation has been updated to reflect the latest NHEA data. We are also proposing the following cost-sharing parameters for calendar year 2016, based on our proposed premium adjustment percentage for 2016.

*Maximum Annual Limitation on Cost Sharing for Calendar Year 2016.* Under § 156.130(a)(2), for the 2016 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2016, and for other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next lowest multiple of 50. Using the premium adjustment percentage of 8.316047520 for 2016 we established above, and the 2014 maximum annual limitation on cost sharing of $6,350 for self-only coverage, which was published by the IRS on May 2, 2013,[56] we propose that the 2016 maximum annual limitation on cost sharing be $6,850 for self-only coverage and $13,700 for other than self-only coverage.

b. Reduced Maximum Annual Limitation on Cost Sharing (§ 156.130)

Sections 1402(a) through (c) of the Affordable Care Act direct issuers to reduce cost sharing for EHBs for eligible individuals enrolled in a silver level QHP. In the 2014 Payment Notice, we established standards related to the provision of these cost-sharing reductions. Specifically, in 45 CFR part 156 subpart E, we specified that QHP issuers must provide cost-sharing reductions by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the Federal government. At § 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS notice of benefit and payment parameters. Although the amount of the reduction in the maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the Affordable Care Act, section 1402(c)(1)(B)(ii) of the of the Affordable Care Act states that the Secretary may adjust the cost-sharing limits to ensure that the resulting limits do not cause the AVs of the health plans to exceed the levels specified in 1402(c)(1)(B)(i) (that is, 73 percent, 87 percent or 94 percent, depending on the income of the enrollee(s)). Accordingly, we propose to use a method we established in the 2014 Payment Notice for determining the appropriate reductions in the maximum annual limitation on cost sharing for cost-sharing plan variations. As we proposed above, the 2016 maximum annual limitation on cost sharing would be $6,850 for self-only coverage and $13,700 for other than self-only coverage. We analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute to determine whether to adjust the reductions so that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2016 benefit year and our proposed results.

*Reduced Maximum Annual Limitation on Cost Sharing for Benefit Year 2016.* Consistent with our analysis in the 2014 and 2015 Payment Notices, we developed three model silver level QHPs, and analyzed the impact on AV of the reductions described in the Affordable Care Act to the estimated 2016 maximum annual limitation on cost sharing for self-only coverage ($6,850). The model plan designs are based on data collected for 2015 plan year QHP certification to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through the Exchange. For 2016, the model silver level QHPs included a PPO with typical cost-sharing structure ($6,850 annual limitation on cost sharing, $2,000 deductible, and 20 percent in-network coinsurance rate), a PPO with a lower annual limitation on cost sharing ($4,600 annual limitation on cost sharing, $2,550 deductible, and 20 percent in-network coinsurance rate), and an HMO ($6,850 annual limitation on cost sharing, $2,700 deductible, 20 percent in-network coinsurance rate, and the following services with copays that are not subject to the deductible or coinsurance: $500 inpatient stay per day, $350 emergency department visit, $25 primary care office visit, and $50 specialist office visit). All three model QHPs meet the AV requirements for silver level health plans.

We then entered these model plans into the proposed 2016 AV calculator developed by HHS and observed how the reductions in the maximum annual limitation on cost sharing specified in the Affordable Care Act affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with a household income between 100 and 150 percent of the Federal poverty line (FPL) (⅔ reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of the FPL (⅔ reduction), would not cause the AV of any of the model QHPs to exceed the statutorily specified AV level (94 and 87 percent, respectively). In contrast, the reduction in the maximum annual limitation on cost sharing specified in the Affordable Care Act for enrollees with a household income between 200 and 250 percent of FPL (½ reduction), would cause the AVs of two of the model QHPs to exceed the specified AV level of 73 percent. As a result, we propose that the maximum annual limitation on cost sharing for enrollees in the 2016 benefit year with a household income between 200 and 250 percent of FPL be reduced by approximately ⅕, rather than ½. We further propose that the maximum annual limitation on cost sharing for enrollees with a household income between 100 and 200 percent of the FPL be reduced by approximately ⅔, as specified in the statute, and as shown in Table 11. These proposed reductions in the maximum annual limitation on cost sharing should adequately account for unique plan designs that may not be captured by our three model QHPs. We also note that selecting a reduction for the maximum annual limitation on cost sharing that is less than the reduction specified in the statute would not reduce the benefit afforded to enrollees in aggregate because QHP issuers are required to further reduce their annual limitation on cost sharing, or reduce other types of cost sharing, if the required reduction does not cause the AV of the QHP to meet the specified

[55] *See http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology2012.pdf* and Table 17 in *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2012.pdf* for additional information.

[56] *See http://www.irs.gov/pub/irs-drop/rp-13-25.pdf.*

level. We welcome comment on this analysis and the proposed reductions in the maximum annual limitation on cost sharing for 2016.

We note that for 2016, as described in § 156.135(d), States are permitted to submit for approval by HHS State-specific data sets for use as the standard population to calculate AV. No State submitted a data set by the September 1 deadline.

TABLE 11—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2016

| Eligibility category | Reduced maximum annual limitation on cost sharing for self-only coverage for 2016 | Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2016 |
|---|---|---|
| Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i) (that is, 100–150 percent of FPL) | $2,250 | $4,500 |
| Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(ii) (that is, 150–200 percent of FPL) | 2,250 | 4,500 |
| Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(iii) (that is, 200–250 percent of FPL) | 5,450 | 10,900 |

c. Plan Variations (§ 156.420)

Sections 1402 and 1412 of the Affordable Care Act provide for reductions in cost sharing on essential health benefits for qualified low- and moderate-income enrollees in silver level health plans offered in the individual market through the Exchanges. Section 1402(d) of the Affordable Care Act also provides for Indians with household income below 300 percent FPL to be enrolled in QHPs with zero cost sharing at any metal level. Implementing regulations, § 156.400 *et seq.,* set forth health insurance issuer responsibilities with respect to the administration of reductions in cost sharing for eligible individuals. In addition, section 2715 of the PHS Act and its implementing regulation, § 147.200, require group health plans and health insurance issuers offering group or individual health insurance coverage to provide a written summary of benefits and coverage (SBC) for each benefit package to all covered entities and individuals, including individuals in the individual market, applying for coverage.

While individual health insurance issuers (including QHP issuers) must provide an SBC for each benefit package, current regulations do not specifically address an issuer's responsibilities to provide an SBC reflecting a QHP with cost-sharing reductions applied, known as a plan variation of the QHP. Consequently, a consumer who is eligible for cost-sharing reductions may receive an SBC that does not accurately represent the cost sharing he or she will be responsible for when receiving essential health benefits. Under the authority stated above, we propose to amend § 156.420 to add § 156.420(h) and require QHP issuers to provide SBCs that accurately represent plan variations in a manner consistent with the requirements set forth at § 147.200 to ensure that consumers have access to SBCs that accurately represent cost-sharing responsibilities for all coverage options, including plan variations, and are provided adequate notice of the plan variations.

We propose that QHP issuers would be required to provide SBCs for plan variations no later than the first day of the next Exchange open enrollment period for the individual market for the 2016 benefit year, in accordance with § 155.410(e). We seek comments on whether the proposed applicability date would present implementation challenges for QHP issuers as well as on other aspects of this proposal. As discussed above, we note that QHP issuers would be required to provide the SBC in a manner that is consistent with the meaningful access requirements under § 155.205(c).

d. Changes in Eligibility for Cost-Sharing Reductions (§ 156.425)

Under the authority in sections 1402 and 1412 of the Affordable Care Act, which provide for reductions in cost sharing on essential health benefits for qualified low- and moderate-income enrollees in silver level health plans offered in the individual market on Exchanges, we propose to amend § 156.425 to clarify when a QHP issuer would be required to provide an SBC if an individual's assignment to a standard plan or plan variation of the QHP changes in accordance with § 156.425(a). We propose that a QHP issuer must provide an SBC that accurately represents a new plan variation (or the standard plan variation) as soon as practicable after receiving notice from the Exchange of the individual's change in eligibility, but in no case later than 7 business days following receipt of notice. We propose that QHP issuers would be required to provide SBCs in accordance with this proposed paragraph beginning on the first day of the benefit year that begins on January 1, 2016. We seek comments on this proposal.

e. Cost-Sharing Reductions Reconciliation (§ 156.430)

Sections 1402(a)–(c) of the Affordable Care Act provide for cost-sharing reductions for essential health benefits (EHB) provided by a qualified health plan. Cost-sharing reductions are advanced to issuers throughout the benefit year, and reconciled by HHS following the benefit year against actual cost-sharing amounts provided by issuers to enrollees.

The reconciliation process requires QHP issuers to submit to HHS the total allowed costs for EHB charged for each plan variation policy, the amounts paid by the issuer, and the amounts paid by or on behalf of the enrollee (other than by the Federal government under section 1402 of the Affordable Care Act), as well as the amounts that would have been paid by the enrollee under the standard plan. Under the standard methodology described at § 156.430(c)(2), costs paid by the issuer under the standard plan are calculated by applying actual cost-sharing requirements for the standard plan to the allowed costs for EHB under the enrollee's policy for the benefit year. The difference is the amount of cost-sharing reductions provided.

As stated above, HHS will not reimburse issuers for reductions in out-of-pocket spending for benefits other than EHB. However, we understand that because of technology challenges in these early years of the cost-sharing reduction program, some issuers are presently unable to differentiate on a

policy level between EHB claims and non-EHB claims, as required by HHS when applying the standard cost-sharing reduction reconciliation methodology. The difficulty occurs in plan designs that allow enrollee out-of-pocket spending for EHB and non-EHB claims alike to accumulate toward deductibles and the reduced annual limit on cost sharing. Such plan designs benefit enrollees by allowing them to reach their spending limits sooner. As a result, for the purpose of cost-sharing reduction reconciliation, we propose to allow QHP issuers to submit percentage estimates of the portion of claims attributable to non-EHB for the 2014 benefit year, and to reduce the total claims amount by that percentage, to arrive at an estimated total EHB amount. The percentage estimate would be the estimate of expected non-EHB claims costs previously submitted for each plan variation on the Uniform Rate Review Template (URRT) [57] and which HHS used to calculate 2014 advance CSR payments. An issuer using this procedure would be required to do so for all plan variations for which the criteria below are met.

As described in proposed § 156.430(c)(2)(i), this exception to permit QHP issuers to use plan-specific URRT estimates of non-EHB claims would be limited to plan designs in which out-of-pocket expenses for non-EHB benefits accumulate toward the deductible and reduced annual limitation on cost sharing, but for which copayments and coinsurance rates for non-EHB are not reduced. This limitation helps assure that the estimated percentage, which is calculated based on the proportion of claims attributable to EHB, does not overstate the proportion of reduced out-of-pocket spending associated with EHB. In addition, the exception would apply only when non-EHB estimated percentages account for less than 2 percent of total claims, helping assure that any inaccuracies in the estimate are unlikely to result in significant inaccuracies in total cost-sharing reduction reimbursement.

5. Minimum Essential Coverage

a. Other Coverage That Qualifies as Minimum Essential Coverage (§ 156.602)

Section 5000A of the Code, as added by section 1501(b) of the Affordable Care Act, requires all non-exempt applicable individuals to maintain minimum essential coverage or make the individual shared responsibility payment. Section 5000A(f) of the Code defines minimum essential coverage as any of the following: (1) Coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; and (4) coverage under a grandfathered health plan. In addition, section 5000A(f)(1)(E) of the Code authorizes the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as minimum essential coverage. The Department of the Treasury and the IRS published final regulations under Code section 5000A on August 30, 2013 (78 FR 53646), codified at 26 CFR 1.5000A–1 through –5.[58]

On July 1, 2013, HHS published final regulations implementing certain functions of an Exchange for determining eligibility for and granting certain exemptions from the individual shared responsibility payment (78 FR 39494).[59] The HHS final regulations also designate certain types of coverage as minimum essential coverage and outline substantive and procedural requirements for other types of coverage to apply for recognition as minimum essential coverage. In § 156.602 HHS designated the following types of health benefits coverage as minimum essential coverage: (1) Self-funded student health plans for plan or policy years beginning on or before December 31, 2014; (2) Refugee Medical Assistance supported by the Administration for Children and Families (45 CFR part 400 subpart G); (3) Medicare advantage plans; and (4) State high risk pools (as defined in section 2744 of the PHS Act) for plan or policy years beginning on or before December 31, 2014. In addition, § 156.604 outlines the substantive and procedural requirements for other types of health benefit coverage, not statutorily specified in section 5000A of the Code and not designated as minimum essential coverage in § 156.602, to apply to HHS for recognition as minimum essential coverage. On October 31, 2013, CMS published guidance explaining the administrative process by which such plans may apply for recognition as minimum essential coverage.[60]

In § 156.602(d), HHS applied a one-year transitional period in 2014 to State high risk pool coverage in anticipation of States phasing-out State high risk pools. Some States, however, will still have high risk pools in 2015 because they did not enact legislation to terminate the program. Some of these State high risk pools will be closed to new enrollment. At least one high risk pool that will still be in existence in 2015 primarily provides supplemental coverage to Medicare beneficiaries under age 65.

We understand the difficulty of transitioning individuals from State high risk pool coverage into QHPs through the Exchanges or into another form of minimum essential coverage. High risk pools provide coverage to vulnerable populations of consumers. Accordingly, we propose to revise § 156.602(d) by eliminating the one-year transition period for State high risk pool coverage and designating as minimum essential coverage any qualified high risk pool established in any State as defined by section 2744(c)(2) of the PHS Act that is currently in existence. We propose that this recognition will not be applied to State high risk pools that are formed after the publication date of this proposed rule. This should provide State legislators the opportunity to continue to evaluate the number of high risk pool enrollees, benefits and cost sharing associated with each State high risk pool. State legislatures may decide to eliminate high risk pool coverage once high risk pool enrollees no longer rely on State high risk pool coverage and have transitioned into QHPs through the Exchanges or into other forms of minimum essential coverage. We seek comments on this proposal. Specifically, we seek comments on whether State high risk pools should be permanently designated as minimum essential coverage or whether the designation should be time-limited (for example, for 2015 only). We also seek comments on the cut-off date for formation of State high risk pools that will qualify for recognition under this proposed rule.

[57] *Percentage of the total allowed costs of benefits* as defined at 45.CFR 156.20 means the anticipated covered medical spending for EHB coverage (as defined in § 156.110(a) of this subchapter) paid by a health plan for a standard population, computed in accordance with the plan's cost-sharing, divided by the total anticipated allowed charges for EHB coverage provided to a standard population, and expressed as a percentage.

[58] Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage, 78 FR 53646 (August 30, 2013).

[59] Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions, 78 FR 39494 (July 1, 2013).

[60] *See* CCIIO Sub-Regulatory Guidance: Process for Obtaining Recognition as Minimum Essential Coverage (October 31, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mec-guidance-10-31-2013.pdf.*

6. Enforcement Remedies in Federally-Facilitated Exchanges

a. Available Remedies; Scope (§ 156.800)

In the first Program Integrity Rule, HHS finalized § 156.800(c), which established a good faith compliance policy for QHP issuers offering coverage through an FFE for the 2014 calendar year. Specifically, the first Program Integrity Rule provides that HHS will not impose sanctions under subpart I of 45 CFR part 156 against a QHP issuer in an FFE if the QHP issuer has made good faith efforts to comply with applicable Exchange requirements. HHS adopted the good faith compliance policy to help QHP issuers become familiar with the standards unique to the FFEs during the initial stage of operations.

We recognize that during 2014, CMS issued revised guidance on some Exchange processes and also implemented some new processes. To help QHP issuers adjust to these processes, HHS provided guidance and technical assistance through various forums. We are aware that despite HHS's support and the QHP issuers' good faith efforts, some QHP issuers offering coverage through an FFE nonetheless experienced difficulties adapting to these processes. However, we found that most QHP issuers were proactive in contacting their assigned HHS account managers to request technical assistance or clarifications to existing policies, standards and processes to ensure their own compliance with FFE standards. When potential issues were identified, the vast majority of QHP issuers demonstrated a willingness to cooperate with HHS to resolve these issues.

HHS is committed to ensuring that QHP issuers have the opportunity to learn from their experiences in 2014 without undue concern about being subject to formal enforcement actions when the QHP issuer has made reasonable efforts to comply with applicable standards. While immediate formal enforcement actions may be appropriate in some cases, we continue to prefer resolving most compliance issues by providing technical assistance. Accordingly, we propose extending the good faith compliance standard under § 156.800(c) through the end of calendar year 2015. We believe this one-year extension will encourage QHP issuers to continue to self-report any potential compliance issues or other problems that may affect their ability to comply with applicable FFE standards in 2015 and future years, and to continue making improvements to their processes and systems, including training their staff about FFE operations and applicable standards. Further, if HHS determines that an issuer is not acting in good faith, that issuer may be subject to enforcement remedies including civil monetary penalties and decertification, if applicable.

Finally, we note that irrespective of the good faith compliance standard, QHP issuers are required to comply with all applicable FFE standards (and any applicable Federal or State laws including privacy, security and fraud) at the time of certification and on an ongoing basis. It should also be noted that QHP issuers have an independent obligation to comply with Federal civil rights laws and regulations to the extent they receive Federal financial assistance, and this proposed modification would not limit or otherwise restrict these laws and regulations. We expect our ongoing coordination with States and other regulatory entities to help streamline communications regarding potential compliance issues and avoid unnecessary duplication of oversight efforts. For issuers of multi-State plans, HHS will coordinate as appropriate with OPM to address compliance issues. We seek comment on this proposal.

b. Plan Suppression (§ 156.815)

In the Exchange Establishment Rule, HHS finalized § 155.205(b), which sets forth the required content and information to be included on an Exchange Web site. Among other things, this rule implemented the Secretary's obligations under section 1311(c)(5) of the Affordable Care Act to continue to operate, maintain, and update the Internet portal developed under section 1103 of the Affordable Care Act to provide information to consumers and small businesses on affordable health insurance coverage options. Under the rule, an Exchange Web site must provide information to consumers on each available QHP's premiums, cost-sharing arrangements, summaries of benefits and coverage, coverage (''metal'') level, results of the enrollee satisfaction survey, quality ratings, medical loss ratio information, transparency in coverage information, and provider directory. The FFE Web site is located at *www.HealthCare.gov* and provides enrollees, consumers, and other stakeholders with access to QHP data to facilitate an informed plan selection when shopping for or enrolling in QHPs on an Exchange. The information provided on the FFE Web site is also presented to consumers enrolling through a HealthCare.gov call center representative, by direct enrollment through a QHP issuer's Web site, or through the Web site of an agent or broker under § 155.220(c)(3).

During the 2014 plan year, we identified situations that made it necessary for purposes of protecting consumers' interests to suppress certain QHPs from each of the avenues of enrollment: enrollment through the HealthCare.gov Web site, enrollment by a HealthCare.gov call center representative, direct enrollment through a QHP issuer Web site, and enrollment through a Web site of an agent or broker. When a QHP is suppressed, the QHP temporarily will not be available for enrollment through the FFE. When all conditions that are grounds for suppression are resolved, the QHP will be unsuppressed.

In § 156.815(a), we propose a definition of suppression which would mean that a suppressed QHP temporarily would not be available for enrollment through the FFE.

In § 156.815(b), we list each of the proposed bases for suppression of a QHP in the FFE. Our first proposed basis for suppression, § 156.815(b)(1), is the issuer's notifying HHS of its withdrawal of the QHP from the FFE when one of the exceptions to guaranteed renewability of coverage related to discontinuing a particular product or discontinuing all coverage under § 147.106(c) or (d) applies. The purpose of this proposed basis for suppression is to clarify the method that we will use to prevent consumers from enrolling in a plan through the FFE after the issuer has notified HHS of its intent to legally withdraw the QHP from the FFE. We note that, per § 156.290(a)(2), issuers withdrawing QHPs from a FFE will be expected to fulfill their obligations to cover benefits for enrollees through the end of the enrollees' plan or benefit year and to comply with other applicable regulations.

In § 156.815(b)(2), we propose to suppress a QHP when we determine that the FFE has incorrect data about the QHP. This basis for suppression is intended for situations where incorrect or incomplete QHP data have been submitted to the FFE by the QHP issuer but the issuer intends to continue offering the QHP on the FFE after the data issue is resolved. We believe that suppression of a QHP with incorrect or incomplete data until the correct or complete information is available is in the best interest of the consumers. The decision to suppress based on incorrect data will be based on the severity of the issue. For example, a QHP with incorrectly submitted rates generally would be suppressed until the rating data are corrected.

In § 156.815(b)(3), we propose to suppress a QHP that is in the process of decertification under § 156.810 or the appeal of a decertification under subpart J of part 156. We believe it is necessary to suspend further enrollment in plans on the FFE where it is likely that consumers will be substantially harmed if the QHP is decertified in the near future. When a QHP is decertified, a consumer enrolled in that QHP will no longer be eligible for advance payments of the premium tax credit under § 155.305(f)(3) or cost-sharing reductions under § 155.305(g)(1) if they choose to remain enrolled in that plan after decertification. If a consumer enrolls in a new plan that is decertified shortly thereafter, the consumer will need to enroll in another QHP to retain access to advance payments of the premium tax credit and cost-sharing reductions. We believe the best way to bolster consumer confidence in the offerings on the FFE and to assist consumers in retaining their subsidies is to prevent further enrollment in a plan at risk of decertification until a determination on decertification is made. HHS will attempt to resolve decertification and appeal proceedings in as timely a manner as possible to minimize any adverse effect of suppression on QHP issuers.

In § 156.815(b)(4), we propose to suppress a QHP when the QHP is the subject of a pending, ongoing, or final State regulatory or enforcement action that could affect the issuer's ability to enroll consumers or otherwise relates to the issuer's ability to offer QHPs in the FFE and would necessitate the removal of a QHP from the FFE until the condition triggering the State action has been resolved. This basis for suppression is intended to protect consumers from enrollment in plans that State insurance regulators have identified as possibly or actually in violation of applicable State or Federal laws and regulations. We recognize that, in the case of pending State regulatory or enforcement action, QHP issuers may ultimately be cleared of alleged wrongdoing. To mitigate the harmful effect of such a scenario, we will base our suppress decision in this instance on the specific details of the pending regulatory or enforcement action, such as, the scope and severity of the alleged violation and the recommendation of State insurance regulators. We are committed to working with State insurance regulators to inform decisions about QHP suppression under this proposal.

In § 156.815(b)(5), we propose allowing suppression of a QHP when either the special rule for network plans under § 147.104(c) or the application of financial capacity limits provision under § 147.104(d) apply. For example, if an issuer demonstrates to its State department of insurance (DOI) that it does not have the financial reserves necessary to offer additional coverage and the DOI places an enrollment restriction on a QHP to prevent it from enrolling new consumers, commonly referred to as an enrollment cap, we may suppress the QHP until the State DOI has lifted the restriction. We intend to coordinate with States to the greatest extent possible in determining whether suppression under this section is appropriate.

In § 156.815(c), we propose to suppress a QHP that is a multi-State plan upon notification by OPM. Under 45 CFR 800.103, OPM may contract with health insurance issuers to provide at least two multi-State plans on Exchanges and SHOPs in each State. When OPM determines that a compliance violation under subpart E of 45 CFR part 800 or one of the grounds for suppression in § 156.815(b) exists, the Exchange may suppress the multi-State plan upon notification by OPM of the violation or other grounds for suppression. We will continue to coordinate efforts with OPM when multi-State plan compliance violations are found.

We invite comments on these proposed regulations, including whether the proposed bases for suppression are appropriate and whether an appeals process should be available following suppression decisions.

7. Quality Standards

a. Quality Improvement Strategy (§ 156.1130)

Section 1311(c)(1)(E) of the Affordable Care Act specifies that to be certified as a QHP for participation on an Exchange, each health plan must implement a quality improvement strategy (QIS), which is described in section 1311(g)(1) of the Affordable Care Act. Section 1311(g)(1) of the Affordable Care Act describes this strategy as a payment structure that provides increased reimbursement or other incentives to improve the health outcomes of plan enrollees, prevent hospital readmissions, improve patient safety and reduce medical errors, implement wellness and health promotion activities, and reduce health and health care disparities. Section 1311(g)(2) of the Affordable Care Act requires the Secretary to develop guidelines associated with the QIS in consultation with health care quality experts and stakeholders, including periodic reporting of the activities that the plan has conducted to implement the QIS, to the applicable Exchange, as described in section 1311(g)(3) of the Affordable Care Act. We have already issued regulations in § 155.200(d) to direct Exchanges to evaluate quality improvement strategies, and at § 156.200(b), which directs QHP issuers to implement and report on a quality improvement strategy or strategies consistent with standards set forth in section 1311(g) of the Affordable Care Act as a QHP certification criteria for participation in an Exchange. This rule proposes standards and the associated timeframe for QHP issuers to submit the necessary information to implement QIS standards for QHPs offered through an Exchange under section 1311(g) of the Affordable Care Act beginning in calendar year 2016.

Many provisions in the Affordable Care Act build on related value-based purchasing concepts. HHS has already implemented several programs (for example, the Medicare Shared Savings Program, the Hospital Value-Based Purchasing Program, and the Physician Value-Based Payment Modifier) that focus on rewarding provider-level organizations that use innovative payment and service delivery models to lower costs and improve quality of health care for Medicare beneficiaries. Although these programs are provider-focused and relate to the Medicare program, their elements are closely aligned to the statutory requirements of a QIS for QHPs offered in an Exchange, including, rewarding quality and value through market-based incentives for improving health outcomes through care coordination activities, preventing hospital readmissions, and improving patient safety. We believe it is important to align with public and private payment and service delivery programs, as appropriate, to support the goals of better health outcomes and lower health care costs. The Center for Medicare and Medicaid Innovation has also recognized the importance of multi-payer engagement in quality improvement, releasing models such as Pioneer Accountable Care Organizations and the Comprehensive Primary Care Initiative that require participating providers to work with both public and private payers on care redesign and efficiency. We encourage QHP issuers to consider diverse approaches to value-based payment and enrollee incentives to reward quality and value in health care.

The HHS National Strategy for Quality Improvement in Health Care (National Quality Strategy) defines

priorities that guide efforts to improve health and health care quality for individuals and communities. It also identifies policy levers, such as payment rewards or incentives for providers, and consumer incentives and benefit designs, which represent a business function, resource or action that stakeholders can use to align with the National Quality Strategy and drive quality improvement for better, more affordable health care.[61] The CMS Quality Strategy is built on the foundation of the National Quality Strategy and operationalizes the priorities of the National Quality Strategy to improve health outcomes for all consumers, including those who seek coverage through the Exchange. We propose to establish QIS standards that use market-based incentives for QHPs offered through the Exchanges, and that align with the National Quality Strategy, the CMS Quality Strategy, and other Federal, State and private sector initiatives, as applicable. We acknowledge that there are numerous existing public and private industry standard initiatives that focus on health plan quality improvement strategies and activities. We believe that aligning QHP issuer standards for quality improvement strategies in Exchanges with existing initiatives would reinforce national health care quality priorities while reducing the burden on health plans and stakeholders to implement different and multiple program requirements. This approach is also consistent with the alignment of the quality rating system for QHPs offered through an Exchange under section 1311(c)(3) of the Affordable Care Act to the National Quality Strategy.[62]

We believe that it is important that the proposed QIS standards leverage existing initiatives and quality improvement strategy tools for QHP issuers to help strengthen health care system-wide efforts to improve health outcomes and lower costs. We reviewed several existing initiatives in the public and private sectors [63] such as Federal health plan quality improvement evaluation programs, private accreditation programs, and other private sector programs to guide the development of the framework for the QIS for QHPs offered through the Exchanges and establish the proposed standards outlined in this rule.

Based on our research, feedback from a QIS Technical Expert Panel (TEP), and discussions with stakeholders, we developed the following principles to guide the development, implementation, and evolution of the QIS standards: (1) The QHP issuer's QIS will focus on one or more of the following topics outlined in section 1311(g)(1) of the Affordable Care Act: Improving health outcomes, implementation of activities to prevent hospital readmissions, implementation of activities to improve patient safety and reduce medical errors, implementation of wellness and health promotion activities, and implementation of activities to reduce health and health care disparities; (2) HHS will seek to minimize administrative burdens through alignment of the QIS data collection and submission standards, where possible, with public and private quality improvement and public reporting programs; (3) The QIS standards will be flexible enough to encourage QHP issuer innovation and promote a culture of continuous quality improvement providing the QHP issuer's strategy is relevant to the characteristics and needs of its enrollees and the Exchange; (4) The QIS standards will allow for flexibility for State Exchanges while still establishing minimum requirements, upon which States, if desired, can build additional reporting requirements in accordance with their needs; (5) The QIS standards will be developed in a public and transparent manner that will seek stakeholder feedback throughout its development and implementation. We believe that these guiding principles and general framework for the QIS standards will promote efficiency, flexibility, and transparency to best engage QHP issuers and serve consumers to improve health and health care quality in the Exchanges.

In § 156.1130(a), we propose that a QHP issuer participating in an Exchange for at least 2 years must implement and report information regarding a quality improvement strategy which includes a payment structure to provide increased reimbursement or other market-based incentives in accordance with the health care topic areas in section 1311(g)(1) of the Affordable Care Act, for each QHP offered in an Exchange consistent with the guidelines developed by HHS under section 1311(g) of the Affordable Care Act. We note that the statutory QIS requirements, similar to the other Exchange quality standards, extend to all Exchange types, including a State Exchange and the FFE. For the QIS, we propose to provide State Exchanges flexibility to establish the timeline, format, validation, and other requirements related to the annual submission of QIS data by QHP issuers that participate in their respective Exchanges. Under this proposal, the establishment and implementation of such standards and other requirements by State Exchanges would support compliance with § 155.200(d), which requires the Exchange to evaluate and oversee implementation of the QIS (among other QHP issuer quality initiatives on coverage offered through Exchanges). We envision the standards that will be used for the FFE will provide the starting point for State Exchanges to build upon.

We propose to phase in QIS implementation standards and reporting requirements to provide QHP issuers the necessary time to understand the populations enrolling in a QHP offered through the Exchange and to build quality performance data on its QHP enrollees. We believe that implementation of a QIS should be a continuous improvement process for which the QHP issuers are required to define the health outcome needs of their enrollees, set goals for improvement, and use increased reimbursement to their providers or other market-based incentives to stimulate achievement of those goals. We believe this proposed approach is consistent with other QHP issuer quality standards for coverage offered through an Exchange including implementation and reporting for the patient safety standards, Quality Rating System (QRS), and Enrollee Satisfaction Survey (ESS), outlined in subpart L of part 156. We further note that, consistent with existing regulations at § 156.200(h), we anticipate that QHP issuers participating in Exchanges would be required to attest to compliance with QIS standards, along with the other QHP issuer quality initiatives for coverage offered through Exchanges established under subpart L of part 156, as part of the QHP application process.

In paragraph (b), we propose to direct a QHP issuer to submit validated data in a form, manner and reporting frequency specified by the Exchange to support evaluation of quality improvement strategies in accordance with

[61] The National Strategy for Quality Improvement in Health Care available at *http://www.ahrq.gov/workingforquality/nqs/nqs2011annlrpt.htm.*

[62] Patient Protection and Affordable Care Act; Exchanges and Qualified Health Plans, Quality Rating System (QRS) Framework, Measures and Methodology; Notice with Comment, 78 FR 69418 (Nov. 19, 2013).

[63] Initiatives include, the Medicaid External Quality Review (EQR) program, the Medicare Advantage Quality Improvement Project and Chronic Care Improvement Program (QIP/CCIP) Program, the Accreditation Association for Ambulatory Health Care (AAAHC), National Committee for Quality Assurance (NCQA), URAC, Integrated Health Association (IHA) Value Based Pay for Performance (P4P) Program, National Business Coalition on Health eValue8 Request for Information.

§ 155.200(d) and § 156.200(b)(5). We anticipate using the data collected as part of information used to evaluate and oversee compliance of QHP issuers in FFEs with the Exchange QIS standards and encourage State Exchanges to adopt a similar approach. We propose that beginning in 2016, a QHP issuer participating in the FFE for at least 2 years would submit a QIS implementation plan to HHS and the applicable Exchange for each QHP offered in the Exchange, followed by annual progress updates. We anticipate that the implementation plan for a QHP issuer's proposed QIS will reflect a payment structure that provides increased reimbursement or other market-based incentives for addressing at least one of the topics specified in section 1311(g)(1) of the Affordable Care Act.

The QIS design should include elements such as: A rationale that describes its relevance to the QHP's enrollee population; proposed performance measures and targets; description of activities to reduce health and health care disparities, as well as other chosen topics, goals, timeline, and information about barriers and mitigation planning. For example, we are considering requesting information from QHP issuers regarding the percentage of payments to providers that is adjusted based on quality and cost of health care services. We believe that QHP issuers measuring and reporting such information related to payment models that link quality and value of health care services is an important part of an issuer's QIS. We also believe that information regarding provider payment models and market-based incentives that link quality and value would promote transparency of such health plan quality data to Exchanges to help make better informed QHP certification decisions. We propose that one year after submitting the QIS implementation plan, the QHP issuer would submit information including, an annual update including a description of progress of QIS implementation activities, analysis of progress using proposed measures and targets, and any modifications to the QIS. Currently, we do not intend to require specific performance measures to be included in a QIS; however, we anticipate that health plan quality measures required for the QRS could be incorporated in a QHP issuer's QIS. We believe that the proposed implementation and reporting for the QIS over time would provide meaningful QIS data from QHP issuers by minimizing administrative effort while also allowing for flexibility and innovation. We anticipate issuing technical guidance in the future that will provide operational details including data validation, other data submission processes, timeframes and potential minimum enrollment size threshold for coverage offered through the FFE. This guidance would be updated on an annual basis (or more frequently as may be necessary). We propose to allow State Exchanges to establish the data validation and submission requirements for QIS data from QHP issuers that participate in their respective Exchanges.

In paragraph (c), we propose to direct a QHP issuer to submit data annually for activities that are conducted related to implementation of its QIS, in a manner and timeframe specified by the Exchange. For example, an issuer that participates in the FFE for two consecutive years for coverage beginning in January 2014 and January 2015 would submit a QIS implementation plan to the FFE during the fall 2016 post-certification period, and in a format specified by HHS. A progress update on the QHP issuer's QIS activities would be required the following year. Similarly, an issuer participating in the FFE for the first time during the 2015 open enrollment period for the 2016 coverage year would submit an implementation plan in the 2018 post-certification period to align with our proposed approach of phasing in the QIS over time and allowing a QHP issuer 2 years to collect data and develop quality improvement strategies for its QHPs offered through an Exchange, before the submission of an implementation plan is required. A progress update on the QHP issuer's QIS activities would be required the following year. We propose to allow State Exchanges to establish the specific timeline and format requirements for the annual submission of QIS data by QHP issuers that participate in their respective Exchanges.

We seek comment on the proposed general requirement in paragraph (a) that describes the QIS and the applicability to QHP issuers that have been participating for at least 2 years in an Exchange. We seek comment on whether the proposed QIS standards should be applicable to all types of QHPs offered through the Exchange (for example, stand-alone dental plans, QHPs providing child-only coverage, and health savings accounts) or if different standards should be developed for the different types of QHPs offered through the Exchange. We also seek comment regarding whether certain types of QHPs offered through the Exchange should be excluded from the QIS certification requirement.

We seek comment on the proposed data requirement in paragraph (b) and the proposed timeline in paragraph (c). We seek comment on the proposed approach of directing QHP issuers to provide information regarding an implementation plan followed by annual progress updates. We seek comment on whether there should be a minimum QHP enrollment size threshold to trigger the applicability of QIS standards proposed in § 155.1130. We also seek comment on what information is important to include for HHS and an Exchange to effectively monitor and evaluate a QIS. We seek comment on requiring information relating to provider payment models, such as an issuer's minimum target or goal set with regards to the percentage of provider payments adjusted for quality and cost, to be submitted for compliance with QIS standards proposed in § 155.1130. We also seek comment on whether QIS data submitted and evaluated under section 1311(g) should be collected in a uniform or standardized format or publically displayed to encourage transparency, support comparison of QHP issuer QIS activities, and align with other quality standards for QHP issuers.

We note that multi-State plans, as defined in § 155.1000(a), are subject to reporting QIS data for evaluation, as described in paragraph (b). This rulemaking proposes to codify this general requirement at § 156.1130(d). We anticipate that OPM will provide guidance on QIS reporting to issuers with whom it holds multi-State plan contracts.

8. Qualified Health Plan Issuer Responsibilities

a. Administrative Appeals (§ 156.1220(c))

In the 2015 Payment Notice, we established an administrative appeals process designed to address unresolved discrepancies regarding advance payments of the premium tax credit, advance payments of cost-sharing reductions, FFE user fee payments, payments and charges for the premium stabilization programs, cost-sharing reduction reconciliation payments and charges, and assessments of default risk adjustment charges. We established a three-tier appeals process: a request for reconsideration under § 156.1220(a); a request for an informal hearing before a CMS hearing officer under § 156.1220(b); and a request for review by the Administrator of CMS under § 156.1220(c).

Under § 156.1220(a), we provided that an issuer may file a request for reconsideration of a processing error by HHS, HHS's incorrect application of the relevant methodology, or HHS's mathematical error only for advance payments of the premium tax credit, advance payments of cost-sharing reductions, FFE user fee payments, payments and charges for the premium stabilization programs, cost-sharing reduction reconciliation payments and charges, and assessments of default risk adjustment charges for a benefit year. In § 156.1220(a)(6), we stated that a reconsideration decision would be final and binding for decisions regarding the advance payments of the premium tax credit, advance payments of cost-sharing reductions, and FFE user fees. A reconsideration decision with respect to other matters would be subject to the outcome of a request for informal hearing filed in accordance with § 156.1220(b).

Under § 156.1220(b), an issuer that elects to challenge the reconsideration decision may request an informal hearing before a CMS hearing officer. The CMS hearing officer's decision would be final and binding, but subject to any Administrator's review initiated in accordance with § 156.1220(c).

We stated in § 156.1220(c)(1) that if the CMS hearing officer upholds the reconsideration decision, the issuer is permitted to request a review by the Administrator of CMS within 15 calendar days of the date of the CMS hearing officer's decision. We are proposing to modify this process to also permit CMS the opportunity to request review of the CMS hearing officer's decision, and to permit the Administrator of CMS to decline to review the CMS hearing officer's decision. Specifically, we propose to amend § 156.1220(c)(1) to permit either the issuer or CMS to request review by the Administrator of the CMS hearing officer's decision. We propose to provide that any request for review of the hearing officer's decision must be submitted to the Administrator of CMS within 15 calendar days of the date of the hearing officer's decision, and must specify the findings or issues that the issuer or CMS challenges. We propose that the issuer or CMS be permitted to submit for review by the Administrator a statement supporting the decision of the CMS hearing officer.

We also propose to amend § 156.1220(c)(2) to provide the Administrator of CMS with the discretion to review or not review the decision of the CMS hearing officer after receiving a request for review under § 156.1220(c)(1). We believe such discretion will permit the Administrator to focus resources on the priority matters, including disputes with implications for other issuers. In keeping with our current process set forth in § 156.1220(c), we propose that if the Administrator elects to review the CMS hearing officer's decision, the Administrator will review the statements of the issuer and CMS, and any other information included in the record of the CMS hearing officer's decision, and will determine whether to uphold, reverse, or modify the CMS hearing officer's decision. We propose that the issuer or CMS be required to prove its case by clear and convincing evidence with respect to issues of fact, and that the Administrator will send the decision and the reasons for the decision to the issuer. As established in § 156.1220(c)(3), the Administrator's decision is final and binding.

We note that this process is consistent with the Medicare Advantage risk adjustment data validation audit dispute and appeal processes set forth in 42 CFR 422.311 and believe that this proposal will strengthen the administrative appeal process by providing CMS the opportunity to appeal inconsistencies from prior decisions and focus resources on disputes affecting many issuers. We seek comment on this proposal.

*I. Part 158—Issuer Use of Premium Revenue: Reporting and Rebate Requirements*

1. Treatment of Cost-Sharing Reductions in MLR Calculation

The Premium Stabilization rule (77 FR 17220) aligned the definition of ''allowable costs'' under the risk corridors program at § 153.500 with the definition of incurred claims under the MLR program at § 158.410 and expenditures for health care quality and health information technology under § 158.150–§ 158.151. In the 2014 Payment Notice, we additionally specified that allowable costs under risk corridors must be reduced by the amount of cost-sharing reduction payments received from HHS. While the MLR regulation describes a number of adjustments to an issuer's incurred claims in the MLR calculation, it currently does not describe how incurred claims should be adjusted to reflect cost-sharing reduction receipts by the issuer. To align the calculations between the two programs, we propose to specify that cost-sharing reduction payments should be deducted from incurred claims under the MLR program just as they are deducted from allowable costs under the risk corridors program. As we previously stated in the 2014 Payment Notice, it is our understanding that in most fee-for-service arrangements, cost-sharing reductions will be passed through to the fee-for-service provider, and therefore no adjustment to incurred claims for cost-sharing reduction payments is required to account for any retained payments. In contrast, in capitated arrangements, cost-sharing reduction payments should be accounted for as a reduction to incurred claims because capitation payments (which are reflected directly in an issuer's incurred claims) will be raised to account for the reductions in providers' cost-sharing income, and the issuer will retain the cost-sharing reduction payments. For these reasons, we propose to amend § 158.140(b)(1) to clarify that cost-sharing reduction payments received by the issuer, to the extent not reimbursed to the provider furnishing the item or service, must be deducted from incurred claims.

2. Reporting of Federal and State Taxes

The MLR December 1, 2010 interim final rule (75 FR 74864) directs issuers to report Federal and State taxes and assessments that are excluded from premium in the MLR and rebate calculations separately from Federal and State taxes and assessments not excluded from premium in MLR and rebate calculations. Specifically, the interim final rule notes that Federal taxes excluded from premium in the MLR include all Federal taxes and assessments allocated to health insurance coverage reported under section 2718 of the PHS Act. The Federal taxes not excluded from premium in the MLR under the interim final rule include Federal income taxes on investment income and capital gains. The State taxes excluded from premium in the MLR under the interim final rule include State income, excise, premium, and certain other taxes, and for certain issuers, community benefit expenditures. The State taxes not excluded from premium in the MLR under the interim final rule include State sales taxes and ceded premium taxes. While our technical guidance and the instructions for the MLR report required by section 2718 of the PHS Act provide some additional details regarding certain types of taxes that may or may not be excluded from premium, we believe that the current reference to all taxes and assessments allocated to health insurance coverage reported under section 2718 of the PHS Act would benefit from further clarification for future MLR reporting years. Specifically, employment taxes such as the employer and employee shares of the Federal Insurance Contributions Act

(FICA) and the Railroad Retirement Tax Act (RRTA) taxes, the Federal Unemployment Act (FUTA) and State unemployment taxes, and other similar taxes represent an administrative cost that is more directly related to an issuer's overhead rather than to the characteristics of its health insurance business in a particular State and market. Therefore, in this rulemaking, we propose to amend the provisions for the reporting of Federal and State taxes in § 158.162(a)(2) and (b)(2) to provide that Federal and State employment taxes should not be excluded from premium in the MLR and rebate calculations.

3. Distribution of Rebates to Group Enrollees in Non-Federal Governmental Plans

The December 7, 2011 MLR Rebate Requirements for Non-Federal Governmental Plans interim final rule (76 FR 76596) directs issuers to distribute rebates to the group policyholders of non-Federal governmental plans. Under CMS's direct enforcement authority over non-Federal governmental plans, the interim final rule further directs the group policyholders of such plans to use the portion of the rebate attributable to the amount of premium paid by subscribers of such plans for the benefit of subscribers in one of three prescribed ways. These provisions were put in place to ensure that rebates are used for the benefit of enrollees of non-Federal governmental plans, who do not receive the protections of Employee Retirement Income Security Act of 1974 (ERISA), as amended. Under ERISA and implementing regulations, most plan participants are assured that the rebate (when the rebate is determined to be a plan asset) is applied for their benefit within 3 months of receipt by the policyholder. Currently, no similar protection is afforded to subscribers of non-Federal governmental plans.

In this proposed rule, we propose to amend the provisions for distribution of rebates in § 158.242(b) to require group policyholders of non-Federal governmental plans to use the subscribers' portion of the rebate for the subscribers' benefit within 3 months of receipt of the rebate by the group policyholder. Under this proposal, plans will continue to be able to use the rebate to reduce the subscribers' portion of premium for the subsequent policy year (including by spreading it over the 12 months of the policy year) as long as the subsequent policy year commences within 3 months of receipt of the rebate by the group policyholder. If the subsequent policy year commences outside this 3-month window, the group policyholder of a non-Federal governmental plan must distribute the subscribers' portion of the rebate within 3 months in the form of a cash refund or by applying a mid-policy year premium credit to the subscriber's portion of premium. We note that, because under § 158.242(b)(3) group health plans that are not governmental plans and are not subject to ERISA (such as church plans) must follow the same rebate distribution rules in order to receive the rebate directly, the same distribution deadline will apply to such plans. Policyholders that are non-Federal governmental or other group health plans not subject to ERISA that do not apply or distribute rebates within 3 months of receipt will be required to pay interest on the rebates, much the same as issuers are required to do if they do not disburse the rebate to the policyholder by the due date. This proposed policy will ensure that consumers enrolled in group health plans not subject to ERISA do not experience unnecessary delays in receiving the benefit of the rebates.

## IV. 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. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 13. 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 these issues for the following sections of this proposed rule that contain ICRs. We generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 35 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.

*A. ICRs Regarding Standards for Notification of Change of Ownership (§ 146.152(i), § 147.106(g), § 148.122(j))*

When an issuer that offers a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance eligible plan experiences a change in ownership, the issuer would be required to notify HHS of a change of ownership in a manner to be specified by HHS and provide the legal name, Health Insurance Oversight System (HIOS) plan identifier, and tax identification number of the original and post-transaction issuers and the effective date of the change of ownership. The information would have to be submitted by the latest of (1) the date the transaction is entered into; or (2) the 30th day prior to the effective date of the transaction. The burden associated with this proposed requirement would be the time and effort for the issuer to notify HHS of a change of ownership. We estimate that it would take an insurance operations analyst 30 minutes (at an hourly wage rate of $56.63) to prepare the data related to the change of ownership, and 10 minutes for a senior manager (at an hourly wage rate of $103.95) to review the data and transmit it electronically to HHS. We estimate that it would cost an issuer $45.65 to comply with this reporting requirement. Although at this time we cannot precisely estimate the number of issuers that would be reporting changes of ownership, we expect that no more than 20 issuers would be subject to this reporting requirement annually, for a total burden of $913.

*B. ICRs Regarding Effective Rate Review Programs (§ 154.301)*

In § 154.301(b)(2), we propose that if a State intends to make the information contained in Parts I, II, and III of the Rate Filing Justification regarding proposed rate increases subject to review available to the public prior to the date specified in guidance by the Secretary, or if it intends to make the information contained in Parts I, II, and III of the Rate Filing Justification regarding final rate increases available to the public prior to the first day of the annual open enrollment period for the applicable calendar year, the State must notify CMS in writing of its intent to publish this information at least 30 days before it makes the information public and the date it intends to make the information public. We intend to seek OMB approval and solicit public comment on this information collection

requirement, in accordance with the Paperwork Reduction Act of 1995, at a future date.

*C. ICRs Regarding Standards for HHS-Approved Vendors of Federally-Facilitated Exchange Training for Agents and Brokers (§ 155.222)*

In § 155.222, we describe the information collection and disclosure requirements that pertain to the approval of vendors' FFE agent and broker training programs, including information verification and administration of identity proofing. The burden estimate associated with these disclosure requirements includes the time and effort required for vendors to develop, compile, and submit the application information and any documentation or agreement necessary to support oversight in the form and manner required by HHS. We estimate that HHS would receive applications from nine or fewer vendors, and that it will take each vendor approximately 10 hours to complete an application and the agreement, at a cost of $24.10 per hour. Therefore, we estimate a total burden of approximately 90 hours and a cost of $2,169 as a result of this proposed requirement. HHS anticipates developing a model vendor application that will include data elements necessary for HHS review and approval. If the proposal is finalized, HHS would solicit public comment on the model application, estimate the burden on vendors for complying with this provision of the regulation, and submit the application for OMB approval in the future. We request comment on the burden for the application and review process for these entities. In addition, HHS will consider current training costs for State licensed agents and brokers for comparable training offered by the vendor to comparable audiences when reviewing vendor applications.

In § 155.222(d), we propose a process through which HHS would monitor approved vendors for ongoing compliance. HHS may require additional information from approved vendors to be periodically submitted in order to ensure continued compliance related to the obligations described in this section. We estimate that HHS would receive applications from nine or fewer vendors. We estimate that it will take no longer than 10 hours (at a cost of $24.10 per hour) for each vendor to comply with any additional monitoring by HHS. Therefore, we estimate a total annual burden of 90 hours for all vendors for a total cost burden estimate of $2,169. In § 155.222(e) of this proposed rule, we propose to establish a process by which a vendor whose application is not approved or whose approval is revoked by HHS can appeal HHS's determination. We discuss the costs associated with the proposed appeals process in the Regulatory Impact Analysis (RIA) section of this proposed rule.

*D. ICRs Regarding Collection of Data To Define Essential Health Benefits (§ 156.120)*

In § 156.120, we propose to give States an opportunity to select a new base-benchmark plan to serve as a reference plan to define EHB in that State for the 2017 plan year. The information collection associated with State selection and submission of a benchmark plan and associated benefits is currently approved under OMB Control Number 0938–1174. We expect to collect less information for the 2017 plan year than we previously collected for this purpose, and therefore expect to revise our current burden estimate to reflect the reduced burden on issuers. We intend to seek OMB approval and solicit public comment on this information collection requirement, in accordance with the Paperwork Reduction Act of 1995, at a future date.

*E. ICRs Regarding Prescription Drug Benefits (§ 156.122)*

In § 156.122, we propose to require health plans that are required to comply with EHB to establish a P&T Committee according to the process and standards proposed in this rule. We expect that health plans have already established P&T Committees that meet these standards and follow these processes. We propose recordkeeping requirements for the P&T committee in this proposed rule. However, because we believe that issuers are already required to maintain such documentation, such as for accreditation purposes, and issuers tend to use the same formulary drug list for multiple plans, we believe that our propose recordkeeping requirement will only impose minimal additional burden on issuers. We, therefore, estimate that it will take a compliance officer approximately 8 hours (at an hourly wage rate of $43.34) to prepare for and attend meetings on a quarterly basis, and maintain the required documentation. Therefore, for approximately 2,400 plans in the individual and small group market that would be subject to this requirement, we estimate an aggregate annual burden of 76,800 hours ($3,328,512) associated with this proposed requirement.

*F. ICRs Regarding Termination Notices for SHOP (§ 156.285(d)(1)(ii)) and § 155.735(d)(1)(iii) and (g))*

We are proposing in § 156.285(d)(1)(ii) and § 155.735(d)(1)(iii) and (g) to require QHP issuers participating in the SHOP to provide notices to qualified employers and enrollees related to terminations due to rescission in accordance with § 147.128 and due to the QHP's termination, decertification, or non-renewal of certification, while shifting the burden of notifying qualified employers and enrollees of terminations due to loss of eligibility or nonpayment of premiums to the SHOP. We note that, while our current rules require issuers to provide notice of terminations when coverage is rescinded in accordance with § 147.128, or when the issuer elects not to seek recertification for a QHP offered through the SHOP, this proposal would expand QHP issuers' notice requirements to circumstances in which the QHP terminates or is decertified in accordance with § 155.1080. The proposed notices must inform the enrollee and qualified employer, promptly and without undue delay, of the termination effective date and the reason for the termination. The burden estimate associated with this requirement includes the time and effort needed to develop the notice and to distribute it through an automated process to qualified employer and the enrollee, as appropriate. We estimate that approximately 445 QHP issuers (including dental issuers) will participate on the SHOP. We estimate that it will take approximately 35 hours annually to develop and transmit this notice, including 4 hours for a health policy analyst (at an hourly wage rate of $58.05), 3 hours for an operations analyst (at an hourly wage rate of $56.63), 25 hours for a computer programmer (at an hourly wage rate of $48.61), 2 hours for a fulfillment manager (at an hourly wage rate of $27.00), and 1 hour for a senior manager (at an hourly wage rate of $103.95). Therefore, we estimate an aggregate burden of 15,575 hours across and $790,004 for QHP issuers participating in the SHOP as a result of this proposed requirement.

Based on the above per-notice development rates and hours, we believe that each State-based SHOP would spend roughly 70 hours annually to prepare the 2 termination notices (35 hours per notice), for a total cost of $3,550 to design and implement the notices proposed under § 155.725(g). We estimate that there will be

approximately 18 State-based SHOPs, and that all State-based SHOPs would be subject to this requirement. Therefore, we estimate an aggregate burden of 1,260 hours and $63,900 for State-based SHOPs as a result of this proposed requirement.

*G. ICRs Regarding Plan Variation Notices and Changes in Eligibility for Cost-Sharing Reductions (§ 156.420 and § 156.425)*

In § 156.420(h), we propose that an issuer must provide a summary of benefits and coverage (SBC) for each plan variation of a QHP it offers in accordance with the rules set forth under § 156.420 (referred to in this section as a ''plan variation SBC''), in a manner that is consistent with the standards set forth in § 147.200. In § 156.425(c), we propose that if an individual's assignment to a plan variation or standard plan without cost-sharing reductions changes in the course of a benefit year (in accordance with § 156.425(a)), an issuer must provide an SBC in a manner consistent with the standards set forth in § 147.200, as soon as practicable after receiving notice from the Exchange of the individual's change in eligibility and no later than 7 business days following receipt of notice. The burden associated with this proposed requirement would be the time and effort necessary for an issuer to create and provide plan variation SBCs to affected individuals under § 156.420.

Nearly all issuers that would be affected by this proposal already incurred one-time start-up costs related to implementing the SBC requirements established under § 147.200, and are already providing SBCs that reflect the standard QHPs they offer.[64] We estimate that QHP issuers would leverage existing processes to generate and distribute plan variation SBCs under proposed § 156.420(h). We estimate that issuers would incur additional burden to produce and distribute plan variation SBCs under the proposed §§ 156.420(h) and 156.425(c). The additional burden would be associated with three tasks: (1) Producing plan variation SBCs; (2) distributing plan variation SBCs; and (3) distributing a plan variation SBC (or standard QHP without cost-sharing reductions) after a change in eligibility in the course of a benefit year. We intend to revise the information collection approved under OMB Control Number 0938–1187 to reflect this additional burden.

1. Producing Plan Variation SBCs

Because stand-alone dental plans (SADPs) are not required to complete SBCs, we exclude these plans from the number of QHPs that we estimate would be required to comply with the proposed requirement. We estimate that approximately 575 issuers participate in the Exchange, and that each issuer offers one QHP per metal level, with four zero cost-sharing plan variations and four limited cost-sharing plan variations (two per metal level per QHP) and three silver plan variations.[65] Therefore, we estimate that each issuer offers 11 plan variations, and would produce 11 SBCs to reflect each plan variation, for a total of 6,325 plan variation SBCs annually. We estimate that it will take up to one hour to produce each plan variation SBC, for an annual time burden of 11 hours for each issuer. We estimate that it would take an information technology (IT) professional 5 hours (at an hourly wage rate of $54.39), a benefits/sales professional 5.5 hours (an hourly wage rate of $44.90) per hour, and an attorney 30 minutes (at an hourly wage rate of $84.96) to comply with the proposed requirements. Therefore, we estimate a total annual cost burden of $561.44 per issuer, and $322,828 (6,325 hours) for all issuers affected by this proposed requirement.

2. Distributing Plan Variation SBCs

We are unable to estimate the number of CSR-eligible enrollees at this time and the related burden on issuers to provide for these disclosures. We expect that the vast majority (approximately 95 percent) of the total number of plan variation SBCs provided in accordance with proposed § 156.420(h) would be sent prior to enrollment and electronically at minimal cost, under the timing and form requirements set forth in § 147.200(a)(1)(iv) and (a)(4)(iii). Of the remaining number of plan variation SBCs that would be provided, we estimate that approximately 4 percent of these disclosures would be sent in other instances, in accordance with the other timing requirements that may apply, including, requests for a plan variation SBC made by a consumer in the course of the benefit year. We expect that the vast majority of these disclosures would be provided electronically at minimal cost. We assume that there are costs for paper disclosures, but no costs for electronic disclosures.[66] We expect that up to one percent of plan variation SBCs would be provided in paper form. We estimate that the labor costs associated with distributing each SBC would be $1.63 (3 minutes for an administrative assistant at an hourly wage rate of $32.59), and that printing, mailing, and supply costs would be $0.69 per SBC ($0.05 to print each page and $0.49 for first class postage), for a total costs of $2.32 per SBC. We estimate an annual burden of $331 for each QHP issuer and an aggregate burden of $190,240 for all issuers that would be subject to the proposed requirement.

3. Notice After Changes in Eligibility for Cost-Sharing Reductions

In § 156.425(c), we propose to require an issuer to provide adequate notice to the individual about the availability of the SBC that accurately reflects the applicable plan variation of the QHP (or the standard QHP without CSRs) if an enrollee's eligibility for CSRs changes in the course of a benefit year. Similarly, if an enrollee changes QHPs as the result of a special enrollment period in accordance with § 155.420(d)(6), the issuer of the new QHP would be required to provide the individual with an SBC that accurately reflects the new QHP. We are unable to estimate the number of CSR-eligible enrollees who would experience a change in eligibility for CSRs at this time and the related burden on issuers to provide for these disclosures. We expect that the vast majority (approximately 99 percent) of the total number of SBCs provided in accordance with proposed § 156.425(c) would be sent electronically at minimal cost. We estimate that the labor costs associated with producing each SBC would be approximately $1.63 (3 minutes for an administrative assistant at an hourly wage rate of $32.59), and that printing, and mailing costs would

[64] Summary of Benefits and Coverage and Uniform Glossary Final Rule (''SBC Final Rule''), 77 FR 8690 (Feb. 14, 2012). We have already received OMB approval under OMB control number 0938–1146 for the collection of information requirements related to the SBC provisions as finalized under current rules.

[65] Under § 156.420(a), for each of its silver health plans that an issuer offers, the issuer must offer three variations of the standard silver plan that reflect, in addition to the applicable annual limitation on cost-sharing, the following: (1) A silver plan variation with cost-sharing reductions such that the actuarial value (AV) of the variation is 94 percent plus or minus the de minimis variation for a silver plan variation; (2) a silver plan variation with cost-sharing reductions such that the AV of the variation is 87 percent plus or minus the de minimis variation for a silver plan variation; and (3) a silver plan variation with cost-sharing reductions such that the AV of the variation is 73 percent plus or minus the de minimis variation for a silver plan variation. Under § 156.420(b), for each QHP at any metal level that an issuer offers, the issuer must offer two variations to American Indians/Alaska Natives that reflect the following: (1) A variation of the QHP with all cost sharing eliminated; and (2) a variation of the QHP with no cost-sharing on any item or service that is an essential health benefit furnished directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or through referral under contract health services.

[66] SBC Final Rule, 77 FR 8691 (Feb. 14, 2012).

be $0.69 ($0.05 to print each page and $0.49 for first class postage), for a total cost of $2.32 per SBC. We estimate a total annual cost of $165 for each QHP issuer and $95,120 for all QHP issuers that would be subject to this proposed requirement.

*H. ICRs Regarding the Collection and Reporting of Quality Improvement Strategies (§ 156.1130)*

In § 156.1130, we propose requirements for QHP issuers related to data collection and submission of information regarding a quality improvement strategy (QIS). QIS standards will establish the minimum requirements for the FFE, States with plan management functions and that State Exchanges must follow. State Exchanges can, if desired, build additional reporting requirements in accordance with their needs. Based on current agency estimates of the number of major medical QHPs and stand-alone dental plans (SADPs) being offered through the Exchange, we estimate that 677 QHP issuers would collect and report QIS data annually. This estimate assumes 677 QHP issuers (all QHP issuers in all Marketplace types, including SADPs) and covers the annual costs for a QHP issuer over a 3-year period (2016–2018). The burden associated with submitting initial attestations as part of the QHP certification process is currently accounted for under OMB Control Number 0938–1187. We estimate that it would take each QHP issuer 48 hours (at a cost of $3,372) to collect this QIS data and to submit this information to the Exchange. Therefore, we estimate an aggregate burden of 32,496 hours and $2,282,844 as the total annual burden for the anticipated 677 QHP issuers associated with these proposed requirements.

If SADPs are not included, the estimate assumes 575 QHP issuers (all issuers in all Marketplaces excluding SADPs) and covers the annual costs for a QHP issuer over a 3-year period (2016–2018). The burden associated with submitting initial attestations as part of the QHP certification process is currently accounted for under OMB Control Number 0938–1187. We estimate that it would take each QHP issuer 48 hours (at a cost of $3,372) to collect this QIS data and to submit this information to the Exchange. Therefore, we would estimate an aggregate burden of 27,600 hours and $1,938,900 as the total annual burden for the anticipated 575 QHP issuers associated with these proposed requirements, if SADPs are not included.

TABLE 12—ANNUAL REPORTING, RECORDKEEPING AND DISCLOSURE BURDEN

| Regulation section(s) | Number of respondents | Responses | Burden per response (hours) | Total annual burden (hours) | Hourly labor cost of reporting ($) | Total labor cost of reporting ($) | Total capital/ maintenance costs ($) | Total cost ($) |
|---|---|---|---|---|---|---|---|---|
| § 155.222(a) ..... | 9 | 9 | 10.00 | 90 | 24.10 | 2,169 | 0 | 2,169 |
| § 155.222(d) ..... | 9 | 9 | 10.00 | 90 | 24.10 | 2,169 | 0 | 2,169 |
| § 155.725(g) ..... | 18 | 36 | 35.00 | 1,260 | 50.71 | 63,900 | 0 | 63,900 |
| § 156.122 ..... | 2,400 | 2,400 | 32.00 | 76,800 | 43.34 | 3,328,512 | 0 | 3,328,512 |
| § 156.285(d) ..... | 445 | 445 | 35.00 | 15,575 | 50.72 | 790,004 | 0 | 790,004 |
| § 156.420 ..... | 575 | 6,325 | 1.00 | 6,325 | 51.04 | 322,828 | 0 | 322,828 |
| § 156.420 ..... | 575 | 81,000 | 0.05 | 4,050 | 32.59 | 131,990 | 58,250 | 190,240 |
| § 156.425 ..... | 575 | 41,000 | 0.05 | 2,025 | 32.59 | 65,995 | 29,125 | 95,120 |
| § 156.1130 ..... | 677 | 677 | 48 | 32,496 | 70.25 | 2,282,844 | 0 | 2,282,844 |
| Total ..... | 2,400 | ..... | ..... | 138,711 | ..... | 6,990,411 | 87,375 | 7,007,786 |

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 requirements. These requirements are not effective until they have been approved by 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.hhs.gov/PaperworkReductionActof1995;* email your request, including your address, phone number, OMB control number, and CMS document identifier, to *Paperwork@cms.hhs.gov;* 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. Please include ''CMS–9944–P,'' the ICR's OMB control number, and the CMS document ID number in your comment.

PRA-specific comments must be received by January 26, 2015.

## V. 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 proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VI. Regulatory Impact Statement (or Analysis)

*A. Statement of Need*

This proposed rule proposes standards related to the premium stabilization programs (risk adjustment, reinsurance, and risk corridors) for the 2016 benefit year, as well as certain modifications for the 2015 benefit year, that will protect issuers from the potential effects of adverse selection and protect consumers from increases in premiums due to issuer uncertainty. The Premium Stabilization Rule and the 2014 and 2015 Payment Notices provided detail on the implementation of these programs, including the specific parameters for the 2014 and 2015 benefit years applicable to these programs. This rule also proposes additional standards related to essential health benefits, meaningful access in the Exchange, consumer assistance tools and programs of an Exchange, non-Navigator assistance personnel, cost-sharing parameters and cost-sharing reduction notices, quality improvement strategy standards for issuers of qualified health plans participating in Exchanges, guaranteed availability and guaranteed renewability, minimum essential coverage, the medical loss ratio

program, the Small Business Health Options Program, and FFE user fees.

*B. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year).

OMB has determined that this proposed rule is ''economically significant'' within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any 1 year. Accordingly, we have prepared an RIA that presents the costs and benefits of this proposed rule.

Although it is difficult to discuss the wide-ranging effects of these provisions in isolation, the overarching goal of the premium stabilization, market standards, and Exchange-related provisions and policies in the Affordable Care Act is to make affordable health insurance available to individuals who do not have access to affordable employer-sponsored coverage. The provisions within this proposed rule are integral to the goal of expanding coverage. For example, the premium stabilization programs help prevent risk selection and decrease the risk of financial loss that health insurance issuers might otherwise expect in 2016 and the advance payments of the premium tax credit and cost-sharing reduction programs assist low- and moderate-income consumers and American Indians/Alaska Natives in purchasing health insurance. The combined impacts of these provisions affect the private sector, issuers, and consumers, through increased access to health care services including preventive services, decreased uncompensated care, lower premiums, establishment of quality improvement strategy standards, and increased plan transparency. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to affordable health coverage.

HHS anticipates that the provisions of this proposed rule will help further the Department's goal of ensuring that all consumers have access to quality and affordable health care and are able to make informed choices, that Exchanges operate smoothly, that premium stabilization programs work as intended, that SHOPs are provided flexibility, and that employers and consumers are protected from fraudulent and criminal activities. Affected entities such as QHP issuers would incur costs to comply with the proposed provisions, including administrative costs related to notices, quality improvement strategy requirements, training and recertification requirements, and establishing a larger provider network. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

*C. Impact Estimates of the Payment Notice Provisions and Accounting Table*

In accordance with OMB Circular A–4, Table 13 below depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This proposed rule implements standards for programs that will have numerous effects, including providing consumers with affordable health insurance coverage, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in an Exchange. We are unable to quantify certain benefits of this proposed rule—such as improved health outcomes and longevity due to continuous quality improvement and increased insurance enrollment—and certain costs—such as the cost of providing additional medical services to newly-enrolled individuals. The effects in Table 13 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for reinsurance contributing entities and health insurance issuers. The annualized monetized costs described in Table 13 reflect direct administrative costs to these entities as a result of the proposed provisions, and include administrative costs related to notices, quality improvement strategy requirements, and training and recertification requirements that are estimated in the Collection of Information section of this proposed rule. The annual monetized transfers described in Table 13 include costs associated with the reinsurance contribution fee and the risk adjustment user fee paid to HHS by issuers, and additional MLR rebate payments from issuers to consumers. We note estimated transfers in Table 13 do not reflect any FFE user fees paid by insurance issuers because we cannot estimate those fee totals. We also note that, while we are proposing a 2016 reinsurance contribution rate that is lower than the 2014 and 2015 reinsurance contribution rates, total reinsurance administrative expenses, included in the reinsurance contribution rate, will slightly increase from 2015 to 2016. In addition, as a result of HHS's increased contract costs related to risk adjustment operations and risk adjustment data validation, we are proposing to collect a total of $50 million in risk adjustment user fees or $1.75 per enrollee per year from risk adjustment issuers, which is greater than the $0.96 per-enrollee-per-year risk adjustment user fee amount established for benefit year 2015. This increase is due in large part to risk adjustment data validation costs that will occur in 2016. We are also including costs associated with administrative appeals under § 156.1220 in the RIA of this proposed rule.

TABLE 13—ACCOUNTING TABLE

| Benefits: |
|---|
| Qualitative: |
| * Increased enrollment in the individual market leading to improved access to health care for the previously uninsured, especially individuals with medical conditions, which will result in improved health and protection from the risk of catastrophic medical expenditures. |

TABLE 13—ACCOUNTING TABLE—Continued

* Encourage continuous quality improvement among QHP issuers to improve health outcomes at lower costs.
* Allow Exchanges to make informed QHP certification decisions.
* Increasing coverage options for small businesses and part-time employees while mitigating the effect of adverse selection.
* Ensure that consumers in group health plans not subject to ERISA receive the benefit of MLR rebates in a timely manner.

| Costs: | Estimate | Year dollar | Discount rate | Period covered |
|---|---|---|---|---|
| Annualized Monetized ($/year) | 7.00 million | 2014 | 7% | 2015–2018 |
| | 7.00 million | 2014 | 3% | 2015–2018 |

Quantitative:

* Costs incurred by issuers and contributing entities to comply with provisions in the proposed rule.
* Costs incurred by States for complying with audits of State-operated reinsurance programs.

| Transfers: | Estimate | Year dollar | Discount rate | Period covered |
|---|---|---|---|---|
| Annualized Monetized ($/year) | 63.61 million | 2014 | 7% | 2015–2018 |
| | 63.52 million | 2014 | 3% | 2015–2018 |

* Transfers reflect incremental cost increases from 2015–2016 for reinsurance administrative expenses and the risk adjustment user fee, which are transfers from contributing entities and health insurance issuers to the Federal government. Transfers also reflect annual transfer from shareholders or nonprofit stakeholders to enrollees of rebates paid by issuers for coverage in the individual and group markets, resulting from clarification regarding MLR methodology to account for Federal and State employment taxes.
* Unquantified: Lower premium rates in the individual market due to the improved risk profile of the insured, competition, and pooling.

This RIA expands upon the impact analyses of previous rules and utilizes the Congressional Budget Office's (CBO) analysis of the Affordable Care Act's impact on Federal spending, revenue collection, and insurance enrollment. Table 14 summarizes the effects of the risk adjustment and reinsurance programs on the Federal budget from fiscal years 2015 through 2018, with the additional, societal effects of this proposed rule discussed in this RIA. We do not expect the provisions of this proposed rule to significantly alter CBO's estimates of the budget impact of the risk adjustment, reinsurance and risk corridors programs that are described in Table 14. For this RIA, we are shifting the estimates for the risk adjustment and reinsurance programs to reflect the 4-year period from fiscal years 2015 through 2018, because CBO's scoring of the risk adjustment and reinsurance programs assumed that payments and charges would begin in 2014, when in fact these payments and charges will begin in the 2015 calendar year for the 2014 benefit year. The CBO assumed that aggregate collections for the risk corridors program would offset payments made to other issuers. We note that transfers associated with the risk adjustment and reinsurance programs were previously estimated in the Premium Stabilization Rule; therefore, to avoid double-counting, we do not include them in the accounting statement for this proposed rule (Table 13).

In addition to utilizing CBO projections, HHS conducted an internal analysis of the effects of its regulations on enrollment and premiums. Based on these internal analyses, we anticipate that the quantitative effects of the provisions proposed in this rule are consistent with our previous estimates in the 2015 Payment Notice for the impacts associated with the cost-sharing reduction program, the advance payments of the premium tax credit program, the premium stabilization programs, and FFE user fee requirements.

TABLE 14—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT, REINSURANCE, AND RISK CORRIDORS PROGRAMS FROM FY 2014–2018, IN BILLIONS OF DOLLARS

| Year | 2014 | 2015 | 2016 | 2017 | 2018 | 2014–2018 |
|---|---|---|---|---|---|---|
| Risk Adjustment, Reinsurance, and Risk Corridors Program Payments | 0 | 18 | 19 | 22 | 15 | 74 |
| Risk Adjustment, Reinsurance, and Risk Corridors Program Collections* | 0 | 19 | 18 | 22 | 15 | 74 |

*Risk adjustment program payments and receipts lag by one quarter. Receipt will fully offset payments over time. Source: Congressional Budget Office. Updated Estimates of the Insurance Coverage Provisions of the Affordable Care Act.

1. Rate Review

The proposed rule would trigger review of rate increases that meet or exceed the applicable review threshold when such increases happen at the ''plan'' level rather than at the ''product'' level. This would protect consumers against unreasonable rate increases for their plans, since, under current regulations, it is possible for a plan to experience a rate increase higher than the threshold and still avoid review because the average rate increase for the product does not meet or exceed the threshold. Issuers already submit this level of information under an existing information collection and are not likely to experience significant increase in costs related to their submissions. States may have to review more submissions and experience an increase in related costs. The proposal to establish a uniform timeframe by which issuers in every State must submit a completed Rate Filing Justification to CMS and the applicable State for all rate increases, including both QHPs and non-QHPs, would provide timely information to consumers and other stakeholders and

ensure that State and Federal regulators have adequate time for review prior to implementation of a rate increase. This approach would also reduce the potential for anti-competitive behavior and promote fair market competition between issuers in the Exchange and non-Exchange markets. The proposed amendment to specify the timing for States to make proposed and final rate increase information available to the public would ensure that consumers have timely access to this information.

2. Change of Ownership Notification Requirement

We propose in § 147.106(g) that when an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan, experiences a change in ownership as recognized by the State in which the plan is offered, the issuer must notify HHS in a manner specified by HHS, by the later of (1) the date the transaction is entered into; or (2) the 30th day prior to the effective date of the transaction. We expect that upon notification, issuers may need to work with HHS to clarify operational processes related to the HHS-administered programs, and will follow forthcoming guidance related to such operational processes. We estimate the administrative costs associated with the proposed notification requirement in the Collection of Information section of this proposed rule.

3. Appeals Process for HHS-Approved Vendors for FFE Training of Agents and Brokers

In § 155.222, we propose information collection and disclosure requirements that pertain to the approval of vendors to have their FFE agent and broker training and information verification programs recognized for agents and brokers assisting with or facilitating enrollment in individual market or SHOP coverage through the FFE. We also establish a monitoring and appeals process for such HHS-approved vendors. We estimate that five vendors that apply may not have their application approved, and one vendor may have their approval revoked, and all of those vendors will appeal HHS's determination and submit additional documentation to HHS. We estimate that filing an appeal with HHS will take no longer than one hour. Therefore, at an hourly wage rate of $24.10, we estimate a total cost of $144.60 as a result of this proposed appeals process.

4. Risk Adjustment

The risk adjustment program is a permanent program created by the Affordable Care Act that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. We established standards for the administration of the risk adjustment program, in subparts D and G of part 45 of the CFR.

A State approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. As described in the 2014 and 2015 Payment Notices, if HHS operates risk adjustment on behalf of a State, it will fund its risk adjustment program operations by assessing a risk adjustment user fee on issuers of risk adjustment covered plans. For the 2016 benefit year, we estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2016 will be approximately $50 million, and that the risk adjustment user fee would be approximately $1.75 per enrollee per year. The increased risk adjustment user fee for 2016 is the result of the increased contract costs to support the risk adjustment data validation process.

5. Reinsurance

The Affordable Care Act directs that a transitional reinsurance program be established in each State to help stabilize premiums for coverage in the individual market by helping to pay the cost of treating high-cost enrollees. In the 2014 and 2015 Payment Notices, we expanded upon the standards set forth in subparts C and E of the Premium Stabilization Rule and established the 2014 and 2015 uniform reinsurance payment parameters and national contribution rate. In this proposed rule, we set forth the 2016 uniform reinsurance payment parameters and contribution rate and also propose a modification to the 2015 benefit year attachment point.

Section 153.220(c) provides that HHS will publish the uniform per capita reinsurance contribution rate for the upcoming benefit year in the annual HHS notice of benefit and payment parameters. Section 1341(b)(3)(B)(iii) of the Affordable Care Act specifies that $10 billion for reinsurance contributions is to be collected from contributing entities in 2014 (the reinsurance payment pool), $6 billion in 2015, and $4 billion in 2016. Additionally, sections 1341(b)(3)(B)(iv) and 1341(b)(4) of the Affordable Care Act direct that $2 billion in funds is to be collected for contribution to the U.S. Treasury in 2014, $2 billion in 2015, and $1 billion in 2016. Finally, section 1341(b)(3)(B)(ii) of the Affordable Care Act allows for the collection of additional amounts for administrative expenses. Taken together, these three components make up the total dollar amount to be collected from contributing entities for 2014, 2015 and 2016 benefit years of the reinsurance program under the uniform per capita contribution rate.

In the 2015 Payment Notice, we estimated that the Federal administrative expenses of operating the reinsurance program would be $25.4 million, based on our estimated contract and operational costs. We propose to use the same methodology to estimate the administrative expenses for the 2016 benefit year. We estimate this amount to be approximately $32 million for the 2016 benefit year. This estimate increased for the 2016 benefit year due to increased audit and data validation contract costs. We believe that this figure reflects the Federal government's significant economies of scale, which helps to decrease the costs associated with operating the reinsurance program. Based on our estimate of covered lives for which reinsurance contributions are to be made for 2016, we are proposing a uniform reinsurance contribution rate of $0.17 annually per capita for HHS administrative expenses. If a State establishes its own reinsurance program, HHS would transfer $0.085 of the per capita administrative fee to the State for purposes of administrative expenses incurred in making reinsurance payments, and retain the remaining $0.085 to offset the costs of collecting contributions. We note that the administrative expenses for reinsurance payments will be distributed to those States that operate their own reinsurance program in proportion to the State-by-State total requests for reinsurance payments made under the uniform reinsurance payment parameters.

6. Risk Corridors

The Affordable Care Act creates a temporary risk corridors program for the years 2014, 2015, and 2016 that applies to QHPs, as defined in § 153.500. Section 1342 of the Affordable Care Act directs the Secretary to establish a temporary risk corridors program that protects issuers against inaccurate rate setting from 2014 through 2016. The Affordable Care Act establishes the risk corridors program as a Federal program; consequently, HHS will operate the risk corridors program under Federal rules with no State variation.

In this proposed rule, we are proposing a clarification to the risk corridors transitional adjustment for

benefit year 2014. We are proposing to clarify that we intend to implement the risk corridors transitional adjustment for transitional plans only, as stated in the 2015 Payment Notice. This proposed clarification does not affect the impact of the risk corridors transitional adjustment.

For benefit year 2016, we are also proposing the treatment of excess risk corridors collections that may remain after the 3-year duration of the program. We are proposing to adjust the allowable administrative cost ceiling and profit floor so that any excess risk corridors collections that remain in benefit year 2016 are paid out to eligible QHP issuers. We anticipate that collections will fully offset payments over the 3-year duration of the program. Consequently, we do not believe that this proposal will have a monetary impact on QHP issuers or the Federal government.

7. SHOP

The SHOP facilitates the enrollment of eligible employees of small businesses into small group health insurance plans. A qualitative analysis of the costs and benefits of establishing a SHOP was included in the RIA published in conjunction with the Exchange Establishment Rule.[67]

Please see the Collection of Information section of this proposed rule for the costs expected to be incurred by State-based SHOPs and QHP issuers participating in the SHOP related to the proposed notification requirements related to terminations of coverage. We believe this cost is justified because SHOPs are best positioned to provide meaningful notice regarding terminations due to loss of eligibility and nonpayment of premiums in a timely manner, while issuers are best positioned to provide meaningful notice when coverage is terminated due to a rescission in accordance with § 147.128 or when the QHP is terminated, decertified, or its certification is not renewed. In this proposed rule, we also seek comment on whether to permit the Federally-facilitated SHOP to accept premium payment using a credit card and the impact of this potential policy, including how many FF–SHOP employers expect to use credit cards for payment.

8. User Fees

To support the operation of FFEs, we require in § 156.50(c) that a participating issuer offering a plan through an FFE must remit a user fee to HHS each month equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE. For the 2016 benefit year, we propose a monthly user fee rate equal to 3.5 percent of the monthly premium. We do not have an aggregate estimate of the collections from the user fees at this time because we do not yet have a count of the number of States in which HHS will run an FFE or Federally-facilitated SHOP in 2016. For the user fee charge assessed on issuers in the FFE, we intend to seek an exception to OMB Circular No. A–25R, which requires that the user fee charge be sufficient to recover the full cost to the Federal government of providing the special benefit. We seek this exception to ensure that the FFE can support many of the goals of the Affordable Care Act, including improving the health of the population, reducing health care costs, and providing access to health coverage as advanced by § 156.50(d).

9. Essential Health Benefits, Cost Sharing, and Actuarial Value

Issuers may incur minor administrative costs associated with altering benefits, cost-sharing and/or AV parameters of their plan designs to ensure compliance with the EHB requirements under this proposed rule. For example, issuers that do not currently meet the standards for EHB prescription drug coverage will incur contracting and one-time administrative costs to bring their prescription drug benefits into compliance. HHS expects that the process for compliance with the proposed EHB requirements will not significantly add to existing compliance costs because issuers have extensive experience in offering products with various benefits and levels of cost sharing and these modifications are expected to be relatively minor for most issuers.

In addition, we are proposing standards for a health plan's formulary exception process that includes an external review. We believe that issuers that provide EHB already have formulary exceptions processes and procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the plan. We do not expect the proposed requirements to significantly increase the volume of reviews conducted under issuers' contracts with Independent Review Organizations. Therefore, we do anticipate that this proposed requirement would result in any significant new cost for issuers.

10. Network Adequacy

Issuers may incur minor administrative costs associated with updating their provider directory to ensure compliance with the requirements under this proposed rule. Since issuers already maintain a directory and the expected modification is to re-locate that directory to a more user-friendly location on the issuer Web site, HHS expects that compliance will not demand any additional resources.

11. Downstream Entities

We propose to revise § 156.200(b)(7), to require that a QHP issuer comply with the standards under 45 CFR part 153 and not just the standards related to the risk adjustment program. Under § 156.340, notwithstanding any relationship(s) that a QHP issuer may have with delegated and downstream entities, a QHP issuer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities, as applicable, with all applicable standards, including the standards of subpart C of part 156 for each of its QHPs on an ongoing basis. Because we believe that QHP issuers have existing agreements with downstream entities that define responsibilities, we do not believe that this requirement will impose an additional burden on QHP issuers.

12. Provisions Related to Cost Sharing

The Affordable Care Act provides for the reduction or elimination of cost sharing for certain eligible individuals enrolled in QHPs offered through the Exchanges. This assistance will help many low- and moderate-income individuals and families obtain health insurance—for many people, cost sharing is a barrier to obtaining needed health care.[68]

To support the administration of the cost-sharing reduction program, we set forth in this proposed rule the reductions in the maximum annual limitation on cost sharing for silver plan variations. Consistent with our analysis in the 2014 and 2015 Payment Notices, we developed three model silver level QHPs and analyzed the impact on their AVs of the reductions described in the Affordable Care Act to the estimated

[67] Available at: *http://cciio.cms.gov/resources/files/Files2/03162012/hie3r-ria-032012.pdf.*

[68] Brook, Robert H., John E. Ware, William H. Rogers, Emmett B. Keeler, Allyson Ross Davies, Cathy D. Sherbourne, George A. Goldberg, Kathleen N. Lohr, Patricia Camp and Joseph P. Newhouse. *The Effect of Coinsurance on the Health of Adults: Results from the RAND Health Insurance Experiment.* Santa Monica, CA: RAND Corporation, 1984. Available at: *http://www.rand.org/pubs/reports/R3055.*

2016 maximum annual limitation on cost sharing for self-only coverage ($6,850). We do not believe these changes will result in a significant economic impact. Therefore, we do not believe the provisions related to cost-sharing reductions in this proposed rule will have an impact on the program established by and described in the 2015 Payment Notice.

We also proposed the premium adjustment percentage for the 2016 benefit year. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013. The annual premium adjustment percentage sets the rate of increase for three parameters detailed in the Affordable Care Act: The annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage by individuals for minimum essential health coverage the Secretary may use to determine eligibility for hardship exemptions under Section 5000A of the Code, and the section 4980H(a) and section 4980H(b) assessable payment amounts (finalized at 26 CFR 54.4980H in the ''Shared Responsibility for Employers Regarding Health Coverage,'' published in the **Federal Register** on February 12, 2014 (79 FR 8544). We believe that the proposed 2016 premium adjustment percentage of 8.316047520 percent is well within the parameters used in the modeling of the Affordable Care Act, and we do not expect that these proposed provisions will alter CBO's April 2014 baseline estimates of the budget impact.

The proposed rule would also replace the one-year period with ongoing recognition of State high risk pools as minimum essential coverage, which would facilitate transition of enrollees into QHPs through the Exchange or into other forms of minimum essential coverage, while ensuring continued access to coverage.

13. Minimum Essential Coverage

The proposed rule would replace the one-year temporary designation with ongoing recognition of State high risk pools as minimum essential coverage. This would facilitate the transition of State high risk pool enrollees into QHPs through the Exchange or into other forms of minimum essential coverage, while ensuring continued access to coverage. It would also help ensure that this vulnerable population will not be subject to the shared responsibility payment during this transition, and thereby avoid an increase in out-of-pocket costs.

14. Quality Improvement Strategy

The proposed standards requiring QHP issuers participating in Exchanges to establish and submit information regarding a quality improvement strategy would encourage continuous quality improvement among QHP issuers to help strengthen system-wide efforts to improve health outcomes at lower costs, promote provider payment models that link quality and value of services, allow for flexibility and innovation of diverse market-based incentive approaches, encourage meaningful improvements as well as provide regulators and stakeholders with information to use for monitoring and evaluation purposes. We discuss the administrative costs associated with submitting this information in the Collection of Information section of this proposed rule.

15. Administrative Appeals

In § 156.1220, we establish an administrative appeals process to address unresolved discrepancies for advance payment of the premium tax credit, advance payment and reconciliation of cost-sharing reductions, FFE user fees, and the premium stabilization programs, as well as any assessment of a default risk adjustment charge under § 153.740(b). We estimated the burden associated with the administrative appeals process in the 2015 Payment Notice, and in the Supporting Statement approved under OMB Control Number 0938–1155. We will revise the information collection currently approved OMB Control Number 0938–1155 with an October 31, 2015 expiration date. We do not believe that the provisions in this proposed rule will alter the economic impact of this requirement that was estimated in the 2015 Payment Notice.

16. Medical Loss Ratio

This proposed rule would clarify the treatment of cost-sharing reductions in the MLR calculations. This proposed rule would also ensure timely distribution of rebates for the benefit of subscribers of group health plans not subject to ERISA. Specifically, the proposed amendments to the MLR provisions governing the distribution of rebates to group enrollees in non-Federal governmental and other group health plans not subject to ERISA would ensure that group policyholders of such plans do not withhold the benefit of rebates from the enrollees for longer than 3 months. We do not anticipate that this proposed provision in this proposed rule will have any significant effect on MLR program estimates. This proposed rule would also amend the MLR regulations to provide that premium in MLR and rebate calculations should not be reduced by the amount of Federal and State employment taxes. Assuming that all issuers previously interpreted the MLR December 1, 2010 interim final rule to reduce premium by the amount of Federal and State employment taxes, based on MLR data for the 2013 MLR reporting year, the proposed clarification regarding the treatment of such taxes in the MLR and rebate calculations would result in additional rebate payments from issuers to consumers of approximately $35 million.

*D. Regulatory Alternatives Considered*

In the preamble discussion of the 2016 reinsurance payment parameters, we also considered, when setting forth the proposed 2016 reinsurance payment parameters, a set of uniform reinsurance payment parameters that would have substantially lowered the reinsurance cap, but believe those uniform reinsurance payment parameters would have raised the complexity of estimating the effects of reinsurance for issuers.

We also considered expanding the risk corridors transitional adjustment to apply to early renewal plans. This approach would have increased the impact of the risk corridors adjustment and altered the impact analysis related to the risk corridors transitional adjustment that was published in the 2015 Payment Notice. However, we decided not to propose this alternate policy.

We considered ending the good faith compliance policy for QHP issuers. However we determined that subjecting QHP issuers to increased punitive actions in the early years of the Exchange would be less effective than working with issuers to address compliance issues.

We considered not suppressing QHPs on the FFE, but this approach would have resulted in less flexibility for the FFE to address situations that could affect consumers' interests. For example, this alternative would increase the burden for consumers who may have to select a new QHP mid-year if their QHP was decertified.

We also considered not recognizing vendors for training and registration of agents and brokers in the FFE. However, we believe that recognizing vendors will make it easier for agents and brokers to identify appropriate vendors who meet HHS standards for training and registration.

Additionally, we considered not requiring QIS reporting for QHP issuers. However, we decided to propose the policy in this proposed rule because we believe that QIS reporting will result in higher quality QHPs being offered in the Exchange and make it easier for consumers to select a high quality QHP.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

In this proposed rule, we propose standards for the risk adjustment, reinsurance, and risk corridors programs, which are intended to stabilize premiums as insurance market reforms are implemented and Exchanges facilitate increased enrollment. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for ''small entities'' established by the SBA, we do not believe that an initial regulatory flexibility analysis is required for such firms.

For purposes of the RFA, we expect the following types of entities to be affected by this proposed rule:

- Health insurance issuers.
- Group health plans.
- Reinsurance entities.

We believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $35.5 million or less would be considered small entities for these NAICS codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $32.5 million or less.

In this proposed rule, we proposed standards for employers that choose to participate in a SHOP Exchange. The SHOPs are limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many employers who would be affected by the proposals would meet the SBA standard for small entities. We do not believe that the proposals impose requirements on employers offering health insurance through the SHOP that are more restrictive than the current requirements on small businesses offering employer sponsored insurance. We believe the processes that we have established constitute the minimum amount of requirements necessary to implement the SHOP program and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to further lessen the compliance burden.

We believe that a substantial number of sponsors of self-insured group health plans could qualify as ''small entities.'' This proposed rule provides HHS with the authority to audit these entities. However, we do not believe that the burden of these audits is likely to reflect more than 3 to 5 percent of such an entity's revenues.

Based on data from MLR annual report submissions for the 2013 MLR reporting year, approximately 141 out of 500 issuers of health insurance coverage nationwide had total premium revenue of $38.5 million or less. This estimate may overstate the actual number of small health insurance companies that would be affected, since 77 percent of these small companies belong to larger holding groups, and many if not all of these small companies are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million. Only 16 of these small entities owed a rebate for the 2013 reporting year, and none of these small entities are estimated to experience a rebate increase of more than 0.1 percent of total premium revenue under the proposed provisions. None of the small entities that did not previously owe rebates are expected to owe rebates as a result of the proposed provisions. Based on data from MLR annual report submissions for the 2013 MLR reporting year, approximately 286,750 out of 1.6 million small group policyholders and 13,500 out of 228,000 large group policyholders nationwide were owed rebates for the 2013 reporting year. It is uncertain how many of the group policyholders obtaining coverage from health insurance issuers subject to MLR are both (a) small entities that fall below the size thresholds set by the SBA for various industries, and (b) enrolled in group health plans not subject to ERISA, and would therefore be subject to the proposed provisions related to MLR. However, the proposed provisions only establish a deadline for the use of MLR rebates by certain policyholders similar to the deadline that is already followed by most group policyholders, and do not otherwise alter the requirements for rebate use by such policyholders. In addition, the proposed clarification regarding how health insurance issuers must treat cost-sharing reductions in their MLR calculations simply aligns the MLR regulatory language with the risk corridors program.

*F. Unfunded Mandates*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by a State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. Although we have not been able to quantify the user fees that will be associated with this proposed rule, the combined administrative cost and user fee impact on State, local, or Tribal governments and the private sector may be above the threshold. Earlier portions of this RIA constitute our UMRA analysis.

*G. Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange and Exchange-related programs, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an Exchange or risk adjustment or reinsurance program. For States electing to operate an Exchange, risk adjustment or reinsurance program, much of the initial cost of creating these programs will be funded by Exchange Planning and Establishment Grants. After establishment, Exchanges will be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In HHS's view, while this proposed rule would not impose substantial direct

requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. Each State electing to establish an Exchange must adopt the Federal standards contained in the Affordable Care Act and in this proposed rule, or have in effect a State law or regulation that implements these Federal standards. However, HHS anticipates that the Federalism implications (if any) are substantially mitigated because under the statute, States have choices regarding the structure and governance of their Exchanges and risk adjustment and reinsurance programs. Additionally, the Affordable Care Act does not require States to establish these programs; if a State elects not to establish any of these programs or is not approved to do so, HHS must establish and operate the programs in that State.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Throughout the process of developing this proposed rule, HHS has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide access to Affordable Insurance Exchanges for consumers in every State. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

*H. Congressional Review Act*

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

**List of Subjects**

*45 CFR Part 144*

Health care, Health insurance, and Reporting and recordkeeping requirements.

*45 CFR Part 146*

Health care, Health insurance, and Reporting and recordkeeping requirements.

*45 CFR Part 147*

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

*45 CFR Part 148*

Administrative practice and procedure, Health care, Health insurance, Penalties, and Reporting and recordkeeping requirements.

*45 CFR Part 153*

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

*45 CFR Part 154*

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, Penalties, Reporting and recordkeeping requirements.

*45 CFR Part 155*

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Required Contribution Percentage, Cost-sharing reductions, Advance payments of the premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

*45 CFR Part 156*

Administrative appeals, Administrative practice and procedure, Administration and calculation of advance payments of the premium tax credit, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Payment and collections reports, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

*45 CFR Part 158*

Administrative practice and procedure, Claims, Health care, Health insurance, Health plans, penalties, Reporting and recordkeeping requirements, Premium revenues, Medical loss ratio, Rebating.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 146, 147, 148, 153, 154, 155, 156, and 158 as set forth below.

## PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 continues to read as follows:

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

■ 2. Section 144.103 is amended by revising the definitions of ''Plan'' and ''State'' to read as follows:

**§ 144.103 Definitions.**

* * * * *

*Plan* means, with respect to an issuer and a product, the pairing of the health insurance coverage benefits under the product with a particular cost-sharing structure, provider network, and service area. The product comprises all plans offered with those characteristics and the combination of the service areas for all plans offered within a product constitutes the total service area of the product.

* * * * *

*State* means each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands; except that for purposes of part 147, the term does not include Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

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## PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 3. The authority citation for part 146 continues to read as follows:

**Authority:** Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92).

■ 4. Section 146.152 is amended by revising paragraph (c)(2) to read as follows:

**§ 146.152 Guaranteed renewability of coverage for employers in the group market.**

* * * * *

(c) * * *

(2) The issuer offers to each plan sponsor provided that particular product the option, on a guaranteed issue basis, to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan in that market. An issuer that automatically enrolls a plan sponsor into a product of another health insurance issuer does not satisfy the requirement of this paragraph (c)(2); and

* * * * *

## PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 5. The authority citation for part 147 continues to read as follows:

**Authority:** Secs. 2701 through 2763, 2791 and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 6. Section 147.104 is amended by—

■ A. Revising paragraphs (b)(1)(i)(C), (b)(2), and (b)(4).

■ B. Redesignating paragraphs (f) through (h) as paragraphs (g) through (i).

■ C. Adding new paragraph (f).

The revisions and addition read as follows:

**§ 147.104 Guaranteed availability of coverage.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) With respect to coverage in the small group market, and in the large group market if such coverage is offered through a Small Business Health Options Program (SHOP) in a State, coverage must become effective consistent with the dates described in § 155.725 of this subchapter, except as provided in paragraph (b)(1)(iii) of this section.

* * * * *

(2) *Limited open enrollment periods.* A health insurance issuer in the individual market must provide a limited open enrollment period for the events described in § 155.420(d) of this subchapter, excluding § 155.420(d)(3) (concerning citizenship status), § 155.420(d)(8) (concerning Indians), and § 155.420(d)(9) (concerning exceptional circumstances).

* * * * *

(4) *Length of enrollment periods.* (i) In the group market, enrollees must be provided 30 calendar days after the date of the qualifying event described in paragraph (b)(3) of this section to elect coverage.

(ii) In the individual market, enrollees must be provided 60 calendar days after the date of an event described in paragraph (b)(2) and (b)(3) of this section to elect coverage, as well as 60 calendar days before certain triggering events as provided for in § 155.420(c)(2) of this subchapter.

* * * * *

(f) *Calendar year plans.* An issuer that offers coverage in the individual market, or in a merged market in a State that has elected to merge the individual market and small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, must ensure that such coverage is offered on a calendar year basis with a policy year ending on December 31 of each calendar year.

* * * * *

■ 7. Section 147.106 is amended by—

■ A. Revising paragraph (c)(2).

■ B. Redesignating paragraphs (g) through (j) as paragraphs (h) through (k).

■ C. Adding new paragraph (g).

The revision and addition read as follows:

**§ 147.106 Guaranteed renewability of coverage.**

* * * * *

(c) * * *

(2) The issuer offers to each plan sponsor or individual, as applicable, provided that particular product the option, on a guaranteed availability basis, to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan or individual health insurance coverage in that market. An issuer that automatically enrolls a plan sponsor or individual, as applicable, into a product of another health insurance issuer does not satisfy the requirement of this paragraph (c)(2).

* * * * *

(g) *Notification of change of ownership.* If an issuer of a QHP, a plan otherwise subject to risk corridors, a risk adjustment covered plan, or a reinsurance-eligible plan experiences a change of ownership, as recognized by the State in which the plan is offered, the issuer must notify HHS in a manner specified by HHS, by the later of—

(1) The date the transaction is entered into; or

(2) The 30th day prior to the effective date of the transaction.

* * * * *

## PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 8. The authority citation for part 148 continues to read as follows:

**Authority:** Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 9. Section 148.122 is amended by revising paragraph (d)(2) to read as follows:

**§ 148.122 Guaranteed renewability of individual health insurance coverage.**

* * * * *

(d) * * *

(2) Offers to each covered individual, on a guaranteed issue basis, the option to purchase any other individual health insurance coverage currently being offered by the issuer for individuals in that market. An issuer that automatically enrolls an individual into a product of another health insurance issuer does not satisfy the requirement of this paragraph (d)(2).

* * * * *

## PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

■ 10. The authority citation for part 153 continues to read as follows:

**Authority:** Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

■ 11. Section 153.100 is amended by revising paragraph (c) to read as follows:

**§ 153.100 State notice of benefit and payment parameters.**

* * * * *

(c) *State notice deadlines.* If a State is required to publish an annual State notice of benefit and payment parameters for a particular benefit year, it must do so by the later of March 1 of the calendar year prior to the applicable benefit year, or by the 30th day following the publication of the final HHS notice of benefit and payment parameters for that benefit year.

* * * * *

■ 12. Section 153.400 is amended by revising paragraph (a)(1)(iii) and adding paragraph (c) to read as follows:

**§ 153.400 Reinsurance contribution funds.**

(a) * * *

(1) * * *

(iii) Such plan or coverage is expatriate health coverage, as defined by the Secretary, or for the 2015 and 2016 benefit years only, is a self-insured group health plan with respect to which enrollment is limited to participants who reside outside of their home country for at least 6 months of the plan year, and any covered dependents; or

* * * * *

(c) *Determination of a debt.* Any amount owed to the Federal government by a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage) and its affiliates for reinsurance is a determination of a debt.

■ 13. Section 153.405 is amended by—

■ A. Revising paragraphs (b), (c)(1), (d) introductory text, (g)(4)(i) introductory text, and (g)(4)(ii) introductory text.

■ B. Removing paragraph (c)(2).

■ C. Redesignating paragraph (c)(3) as paragraph (c)(2).

■ D. Revising newly designated paragraph (c)(2).

The revisions read as follows:

**§ 153.405 Calculation of reinsurance contributions.**

* * * * *

(b) *Annual enrollment count.* No later than November 15 of benefit year 2014, 2015, or 2016, as applicable, or, if such date is not a business day, the next business day, a contributing entity must submit an annual enrollment count of the number of covered lives of reinsurance contribution enrollees for the applicable benefit year to HHS. The count must be determined as specified in paragraphs (d) through (g) of this section, as applicable.

(c) * * *

(1) Following submission of the annual enrollment count described in paragraph (b) of this section, HHS will notify the contributing entity of the reinsurance contribution amount allocated to reinsurance payments, administrative expenses and the U.S. Treasury to be paid for the applicable benefit year.

(2) A contributing entity must remit reinsurance contributions to HHS no later than January 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next business day, if making a combined contribution or the first payment of the bifurcated contribution, and no later than November 15, 2015, 2016, or 2017, as applicable, or, if such date is not a business day, the next business day, if making the second payment of the bifurcated contribution.

(d) *Procedures for counting covered lives for health insurance issuers.* A health insurance issuer must use the same method in a benefit year for all of its health insurance plans in the State (including both the individual and group markets) for which reinsurance contributions are required. To determine the number of covered lives of reinsurance contribution enrollees under all health insurance plans in a State for a benefit year, a health insurance issuer must use one of the following methods:

* * * * *

(g) * * *

(4) * * *

(i) *Multiple group health plans including an insured plan.* If at least one of the multiple plans is an insured plan, the average number of covered lives of reinsurance contribution enrollees must be calculated using one of the methods specified in either paragraph (d)(1) or paragraph (d)(2) of this section, applied across the multiple plans as a whole. The following information must be determined by the plan sponsor:

* * * * *

(ii) *Multiple group health plans not including an insured plan.* If each of the multiple plans is a self-insured group health plan, the average number of covered lives of reinsurance contribution enrollees must be calculated using one of the methods specified either in paragraph (e)(1) or paragraph (e)(2) of this section, applied across the multiple plans as a whole. The following information must be determined by the plan sponsor:

* * * * *

■ 14. Section 153.500 is amended by revising the definition of ''Adjustment percentage'' to read as follows:

**§ 153.500 Definitions.**

* * * * *

*Adjustment percentage* means, with respect to a QHP:

(1) For benefit year 2014—

(i) For a QHP offered by a health insurance issuer with allowable costs of at least 80 percent of after-tax premium in a transitional State, the percentage specified by HHS for such QHPs in the transitional State; and otherwise

(ii) Zero percent.

(2) For benefit year 2015, for a QHP offered by a health insurance issuer in any State, 2 percent.

(3) For benefit year 2016—

(i) For a QHP offered by a health insurance issuer with allowable costs of at least 80 percent of after-tax premium, the percentage specified by HHS; and otherwise.

(ii) Zero percent.

* * * * *

■ 15. Section 153.740 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 153.740 Failure to comply with HHS-operated risk adjustment and reinsurance data requirements.**

(a) *Enforcement actions.* If an issuer of a risk adjustment covered plan or reinsurance-eligible plan fails to establish a dedicated distributed data environment in a manner and timeframe specified by HHS; fails to provide HHS with access to the required data in such environment in accordance with § 153.700(a) or otherwise fails to comply with the requirements of §§ 153.700 through 153.730; fails to adhere to the reinsurance data submission requirements set forth in § 153.420; or fails to adhere to the risk adjustment data submission and data storage requirements set forth in §§ 153.610 through 153.630, HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805 of this subchapter. Civil monetary penalties will not be imposed for non-compliance with these requirements during the 2014 or 2015 calendar year under this paragraph if the issuer has made good faith efforts to comply with these requirements.

* * * * *

(c) *Information sharing.* HHS may consult and share information about issuers of risk adjustment covered plans and reinsurance-eligible plans with other Federal and State regulatory and enforcement entities to the extent the consultation and information is necessary for purposes of State or Federal oversight and enforcement activities.

## PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

■ 16. The authority citation for part 154 continues to read as follows:

**Authority:** Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

■ 17. Section 154.102 is amended by—

■ A. Revising the definitions of ''Individual market,'' ''Rate increase,'' ''Small group market,'' and ''State.''

■ B. Adding a definition of ''Plan'' in alphabetical order.

The revisions and addition read as follows:

**§ 154.102 Definitions.**

* * * * *

*Individual market* has the meaning given the term in § 144.103 of this subchapter.

* * * * *

*Plan* has the meaning given the term in § 144.103 of this subchapter.

* * * * *

*Rate increase* means any increase of the rates for a specific product or plan within a product offered in the individual or small group market.

* * * * *

*Small group market* has the meaning given the term in § 144.103 of this subchapter.

*State* means each of the 50 States and the District of Columbia.

* * * * *

■ 18. Section 154.200 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 154.200 Rate increases subject to review.**

(a) A rate increase filed for coverage effective on or after January 1, 2016 is subject to review if:

(1) The rate increase is 10 percent or more for any plan within the product applicable to a 12-month period that begins on January 1, as calculated under paragraph (c) of this section; or

(2) The rate increase for any plan within the product meets or exceeds a State-specific threshold applicable to a 12-month period that begins on January 1, as calculated under paragraph (c) of this section, determined by the Secretary. A State-specific threshold shall be based on factors impacting rate increases in a State to the extent that the data relating to such State-specific factors is available by August 1. States interested in proposing a State-specific threshold for approval are required to submit a proposal to the Secretary by August 1.

* * * * *

(c) A rate increase meets or exceeds the applicable threshold set forth in paragraph (a) of this section if an increase in the plan-adjusted index rate (as described in § 156.80 of this subchapter) for any plan within the product meets or exceeds the applicable threshold.

* * * * *

■ 19. Section 154.215 is amended by revising paragraph (a) to read as follows:

**§ 154.215 Submission of rate filing justification.**

(a) If any plan within a product is subject to a rate increase, a health insurance issuer must submit a Rate Filing Justification for all products in the single risk pool, including new or discontinuing products, on a form and in a manner prescribed by the Secretary.

* * * * *

■ 20. Section 154.220 is revised to read as follows:

**§ 154.220 Timing of providing the rate filing justification.**

A health insurance issuer must submit to CMS and the applicable State a Rate Filing Justification for all rate increases that are filed for coverage effective on or after January 1, 2016, by the earlier of the following:

(a) The date by which the State requires that a proposed rate increase be filed with the State; or

(b) The date specified in guidance by the Secretary.

■ 21. Section 154.301 is amended by revising paragraph (b) to read as follows:

**§ 154.301 CMS's determinations of Effective Rate Review Programs.**

* * * * *

(b) *Public disclosure and input.* (1) In addition to satisfying the provisions in paragraph (a) of this section, a State with an Effective Rate Review Program must provide:

(i) For proposed rate increases subject to review, access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's Web address for such information), and have a mechanism for receiving public comments on those proposed rate increases, no later than the date specified in guidance by the Secretary.

(ii) For all final rate increases (including those not subject to review), access from its Web site to at least the information contained in Parts I, II, and III of the Rate Filing Justification that CMS makes available on its Web site (or provide CMS's Web address for such information), no later than the first day of the annual open enrollment period for the applicable calendar year.

(2) If a State intends to make the information in paragraph (b)(1)(i) of this section available to the public prior to the date specified by the Secretary, or if it intends to make the information in paragraph (b)(1)(ii) of this section available to the public prior to the first day of the annual open enrollment period for the applicable calendar year, the State must notify CMS in writing, no later than 30 days prior to the date it intends to make the information public, of its intent to do so and the date it intends to make the information public.

(3) A State with an Effective Rate Review Program must ensure the information in paragraphs (b)(1)(i) and (ii) of this section is made available to the public at a uniform time for all proposed and final rate increases, as applicable, in the relevant market segment and without regard to whether coverage is offered through or outside an Exchange.

* * * * *

## PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 22. The authority citation for part 155 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 23. Section 155.20 is amended by—

■ A. Revising paragraph (2) of the definition of ''Applicant.''

■ B. Revising the definitions of ''Enrollee'' and ''Qualified employee''.

The revisions read as follows:

**§ 155.20 Definitions.**

* * * * *

*Applicant* * * *

(2) An employer, employee, or former employee seeking eligibility for enrollment in a QHP through the SHOP for himself or herself, and, if the qualified employer offers dependent coverage through the SHOP, seeking eligibility to enroll his or her dependents in a QHP through the SHOP.

* * * * *

*Enrollee* means a qualified individual or qualified employee enrolled in a QHP. Enrollee also means the dependent of a qualified employee enrolled in a QHP through the SHOP. Provided that at least one employee enrolls in a QHP through the SHOP, enrollee also means a business owner enrolled in a QHP through the SHOP, or the dependent of a business owner enrolled in a QHP through the SHOP.

* * * * *

*Qualified employee* means any employee or former employee of a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP for himself or herself and, if the qualified employer offers dependent coverage through the SHOP, for his or her dependents.

* * * * *

■ 24. Section 155.205 is amended by revising paragraph (c)(2)(i) to read as follows:

**§ 155.205 Consumer assistance tools and programs of an Exchange.**

* * * * *

(c) * * *

(2) * * *

(i) Oral interpretation. For Exchanges, QHP issuers, and agents or brokers subject to § 155.220(c)(3)(i) only, this standard includes telephonic interpreter services in at least 150 languages;

* * * * *

■ 25. Section 155.215 is amended by revising paragraph (h) to read as follows:

**§ 155.215 Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.**

* * * * *

(h) *Physical presence.* All non-Navigator entities carrying out consumer assistance functions under § 155.205(d) and (e) in an Exchange operated by HHS during the exercise of its authority under § 155.105(f) and all non-Navigator entities funded through an Exchange Establishment Grant under section 1311(a) of the Affordable Care Act must maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees. In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a non-Navigator entity or as non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area.

* * * * *

■ 26. Section 155.222 is added to read as follows:

**§ 155.222 Standards for HHS-approved vendors of Federally-facilitated exchange training for agents and brokers.**

(a) *Application for approval.* A vendor must be approved by HHS, in a form and manner to be determined by HHS, in order to have its training and information verification program recognized for agents and brokers assisting with or facilitating enrollment in individual market or SHOP coverage through the Exchange consistent with § 155.220. As part of the training program, the vendor must require agents and brokers to complete identity proofing, provide identifying information, and successfully complete the required curriculum. HHS will approve vendors on an annual basis for a given plan year, and each vendor must submit an application for each year that approval is sought.

(b) *Standards.* To be approved by HHS and maintain its status as an approved vendor for plan year 2016 and future plan years, a vendor must meet each of the following standards:

(1) Submit a complete and accurate application by the deadline established by HHS, which includes demonstration of prior experience with successfully conducting online training and identity proofing, as well as providing technical support to a large customer base.

(2) Adhere to HHS specifications for content, format, and delivery of training and information verification.

(3) Collect, store, and share with HHS all data from agent and broker users of the vendor's training and information verification in a manner specified by HHS, and protect the data in accordance with applicable privacy and security laws and regulations.

(4) Execute an agreement with HHS, in a form and manner to be determined by HHS, which requires the vendor to comply with HHS guidelines for interfacing with HHS data systems, the implementation of the training and information verification processes, and the use of all data collected.

(5) Permit any individual who holds a valid State license or equivalent State authority to sell health insurance products to access the vendor's training and information verification.

(c) *Approved list.* A list of approved vendors will be published on an HHS Web site.

(d) *Monitoring.* HHS may periodically monitor and audit vendors approved under this subpart, and their records related to the training and information verification functions described in this section, to ensure ongoing compliance with the standards in paragraph (b) of this section. If HHS determines that an HHS-approved vendor is not in compliance with the standards required in paragraph (b) of this section, the vendor may be removed from the approved list described in paragraph (c) of this section and may be required by HHS to cease performing the training and information verification functions described under this subpart.

(e) *Appeals.* A vendor that is not approved by HHS after submitting the application described in paragraph (a) of this section, or an approved vendor whose agreement is revoked under paragraph (d) of this section, may appeal HHS's decision by notifying HHS in writing within 15 days from receipt of the notification of not being approved and submitting additional documentation demonstrating how the vendor meets the standards in paragraph (b) of this section and (if applicable) the terms of their agreement with HHS. HHS will review the submitted documentation and make a final approval determination within 30 days from receipt of the additional documentation.

■ 27. Section 155.400 is amended by revising paragraph (e) to read as follows:

**§ 155.400 Enrollment of qualified individuals into QHPs.**

* * * * *

(e) *Premium payment.* Exchanges may, and the Federally-facilitated Exchange will, require payment of the first month's premium to effectuate an enrollment. An Exchange may establish a standard policy for setting premium payment deadlines.

* * * * *

■ 28. Section 155.410 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 155.410 Initial and annual open enrollment periods.**

* * * * *

(e) *Annual open enrollment period.* (1) For the benefit year beginning on January 1, 2015, the annual open enrollment period begins on November 15, 2014, and extends through February 15, 2015.

(2) For benefit years beginning on or after January 1, 2016, the annual open enrollment period begins on October 1 and extends through December 15 of the calendar year preceding the benefit year.

(f) *Effective date.* (1) For the benefit year beginning on January 1, 2015, the Exchange must ensure coverage is effective—

(i) January 1, 2015, for QHP selections received by the Exchange on or before December 15, 2014.

(ii) February 1, 2015, for QHP selections received by the Exchange from December 16, 2014 through January 15, 2015.

(iii) March 1, 2015, for QHP selections received by the Exchange from January 16, 2015 through February 15, 2015.

(2) For enrollments made under any annual open enrollment periods for benefit years beginning on or after January 1, 2016, the Exchange must ensure that coverage is effective as of January 1 of the year following the open enrollment period.

* * * * *

■ 29. Section 155.420 is amended by—

■ A. Revising paragraphs (b)(2)(i), (b)(2)(iv), (c)(2), (d)(1)(ii), (d)(2), and (d)(4).

■ B. Adding paragraphs (b)(2)(v), (b)(2)(vi), and (d)(6)(iv).

■ C. Removing paragraph (d)(10).

The revisions and additions read as follows:

**§ 155.420 Special enrollment periods.**

* * * * *

(b) * * *

(2) * * *

(i) In the case of birth, adoption, placement for adoption, or placement in foster care as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, or placement in foster care, or it may permit the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly selected by the qualified individual or enrollee.

* * * * *

(iv) If a consumer loses coverage as described in paragraph (d)(1), (d)(6)(iii), or gains access to a new QHP as described in paragraph (d)(7) of this section, if the plan selection is made before or on the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the loss of coverage. If the plan selection is made after the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.

(v) In the case of a court order as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date the court order is effective, or it may permit the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly elected by the qualified individual or enrollee.

(vi) If an enrollee or his or her dependent dies as described in paragraph (d)(2)(iv) of this section, the Exchange must ensure that coverage is effective on the first day of the month following the death, or it may permit the enrollee or his or her dependent to elect a coverage effective date in accordance with paragraph (b)(1) of this section. If the Exchange permits the enrollee or his or her dependent to elect a coverage effective date in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly elected by the enrollee or his or her dependent.

* * * * *

(c) * * *

(2) *Advanced availability.* A qualified individual or his or her dependent who is described in paragraph (d)(1), (d)(6)(iii) or, effective January 1, 2016, (d)(7), of this section, has 60 days before and after the triggering event to select a QHP. Prior to January 1, 2016, a qualified individual or his or her dependent who is described in paragraph (d)(7) of this section may select a QHP in accordance with paragraph (c)(1) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) Is enrolled in any non-calendar year group health plan or individual health insurance coverage, even if the qualified individual or his or her dependent has the option to renew such coverage. The date of the loss of coverage is the last day of the plan or policy year;

* * * * *

(2)(i) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order.

(ii) The enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

* * * * *

(4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, misconduct, or inaction of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws as determined by the Exchange.

* * * * *

(6) * * *

(iv) A qualified individual in a non-Medicaid expansion State who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent FPL, who was ineligible for Medicaid during that same timeframe, who has experienced a change in household income that makes the qualified individual newly eligible for advance payments of the premium tax credit.

* * * * *

■ 30. Section 155.430 is amended by revising paragraphs (b)(1)(i) and (d)(6), and adding paragraphs (b)(1)(iii), (d)(2)(v), and (d)(8) to read as follows:

**§ 155.430 Termination of coverage.**

* * * * *

(b) * * *

(1) * * *

(i) The Exchange must permit an enrollee to terminate his or her coverage in a QHP, including as a result of the enrollee obtaining other minimum essential coverage. To the extent the enrollee has the right to cancel the coverage under applicable State laws, including ''free look'' cancellation laws, the enrollee may do so, in accordance with such laws.

* * * * *

(iii) The Exchange must establish process to permit individuals, including enrollees' authorized representatives, to report the death of an enrollee for purposes of initiating termination of the enrollee's Exchange enrollment. The Exchange may require the reporting party to submit documentation of the death. Any applicable premium refund, or premium due, must be processed by the deceased enrollee's qualified health plan in accordance with State law.

* * * * *

(d) * * *

(2) * * *

(v) The retroactive termination date requested by the enrollee, if specified by applicable State laws.

* * * * *

(6) In the case of a termination in accordance with paragraph (b)(2)(v) of this section, the last day of coverage in an enrollee's prior QHP is the day before the effective date of coverage in his or her new QHP, including any retroactive enrollments effectuated under § 155.420(b)(2)(iii).

* * * * *

(8) In cases of retroactive terminations dates, the Exchange will ensure that appropriate actions are taken to make necessary adjustments to advance payments of the premium tax credit, cost-sharing reductions, premiums, claims, and user fees.

* * * * *

■ 31. Section 155.605 is amended by revising paragraphs (g)(3) and (g)(6)(i) and adding paragraph (g)(6)(iii) to read as follows:

**§ 155.605 Eligibility standards for exemptions.**

* * * * *

(g) * * *

(3) *Filing threshold.* The IRS may allow an applicant to claim an exemption without obtaining an exemption certificate number from an Exchange for a taxable year if, for such year, the applicant could not be claimed as a dependent by another taxpayer and the applicant's gross income was less than the applicant's applicable return filing threshold described in section 5000A(e)(2) of the Code;

* * * * *

(6) * * *

(i) The Exchange must determine an applicant eligible for an exemption for any month if he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.51 and not otherwise eligible for an exemption under paragraph (f) of this section, or an individual eligible for services through the Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3).

* * * * *

(iii) The IRS may allow an applicant to claim the exemption specified in paragraph (g)(6) of this section without obtaining an exemption certificate number from an Exchange.

■ 32. Section 155.700(b) is amended by removing the definition of ''Group participation rule'' and by adding the definition of ''Group participation rate'' to read as follows:

**§ 155.700 Standards for the establishment of a SHOP.**

* * * * *

(b) * * *

*Group participation rate* means the minimum percentage of all eligible individuals or employees of an employer that must be enrolled.

* * * * *

■ 33. Section 155.705 is amended by—

■ A. Revising paragraph (b)(4)(i)(B).

■ B. Redesignating paragraphs (b)(4)(ii)(A) and (b)(4)(ii)(B) as paragraphs (b)(4)(ii)(B) and (b)(4)(ii)(C), respectively.

■ C. Adding new paragraph (b)(4)(ii)(A).

■ D. Revising paragraphs (b)(7), (b)(10) introductory text, and (b)(10)(i).

The additions and revisions read as follows:

**§ 155.705 Functions of a SHOP.**

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) Collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees except as provided for in paragraph (b)(4)(ii)(A) of this section; and

* * * * *

(ii) * * *

(A) The SHOP may, upon an election by a qualified employer, enter into an agreement with a qualified employer to facilitate the administration of continuation coverage by collecting premiums for continuation coverage enrolled in through the SHOP directly from a qualified employee and remitting premium payments for this coverage to QHP issuers. A Federally-facilitated SHOP may elect to limit this service to the collection of premiums related to Federally mandated continuation coverage.

* * * * *

(7) *QHP availability in merged markets.* If a State merges the individual market and the small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, the SHOP may permit a qualified employee to enroll in any QHP meeting level of coverage requirements described in section 1302(d) of the Affordable Care Act.

* * * * *

(10) *Participation rules.* Subject to § 147.104 of this subchapter, the SHOP may authorize a uniform group participation rate for the offering of health insurance coverage in the SHOP, which must be a single, uniform rate that applies to all groups and issuers in the SHOP. If the SHOP authorizes a minimum participation rate, such rate must be based on the rate of employee participation in the SHOP and in coverage through another group health plan, governmental coverage (such as Medicare, Medicaid, or TRICARE), coverage sold through the individual market, or in other minimum essential coverage, not on the rate of employee participation in any particular QHP or QHPs of any particular issuer.

(i) Subject to § 147.104 of this subchapter, a Federally-facilitated SHOP must use a minimum participation rate of 70 percent, calculated as the number of full-time employees accepting coverage offered by a qualified employer plus the number of full-time employees who, at the time the employer submits the SHOP group enrollment, are enrolled in coverage through another group health plan, governmental coverage (such as Medicare, Medicaid, or TRICARE), coverage sold through the individual market, or in other minimum essential coverage, divided by the number of full-time employees offered coverage.

* * * * *

■ 34. Section 155.710 is amended by revising paragraph (e) to read as follows:

**§ 155.710 Eligibility standards for SHOP.**

* * * * *

(e) *Employee eligibility requirements.* An employee is a qualified employee eligible to enroll in coverage through a SHOP if such employee receives an offer of coverage from a qualified employer. A qualified employee is eligible to enroll his or her dependents in coverage through a SHOP if the offer from the qualified employer includes an offer of dependent coverage.

■ 35. Section 155.720 is amended by:

■ A. Removing ''; '' from paragraph (b)(5) and adding ''; and'' it its place.

■ B. Removing ''; and'' from paragraph (b)(6) and adding a period in its place.

■ C. Removing paragraph (b)(7).

■ D. Revising paragraph (e).

The revisions read as follows:

**§ 155.720 Enrollment of employees into QHPs under SHOP.**

* * * * *

(e) *Notification of effective date.* The SHOP must ensure that a QHP issuer notifies an enrollee enrolled in a QHP through the SHOP of the effective date of his or her coverage.

* * * * *

■ 36. Section 155.725 is amended by revising paragraphs (a), (b), (g), (h), (i), and (j)(5) and by adding paragraph (k) to read as follows:

**§ 155.725 Enrollment periods under SHOP.**

(a) *General requirements.* The SHOP must ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with this section.

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage, unless the plan is issued in a State that has elected to merge its individual and small group risk pools under section 1312(c)(3) of the Affordable Care Act, in which case the plan year will end on December 31 of the calendar year in which coverage first became effective.

* * * * *

(g) *Newly qualified employees.* (1) The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period beginning on the first day of becoming a qualified employee. A newly qualified employee must have at least 30 days from the

beginning of his or her enrollment period to select a QHP. The enrollment period must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible.

(2) The effective date of coverage for a QHP selection received by the SHOP from a newly qualified employee must always be the first day of a month, and must generally be determined in accordance with § 155.725(h), unless the employee is subject to a waiting period consistent with § 147.116 of this subchapter, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with § 147.116 of this subchapter.

(h) *Initial and annual open enrollment effective dates.* (1) The SHOP must establish effective dates of coverage for qualified employees enrolling in coverage for the first time, and for qualified employees enrolling during the annual open enrollment period described in paragraph (e) of this section.

(2) For a QHP selection received by the Federally-facilitated SHOP from a qualified employee in his or her initial or annual open enrollment period:

(i) Between the first and fifteenth day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the following month

(ii) Between the 16th and last day of any month, the Federally-facilitated SHOP must ensure a coverage effective date of the first day of the second following month.

(i) *Renewal of coverage.* (1) If a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage, such employee will remain in the QHP selected the previous year unless—

(i) The qualified employee terminates coverage from such QHP in accordance with standards identified in § 155.430;

(ii) The qualified employee enrolls in another QHP if such option exists; or

(iii) The QHP is no longer available to the qualified employee.

(2) The SHOP may treat a qualified employer offering coverage through the SHOP as offering the same coverage under § 155.705(b)(3) at the same level of contribution under § 155.705(b)(11) unless:

(i) The qualified employer is no longer eligible to offer such coverage through the SHOP;

(ii) The qualified employer elects to offer different coverage or a different contribution through the SHOP;

(iii) The qualified employer withdraws from the SHOP; or

(iv) In the case of a qualified employer offering a single QHP, the single QHP is no longer available through the SHOP.

(j) * * *

(5) The effective dates of coverage for special enrollment periods are determined using the provisions of § 155.420(b).

* * * * *

(k) *Limitation.* Qualified employees will not be able to enroll unless the employer group meets any applicable minimum participation rate implemented under § 155.705(b)(10).

■ 37. Section 155.735 is amended by revising paragraphs (c)(2)(ii), (c)(2)(iii), and (d)(1)(iii) and adding paragraph (g) to read as follows:

**§ 155.735 Termination of coverage.**

* * * * *

(c) * * *

(2) * * *

(ii) If premium payment is not received 31 days from the first of the coverage month, the Federally-facilitated SHOP may terminate the qualified employer for lack of payment. The termination would take effect on the last day of the month for which the Federally-facilitated SHOP received full payment.

(iii) If a qualified employer is terminated due to lack of premium payment, but within 30 days following its termination the qualified employer requests reinstatement, pays all premiums owed including any prior premiums owed for coverage during the grace period, and pays the premium for the next month's coverage, the Federally-facilitated SHOP must reinstate the qualified employer in its previous coverage. A qualified employer may be reinstated in the Federally-facilitated SHOP only once per calendar year.

(d) * * *

(1) * * *

(iii) The QHP in which the enrollee is enrolled, terminates, is decertified as described in § 155.1080, or its certification as a QHP is not renewed;

* * * * *

(g) *Notice of termination.* (1) If any enrollee's coverage through the SHOP is terminated due to non-payment of premiums or due to a loss of the enrollee's eligibility to participate in the SHOP, including where an enrollee loses his or her eligibility because a qualified employer has lost its eligibility, the SHOP must, promptly and without undue delay, provide the enrollee with a notice of termination of coverage that includes the termination effective date and reason for termination.

(2) If an employer group's coverage through the SHOP is terminated due to non-payment of premiums or, where applicable, due to a loss of the qualified employer's eligibility to offer coverage through the SHOP, the SHOP must, promptly and without undue delay, provide the employer with a notice of termination of coverage that includes the termination effective date and the reason for termination.

■ 38. Section 155.1000 amended by adding paragraph (d) to read as follows:

**§ 155.1000 Certification standards for QHPs.**

* * * * *

(d) *Special rule for SHOP.* In a SHOP that certifies QHPs on a calendar-year basis, the certification shall remain in effect for the duration of any plan year beginning in the calendar year for which the QHP was certified, even if the plan year ends after the calendar year for which the QHP was certified.

## PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 39. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 40. Section 156.20 is amended by adding a definition of ''Plan'' in alphabetical order to read as follows:

**§ 156.20 Definitions.**

* * * * *

*Plan* has the meaning given the term in § 144.103 of this subchapter.

* * * * *

■ 41. Section 156.100 is amended by revising paragraph (c) to read as follows:

**§ 156.100 State selection of benchmark.**

* * * * *

(c) *Default base-benchmark plan.* If a State does not make a selection using the process described in this section, the default base-benchmark plan will be the largest plan by enrollment in the largest product by enrollment in the State's small group market.

■ 42. Section 156.110 is amended by revising paragraphs (c)(4) and (c)(5) and removing paragraph (c)(6) to read as follows.

**§ 156.110 EHB-benchmark plan standards.**

* * * * *

(c) * * *

(4) The plan described in paragraph (b)(2)(i) of the section with respect to pediatric oral care benefits; and

(5) The plan described in paragraph (b)(3)(i) of this section with respect to pediatric vision care benefits.

* * * * *

■ 43. Section 156.115 is amended by revising paragraph (a)(5) and adding paragraph (a)(6) to read as follows:

**§ 156.115 Provision of EHB.**

(a) * * *

(5) If the EHB-benchmark plan does not include coverage for habilitative services as described in § 156.110(f), the plan must:

(i) Cover health care services that help a person keep, learn, or improve skills and functioning for daily living; and

(ii) Provide coverage of habilitative services in a manner no less favorable than coverage of rehabilitative services.

(6) For pediatric services that are required under § 156.110(a)(10), provide coverage for enrollees until at least the end of the plan year in which the enrollee turns 19 years of age.

* * * * *

■ 44. Section 156.120 is added to read as follows:

**§ 156.120 Collection of data to define essential health benefits.**

(a) *Definitions.* The following definitions apply to this section, unless the context indicates otherwise:

*Health benefits* means benefits for medical care, as defined at § 144.103 of this subchapter, which may be delivered through the purchase of insurance or otherwise.

*Health insurance product* has the meaning given to the term in § 159.110 of this subchapter.

*Health plan* has the meaning given to the term, ''Portal Plan'' in § 159.110 of this subchapter.

*Small group market* has the meaning given to the term in § 155.20 of this subchapter.

*State* has the meaning given to the term in § 155.20 of this subchapter.

*Treatment limitations* include limits on benefits based on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. Treatment limitations include only quantitative treatment limitations. A permanent exclusion of all benefits for a particular condition or disorder is not a treatment limitation.

(b) *Reporting requirement.* A State that selects a base-benchmark plan or an issuer that offers a default base-benchmark plan in accordance with § 156.100 must submit to HHS the following information in a form and manner, and by a date, determined by HHS:

(1) Administrative data necessary to identify the health plan;

(2) Data and descriptive information for each plan on the following items:

(i) All health benefits in the plan;

(ii) Treatment limitations;

(iii) Drug coverage; and

(iv) Exclusions.

■ 45. Section 156.122 is amended by—

■ A. Revising paragraphs (a)(1), (a)(2), and (c).

■ B. Adding paragraphs (d) and (e).

The revisions and additions read as follows:

**§ 156.122 Prescription drug benefits.**

(a) * * *

(1) Submits its formulary drug list to the Exchange, the State or OPM.

(2) Uses a pharmacy and therapeutic (P&T) committee that meets the following standards

(i) *Membership standards.* The P&T committee must:

(A) Have members that represent a sufficient number of clinical specialties to adequately meet the needs of enrollees.

(B) Consist of a majority of individuals who are practicing physicians, practicing pharmacists and other practicing health care professionals.

(C) Prohibit any member with a conflict of interest with respect to the issuer or a pharmaceutical manufacturer from voting on any matters for which the conflict exists.

(D) Require at least 20 percent of its membership have no conflict of interest with respect to the issuer and any pharmaceutical manufacturer.

(ii) *Meeting standards.* The P&T committee must:

(A) Meet at least quarterly.

(B) Maintain written documentation of the rationale for all decisions regarding formulary drug list development or revision.

(iii) *Formulary drug list establishment and management.* The P&T committee must:

(A) Develop and document procedures to ensure appropriate drug review and inclusion.

(B) Make clinical decisions based on scientific evidence such as peer reviewed medical literature, standards of practice such as well-established clinical practice guidelines and other sources of appropriate information.

(C) Consider the therapeutic advantages of drugs in terms of safety and efficacy when selecting formulary drugs and making recommendations on placing them on formulary tiers.

(D) Review new FDA-approved drugs and new uses for existing drugs.

(E) Ensure the issuer's formulary drug list:

(*1*) Covers a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all disease states and does not substantially discourage enrollment by any group of enrollees; and

(*2*) Provides appropriate access to drugs that are included in broadly accepted treatment guidelines and which are indicative of, and consistent with, general best practice formularies currently in widespread use.

* * * * *

(c) A health plan providing essential health benefits must have the following processes in place that allow an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber, as appropriate) to request and gain access to clinically appropriate drugs not otherwise covered by the health plan (a request for exception). In the event that an exception request is granted, the plan must treat the excepted drug(s) as an essential health benefit, including by counting any cost-sharing towards the plan's annual limitation on cost-sharing under § 156.130 and when calculating the plan's actuarial value under § 156.135.

(1) *Standard exception request.* (i) A health plan must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request a standard review of a decision that a drug is not covered by the plan.

(ii) A health plan must make its determination on a standard exception and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following receipt of the request.

(iii) A health plan that grants a standard exception request must provide coverage of the non-formulary drug for the duration of the prescription, including refills.

(2) *Expedited exception request.* (i) A health plan must have a process for an enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request an expedited review based on exigent circumstances.

(ii) Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health, or ability to

regain maximum function or when an enrollee is undergoing a current course of treatment using a non-formulary drug.

(iii) A health plan must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours following receipt of the request.

(iv) A health plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

(3) *External exception request review.* (i) If the health plan denies a request for a standard exception paragraph (c)(1) of this section or for an expedited exception under paragraph (c)(2) of this section, the health plan must have a process for the enrollee, the enrollee's designee, or the enrollee's prescribing physician (or other prescriber) to request an external exception review by an independent review organization to review the original exception request and subsequent denial of such request.

(ii) A health plan must make its determination on the external exception request and notify the enrollee or the enrollee's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following its receipt of the request, if the original request was a standard exception request under paragraph (c)(1) of this section, and no later than 24 hours following its receipt of the request, if the original request was an expedited exception request under paragraph (c)(2) of this section.

(d)(1) A health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS, the U.S. Office of Personnel Management, and the general public. A formulary drug list is easily accessible when:

(i) It can be viewed on the plan's public Web site through a clearly identifiable link or tab without requiring an individual to create or access an account or enter a policy number; and

(ii) If an issuer offers more than one plan, when an individual can easily discern which formulary drug list applies to which plan.

(2) [Reserved]

(e) A health plan must have the following access procedures:

(1) A health plan must allow enrollees to access prescription drug benefits at in-network retail pharmacies, unless:

(i) The drug is subject to restricted distribution by the U.S. Food and Drug Administration; or

(ii) The drug requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.

(2) If a health plan charges enrollees a higher cost-sharing amount for obtaining a covered drug at a retail pharmacy, the higher cost-sharing will count towards the plan's annual limitation on cost-sharing under § 156.130 and must be accounted for in the plan's actuarial value calculated under § 156.135.

■ 46. Section 156.130 is amended by adding paragraph (b) and revising paragraph (c) to read as follows:

**§ 156.130 Cost sharing requirements**

* * * * *

(b) *Non-calendar year plans.* Non-calendar year plans subject to paragraph (a) of this section must adhere to the annual limitation on cost sharing beginning on the date the plan begins and ending one year later.

(c) *Special rule for network plans.* In the case of a plan using a network of providers, cost sharing paid by, or on behalf of, an enrollee for benefits provided outside of such network is not required to count toward the annual limitation on cost sharing (as defined in paragraph (a) of this section).

* * * * *

■ 47. Section 156.145 is amended by revising paragraph (a) introductory text to read as follows:

**§ 156.145 Determination of minimum value.**

(a) *Acceptable methods for determining MV.* An employer-sponsored plan provides minimum value (MV) only if the percentage of the total allowed costs of benefits provided under the plan is greater than or equal to 60 percent, and the benefits under the plan include substantial coverage of inpatient hospital services and physician services. An employer-sponsored plan may use one of the following methods to determine whether the percentage of the total allowed costs of benefits provided under the plan is not less than 60 percent.

* * * * *

■ 48. Section 156.200 is amended by revising paragraph (b)(7) to read as follows:

**§ 156.200 QHP issuer participation standards.**

* * * * *

(b) * * *

(7) Comply with the standards under 45 CFR part 153.

* * * * *

■ 49. Section 156.230 is amended by revising paragraph (a) introductory text and (b) to read as follows:

**§ 156.230 Network adequacy standards.**

(a) *General requirement.* Each QHP issuer that uses a provider network must ensure that the provider network consisting of in-network providers, as available to all enrollees, meets the following standards—

* * * * *

(b) *Access to provider directory.* (1) A QHP issuer must make its provider directory for a QHP available to the Exchange for publication online in accordance with guidance from HHS and to potential enrollees in hard copy upon request. In the provider directory, a QHP issuer must identify providers that are not accepting new patients.

(2) A QHP issuer must publish an up-to-date, accurate, and complete provider directory, including information on which providers are accepting new patients, the provider's location, contact information, specialty, medical group, and any institutional affiliations, in a manner that is easily accessible to plan enrollees, prospective enrollees, the State, the Exchange, HHS and OPM. A provider directory is easily accessible when—

(i) The general public is able to view all of the current providers for a plan in the provider directory on the issuer's public Web site through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number; and

(ii) If a health plan issuer maintains multiple provider networks, the general public is able to easily discern which providers participate in which plans and which provider networks.

■ 50. Section 156.235 is revised to read as follows:

**§ 156.235 Essential community providers.**

(a) *General ECP standard.* (1) A QHP issuer that uses a provider network must include in its provider network a sufficient number and geographic distribution of essential community providers (ECPs), where available, to ensure reasonable and timely access to a broad range of such providers for low-income individuals or individuals residing in Health Professional Shortage Areas within the QHP's service area, in accordance with the Exchange's network adequacy standards.

(2) A plan applying for QHP certification to be offered through an FFE has a sufficient number and geographic distribution of ECPs if it demonstrates in its QHP application that—

(i) The network includes as participating providers at least a minimum percentage, as specified by HHS, of available ECPs in each plan's service area with multiple providers at a single location counting as a single ECP toward both the available ECPs in the plan's service area and the issuer's satisfaction of the ECP participation standard; and

(ii) The issuer of the plan offers contracts to—

(A) All available Indian health providers in the service area, applying the special terms and conditions necessitated by federal law and regulations as referenced in the recommended model QHP addendum for Indian health providers developed by HHS; and

(B) At least one ECP in each of the five ECP categories (Federally Qualified Health Centers, Ryan White Providers, Family Planning Providers, Indian Health Providers, Hospitals and other ECP providers) in each county in the service area, where an ECP in that category is available and provides medical or dental services that are covered by the issuer plan type.

(3) If a plan applying for QHP certification to be offered through an FFE does not satisfy the ECP standard described in paragraph (a)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the plan's provider network provides an adequate level of service for low-income enrollees or individuals residing in Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year.

(4) Nothing in paragraphs (a)(1) through (a)(3) of this section requires any QHP to provide coverage for any specific medical procedure provided by an ECP.

(5) A plan that provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group may instead comply with the alternate standard described in paragraph (b) of this section.

(b) *Alternate ECP standard.* (1) A plan described in paragraph (a)(5) of this section must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities, to ensure reasonable and timely access for low-income individuals or individuals residing in Health Professional Shortage Areas within the plan's service area, in accordance with the Exchange's network adequacy standards.

(2) A plan described in paragraph (a)(5) of this section applying for QHP certification to be offered through an FFE has a sufficient number and geographic distribution of employed or contracted providers if it demonstrates in its QHP application that the number of its providers in the following locations satisfies a minimum percentage, specified by HHS, of available ECPs in the plan's service area. Multiple providers at a single location count as a single ECP, if—

(i) Located within Health Professional Shortage Areas; or

(ii) Located within five-digit zip codes in which 30 percent or more of the population falls below 200 percent of the Federal Poverty Level.

(3) If a plan does not satisfy the alternate ECP standard described in paragraph (b)(2) of this section, the issuer must include as part of its QHP application a narrative justification describing how the plan's provider networks provides an adequate level of service for low-income enrollees or individuals residing in Health Professional Shortage Areas within the plan's service area and how the plan's provider network will be strengthened toward satisfaction of the ECP standard prior to the start of the benefit year.

(c) *Definition.* An essential community provider is a provider that serves predominantly low-income, medically underserved individuals, including a health care provider defined in section 340B(a)(4) of the PHS Act; or described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 221 of Public Law 111–8, unless the provider has lost its status under either of these sections, 340(B) of the PHS Act or 1927 of the Act as a result of violating Federal law.

(d) *Payment rates.* Nothing in paragraph (a) of this section must be construed to require a QHP issuer to contract with an ECP if such provider refuses to accept the generally applicable payment rates of such issuer.

(e) *Payment of Federally qualified health centers.* If an item or service covered by a QHP is provided by a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the Federally qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service. Nothing in this paragraph (e) precludes a QHP issuer and Federally-qualified health center from agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as that rate is at least equal to the generally applicable payment rate of the issuer described in paragraph (d) of this section.

■ 51. Section 156.250 is revised to read as follows:

**§ 156.250 Meaningful access to qualified health plan information.**

A QHP issuer must provide all information that is critical for obtaining health insurance coverage or access to health care services through the QHP, including applications, forms, and notices, to qualified individuals, applicants, qualified employers, qualified employees, and enrollees in accordance with the standards described in § 155.205(c) of this subchapter. Information is deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer is required by law or regulation to provide the document to a qualified individual, applicant, qualified employer, qualified employee, or enrollee.

■ 52. Section 156.265 is amended by revising paragraph (d) to read as follows:

**§ 156.265 Enrollment process for qualified individuals.**

* * * * *

(d) *Premium payment.* A QHP issuer must follow the premium payment process established by the Exchange in accordance with § 155.240 of this subchapter and the payment rules established in § 155.400(e) of this subchapter.

* * * * *

■ 53. Section 156.285 is amended by—

■ A. Revising paragraphs (b)(1), (b)(4) and (d)(1)(ii);

■ B. Redesignating paragraph (c)(3), (c)(4), (c)(5), (c)(6), and (c)(7) as (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8) respectively; and

■ C. Adding new paragraph (c)(3).

The revisions and addition read as follows:

**§ 156.285 Additional standards specific to SHOP.**

* * * * *

(b) * * *

(1) Enroll a qualified employee in accordance with the qualified employer's initial and annual employee

open enrollment periods described in § 155.725 of this subchapter;

* * * * *

(4) Adhere to effective dates of coverage established in accordance with § 155.725 of this subchapter.

* * * * *

(c) * * *

(3) Provide new enrollees with notice of their effective date of coverage consistent with § 155.720(e) of this subchapter.

* * * * *

(d) * * *

(1) * * *

(ii) If a QHP issuer terminates an enrollee's coverage in accordance with § 155.735(d)(1)(iii) or (v) of this subchapter, the QHP issuer must, promptly and without undue delay, provide the qualified employer and the enrollee with a notice of termination of coverage that includes the termination effective date and reason for termination.

* * * * *

■ 54. Section 156.410 is amended by removing the second paragraph designated as paragraph (d)(4)(ii) and adding paragraph (d)(4)(iii) to read as follows:

**§ 156.410 Cost-sharing reductions for enrollees.**

* * * * *

(d) * * *

(4) * * *

(iii) If the excess cost sharing was not paid by the provider, then, if the enrollee requests a refund, the refund must be provided to the enrollee within 45 calendar days of the date of the request.

■ 55. Section 156.420 is amended by adding paragraph (h) to read as follows:

**§ 156.420 Plan variations.**

* * * * *

(h) *Notice.* No later than the first day of the Exchange open enrollment period for the 2016 benefit year, for each plan variation that an issuer offers in accordance with the rules of this section, an issuer must provide a summary of benefits and coverage that accurately represents each plan variation consistent with the requirements set forth in § 147.200 of this subchapter.

■ 56. Section 156.425 is amended by adding paragraph (c) to read as follows:

**§ 156.425 Changes in eligibility for cost-sharing reductions.**

* * * * *

(c) *Notice upon assignment.* Beginning on January 1, 2016, if an individual's assignment to a standard plan or plan variation of the QHP changes in accordance with paragraph (a) of this section, the issuer must provide to that individual a summary of benefits and coverage that accurately reflects the new plan variation (or standard plan variation without cost-sharing reductions) in a manner consistent with § 147.200 of this subchapter as soon as practicable following receipt of notice from the Exchange, but not later than 7 business days following receipt of notice.

■ 57. Section 156.430 is amended by adding paragraph (c)(2)(i) and by reserving paragraph (c)(2)(ii) to read as follows:

**§ 156.430 Payment for cost-sharing reductions.**

* * * * *

(c) * * *

(2) * * *

(i) For reconciliation of cost-sharing reduction amounts advanced for the 2014 benefit year, an issuer of a QHP may calculate claims amounts attributable to EHB, including cost sharing amounts attributable to EHB, by reducing total claims amounts by the plan-specific percentage estimate of non-essential health benefit claims submitted on the 2014 Uniform Rate Review Template, if the following conditions are met:

(A) The non-essential health benefits percentage estimate is less than 2 percent; and

(B) Out-of-pocket expenses for non-EHB benefits are included in the calculation of amounts subject to a deductible or annual limitation on cost sharing, but copayments and coinsurance rates on non-EHB benefits are not reduced under the plan variation.

(ii) [Reserved]

* * * * *

■ 58. Section 156.602 is amended by revising paragraph (d) to read as follows:

**§ 156.602 Other coverage that qualifies as minimum essential coverage.**

* * * * *

(d) *State high risk pool coverage.* A qualified high risk pool established on or before November 26, 2014 in any State as defined by section 2744(c)(2) of the Public Health Service Act.

* * * * *

■ 59. Section 156.800 is amended by revising paragraph (c) to read as follows:

**§ 156.800 Available remedies; Scope.**

* * * * *

(c) *Compliance standard.* For calendar years 2014 and 2015, sanctions under this subpart will not be imposed if the QHP issuer has made good faith efforts to comply with applicable requirements.

* * * * *

■ 60. Section 156.815 is added to subpart I to read as follows:

**§ 156.815 Plan suppression.**

(a) *Suppression* means temporarily making a QHP certified to be offered through the FFE unavailable for enrollment through the FFE.

(b) *Grounds for suppression.* A QHP may be suppressed as described in paragraph (a) of this section on one or more of the following grounds:

(1) The QHP issuer notifies HHS of its intent to withdraw the QHP from an FFE when one of the exceptions to guaranteed renewability of coverage related to discontinuing a particular product or discontinuing all coverage under § 147.106(c) or (d) of this subchapter applies;

(2) Data submitted for the QHP is incomplete or inaccurate;

(3) The QHP is in the process of being decertified as described in § 156.810(c) or § 156.810(d) or the QHP issuer is appealing a completed decertification as described in subpart J of this part;

(4) The QHP issuer offering the QHP is the subject of a pending, ongoing, or final State regulatory or enforcement action or determination that could affect the issuer's ability to enroll consumers or otherwise relates to the issuer offering QHPs in the FFE; or

(5) One of the exceptions to guaranteed availability of coverage related to special rules for network plans or financial capacity limits under § 147.104(c) or (d) of this subchapter applies.

(c) A multi-State plan may be suppressed as described in paragraph (a) of this section if OPM notifies the Exchange that:

(1) OPM has found a compliance violation within the multi-State plan, or

(2) One of the grounds for suppression in paragraph (b) exists for the multi-State plan.

■ 61. Section 156.1130 is added to subpart L to read as follows:

**§ 156.1130 Quality improvement strategy.**

(a) *General requirement.* A QHP issuer participating in an Exchange for 2 or more consecutive years must implement and report on a quality improvement strategy including a payment structure that provides increased reimbursement or other market-based incentives in accordance with the health care topic areas in section 1311(g)(1) of the Affordable Care Act, for each QHP offered in an Exchange, consistent with the guidelines developed by HHS under section 1311(g) of the Affordable Care Act.

(b) *Data requirement.* A QHP issuer must submit data, that has been validated in a manner and timeframe specified by the Exchange to support the evaluation of quality improvement strategies in accordance with § 155.200(d) of this subchapter.

(c) *Timeline.* A QHP issuer must submit data annually to evaluate compliance with the standards for a quality improvement strategy in accordance with paragraph (a) of this section, in a manner and timeframe specified by the Exchange.

(d) *Multi-State plans.* Issuers of multi-State plans, as defined in § 155.1000(a) of this subchapter, must provide the data described in paragraph (b) of this section to the U.S. Office of Personnel Management, in the manner and timeframe specified by the U.S. Office of Personnel Management.

■ 62. Section 156.1220 is amended by revising paragraph (c) to read as follows:

**§ 156.1220 Administrative appeals.**

* * * * *

(c) *Review by the Administrator.* (1) Either the issuer or CMS may request review by the Administrator of CMS of the CMS hearing officer's decision. A request for review of the CMS hearing officer's decision must be submitted to the Administrator of CMS within 15 calendar days of the date of the CMS hearing officer's decision, and must specify the findings or issues that the issuer or CMS challenges. The issuer or CMS may submit for review by the Administrator a statement supporting the decision of the CMS hearing officer.

(2) After receiving a request for review, the CMS Administrator has the discretion to elect to review the CMS hearing officer's decision or to decline to review the CMS hearing officer's decision. If the Administrator elects to review the CMS hearing officer's decision, the Administrator will also review the statements of the issuer and CMS, and any other information included in the record of the CMS hearing officer's decision, and will determine whether to uphold, reverse, or modify the CMS hearing officer's decision. The issuer or CMS must prove its case by clear and convincing evidence with respect to issues of fact. The Administrator will send the decision and the reasons for the decision to the issuer.

(3) The Administrator's determination is final and binding.

## PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 63. The authority citation for part 158 continues to read as follows:

**Authority:** Section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18), as amended.

■ 64. Section 158.140 is amended by adding paragraph (b)(1)(iii) to read as follows:

**§ 158.140 Reimbursement for clinical services provided to enrollees.**

* * * * *

(b) * * *

(1) * * *

(iii) Cost-sharing reduction payments received by the issuer to the extent not reimbursed to the provider furnishing the item or service.

* * * * *

■ 65. Section 158.162 is amended by revising paragraph (a)(2) and adding paragraph (b)(2)(iv) to read as follows:

**§ 158.162 Reporting of Federal and State taxes.**

(a) * * *

(2) Federal taxes not excluded from premium under subpart B which include Federal income taxes on investment income and capital gains, as well as Federal employment taxes, as other non-claims costs.

(b) * * *

(2) * * *

(iv) State employment and similar taxes and assessments.

* * * * *

■ 66. Section 158.242 is amended by adding paragraph (b)(1)(v) to read as follows:

**§ 158.242 Recipients of rebates.**

* * * * *

(b) * * *

(1) * * *

(v) All rebate distributions made under paragraphs (b)(1)(i), (ii), or (iii) of this section must be made within 3 months of the policyholder's receipt of the rebate. Rebate distributions made after 3 months must include late payment interest at the current Federal Reserve Board lending rate or 10 percent annually, whichever is higher, on the total amount of the rebate, accruing from the date payment was due under this section.

* * * * *

Dated: November 14, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: November 19, 2014.

**Sylvia M. Burwell,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–27858 Filed 11–21–14; 4:15 pm]

**BILLING CODE 4120–01–P**


# FEDERAL REGISTER

Vol. 79 Wednesday,
No. 228 November 26, 2014

Part IV

## The President

Federal Register
Vol. 79, No. 228
Wednesday, November 26, 2014

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9213 of November 21, 2014**

## National Family Week, 2014

**By the President of the United States of America**

**A Proclamation**

In big cities and small towns throughout our Nation, the strength and diversity of hardworking families reflect the promise of America—that with grit and determination, anyone can build a better future for themselves and their children. Families provide love and encouragement, and they are a source of support and inspiration to a generation limited only by the size of their dreams and the power of their imagination. During National Family Week, we celebrate our family members and the countless ways they lift us up, and we continue our work to bolster the bonds that tie all of us together.

Family is the bedrock of our lives, and my Administration is fighting to ensure Americans are able to seize their every opportunity and fulfill their responsibilities to their loved ones. Working mothers and fathers should not have to choose between their career and their life at home—especially when a new baby or an aging parent needs them most—and no one who works full-time should have to raise their family in poverty. Family leave, childcare, and workplace flexibility are not bonuses, they are basic needs; and earlier this year, we held the first-ever White House Summit on Working Families, bringing together private and public sector partners who know that family-friendly policies are good business practices too.

My Administration is supporting programs that help families thrive. Many workers who would benefit from an increase in the minimum wage are supporting children and families, and that is why I continue to work to make sure an honest day's work is rewarded with an honest day's pay. The Affordable Care Act expands access to quality, affordable health insurance, providing millions of Americans with the freedom to take the best job for their families without worrying about losing their health care. And the Federal Government is leading the way by increasing opportunities for flexible work schedules for Federal employees and giving these workers the right to request them.

Each day, American families do everything right: they work hard, live responsibly, take care of their children, and participate in their neighborhoods. They deserve the opportunity to succeed and a country that supports lasting economic security for all. This week, we recognize the employers and communities that empower families, and we honor our family members and all those who sacrifice to ensure every possibility is within our reach. Let us recommit to building a society where dynamic workplaces support strong families, where time with our loved ones is precious but not rare.

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 November 23 through November 29, 2014, as National Family Week. I invite all States, communities, and individuals to join in observing this week with appropriate ceremonies and activities to honor our Nation's families.

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

[FR Doc. 2014–28190
Filed 11–25–14; 11:15 am]
Billing code 3295–F5

# Presidential Documents

**Memorandum of November 21, 2014**

## Creating Welcoming Communities and Fully Integrating Immigrants and Refugees

**Memorandum for the Heads of Executive Departments and Agencies**

Our country has long been a beacon of hope and opportunity for people from around the world. Nearly 40 million foreign-born residents nationwide contribute to their communities every day, including 3 million refugees who have resettled here since 1975. These new Americans significantly improve our economy. They make up 13 percent of the population, but are over 16 percent of the labor force and start 28 percent of all new businesses. Moreover, immigrants or their children have founded more than 40 percent of Fortune 500 companies, which collectively employ over 10 million people worldwide and generate annual revenues of $4.2 trillion.

By focusing on the civic, economic, and linguistic integration of new Americans, we can help immigrants and refugees in the United States contribute fully to our economy and their communities. Civic integration provides new Americans with security in their rights and liberties. Economic integration empowers immigrants to be self-sufficient and allows them to give back to their communities and contribute to economic growth. English language acquisition allows new Americans to attain employment or career advancement and be more active civic participants.

Our success as a Nation of immigrants is rooted in our ongoing commitment to welcoming and integrating newcomers into the fabric of our country. It is important that we develop a Federal immigrant integration strategy that is innovative and competitive with those of other industrialized nations and supports mechanisms to ensure that our Nation's diverse people are contributing to society to their fullest potential.

Therefore, I am establishing a White House Task Force on New Americans, an interagency effort to identify and support State and local efforts at integration that are working and to consider how to expand and replicate successful models. The Task Force, which will engage with community, business, and faith leaders, as well as State and local elected officials, will help determine additional steps the Federal Government can take to ensure its programs and policies are serving diverse communities that include new Americans.

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

**Section 1**. *White House Task Force on New Americans.* (a) There is established a White House Task Force on New Americans (Task Force) to develop a coordinated Federal strategy to better integrate new Americans into communities and support State and local efforts to do the same. It shall be co-chaired by the Director of the Domestic Policy Council and Secretary of Homeland Security, or their designees. In addition to the Co-Chairs, the Task Force shall consist of the following members:

(i) the Secretary of State;

(ii) the Attorney General;

(iii) the Secretary of Agriculture;

(iv) the Secretary of Commerce;

(v) the Secretary of Labor;

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Housing and Urban Development;

(viii) the Secretary of Transportation;

(ix) the Secretary of Education;

(x) the Chief Executive Officer of the Corporation for National and Community Service;

(xi) the Director of the Office of Management and Budget;

(xii) the Administrator of the Small Business Administration;

(xiii) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Engagement;

(xiv) the Director of the National Economic Council;

(xv) the Assistant to the President for Homeland Security and Counterterrorism; and

(xvi) the Director of the Office of Science and Technology Policy.

(b) A member of the Task Force may designate a senior-level official who is from the member's department, agency, or office, and is a full-time officer or employee of the Federal Government, to perform day-to-day Task Force functions of the member. At the direction of the Co-Chairs, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this subsection, as appropriate.

(c) The Secretary of Homeland Security shall appoint an Executive Director who will determine the Task Force's agenda, convene regular meetings of the Task Force, and supervise work under the direction of the Co-Chairs. The Department of Homeland Security shall provide funding and administrative support for the Task Force to the extent permitted by law and subject to the availability of appropriations. Each executive department or agency shall bear its own expenses for participating in the Task Force.

**Sec. 2**. *Mission and Function of the Task Force.* (a) The Task Force shall, consistent with applicable law, work across executive departments and agencies to:

(i) review the policies and programs of all relevant executive departments and agencies to ensure they are responsive to the needs of new Americans and the receiving communities in which they reside, and identify ways in which such programs can be used to increase meaningful engagement between new Americans and the receiving community;

(ii) identify and disseminate best practices at the State and local level;

(iii) provide technical assistance, training, or other support to existing Federal grantees to increase their coordination and capacity to improve long-term integration and foster welcoming community climates;

(iv) collect and disseminate immigrant integration data, policies, and programs that affect numerous executive departments and agencies, as well as State and local governments and nongovernmental actors;

(v) conduct outreach to representatives of nonprofit organizations, State and local government agencies, elected officials, and other interested persons that can assist with the Task Force's development of recommendations;

(vi) work with Federal, State, and local entities to measure and strengthen equitable access to services and programs for new Americans, consistent with applicable law; and

(vii) share information with and communicate to the American public regarding the benefits that result from integrating new Americans into communities.

(b) Within 120 days of the date of this memorandum, the Task Force shall develop and submit to the President an Integration Plan with recommendations for agency actions to further the integration of new Americans. The Integration Plan shall include:

(i) an assessment by each Task Force member of the status and scope of the efforts by the member's department, agency, or office to further the civic, economic, and linguistic integration of new Americans, including a report on the status of any offices or programs that have been created to develop, implement, or monitor targeted initiatives concerning immigrant integration; and

(ii) recommendations for issues, programs, or initiatives that should be further evaluated, studied, and implemented, as appropriate.

(c) The Task Force shall provide, within 1 year of the date of this memorandum, a status report to the President regarding the implementation of this memorandum. The Task Force shall review and update the Integration Plan periodically, as appropriate, and shall present to the President any updated recommendations or findings.

**Sec. 3**. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

(d) The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,

*Washington, November 21, 2014*

[FR Doc. 2014–28191

Filed 11–25–14; 11:15 am]

Billing code 4410–10

# Presidential Documents

**Memorandum of November 21, 2014**

## Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century

**Memorandum for the Heads of Executive Departments and Agencies**

Throughout our Nation's history, immigrants have helped the United States build the world's strongest economy. Immigrants represent the majority of our Ph.D.s in math, computer science, and engineering, and over one quarter of all U.S.-based Nobel laureates over the past 50 years were foreign-born. Immigrants are also more than twice as likely as native-born Americans to start a business in the United States. They have started one of every four American small businesses and high-tech startups, and more than 40 percent of Fortune 500 companies were founded by immigrants or their children.

But despite the overwhelming contributions of immigrants to our Nation's prosperity, our immigration system is broken and has not kept pace with changing times. To address this issue, my Administration has made common-sense immigration reform a priority, and has consistently urged the Congress to act to fix the broken system. Such action would not only continue our proud tradition of welcoming immigrants to this country, but also reduce Federal deficits, increase productivity, and raise wages for all Americans. Immigration reform is an economic, national security, and moral imperative.

Even as we continue to seek meaningful legislative reforms, my Administration has pursued administrative reforms to streamline and modernize the legal immigration system. We have worked to simplify an overly complex visa system, one that is confusing to travelers and immigrants, burdensome to businesses, and results in long wait times that negatively impact millions of families and workers. But we can and must do more to improve this system. Executive departments and agencies must continue to focus on streamlining and reforming the legal immigration system, while safeguarding the interest of American workers.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize and streamline the U.S. immigration system, I hereby direct as follows:

**Section 1**. *Recommendations to Improve the Immigration System*. (a) Within 120 days of the date of this memorandum, the Secretaries of State and Homeland Security (Secretaries), in consultation with the Director of the Office of Management and Budget, the Director of the National Economic Council, the Assistant to the President for Homeland Security and Counterterrorism, the Director of the Domestic Policy Council, the Director of the Office of Science and Technology Policy, the Attorney General, and the Secretaries of Agriculture, Commerce, Labor, and Education, shall develop:

(i) in consultation with private and nonfederal public actors, including business people, labor leaders, universities, and other stakeholders, recommendations to streamline and improve the legal immigration system—including immigrant and non-immigrant visa processing—with a focus on reforms that reduce Government costs, improve services for applicants, reduce burdens on employers, and combat waste, fraud, and abuse in the system;

(ii) in consultation with stakeholders with relevant expertise in immigration law, recommendations to ensure that administrative policies, practices,

and systems use all of the immigrant visa numbers that the Congress provides for and intends to be issued, consistent with demand; and

(iii) in consultation with technology experts inside and outside the Government, recommendations for modernizing the information technology infrastructure underlying the visa processing system, with a goal of reducing redundant systems, improving the experience of applicants, and enabling better public and congressional oversight of the system.

(b) In developing the recommendations as set forth in subsection (a) of this section, the Secretaries shall establish metrics for measuring progress in implementing the recommendations and in achieving service-level improvements, taking into account the Federal Government's responsibility to protect the integrity of U.S. borders and promote economic opportunity for all workers.

**Sec. 2**. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

(d) The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
*Washington, November 21, 2014*

[FR Doc. 2014–28195
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Billing code 4710–10

# Reader Aids

**Federal Register**

Vol. 79, No. 228

Wednesday, November 26, 2014

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## FEDERAL REGISTER PAGES AND DATE, NOVEMBER



## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**46 CFR**

24.....68370
30.....68131, 68370
70.....68370
90.....68370
150.....68131
153.....68131
188.....68370

**47 CFR**

0.....65906
Ch. I.....70113
1.....65906
2.....65906
4.....65348
15.....65906, 66312
20.....68132
27.....65906
54.....68632, 69057
73 .....65906, 67355, 68370, 69057, 69058, 69375, 69775
74.....65350, 65906

**Proposed Rules:**

0.....65371
1.....65371, 68172
2.....65371
15.....65371, 69710
27.....65371, 68172
54.....68657, 69091
64.....69682
73.....65371
74 .....65371, 69387, 69710

**48 CFR**

Ch. 1.....70340, 70349
1.....70348
4.....70341
14.....70341
15.....70341
16.....70348
22.....70342, 70348
31.....70343
39.....70343
44.....70344
46.....70344
52 .....70343, 70344, 70348
53 .....70341, 70342, 70348
212.....65816
217.....65592, 67356
219.....67356, 68635
225.....65816
234.....65592
237.....65592
252.....65592, 65816

**Proposed Rules:**

1.....70141
2.....70141
3.....70141
4.....70141
6.....70141
7.....70141
8.....70141
9.....70141
10.....70141
12.....70141
13.....70141
15.....70141
16.....70141
17.....70141
19.....70141
22.....70141
25.....70141
26.....70141
28.....70141
32.....70141
42.....70141
50.....70141
52.....70141
53.....70141
202.....65912
203.....65912
205.....65912
207.....65912
211.....65912
212.....65912, 65917
215.....65912
217.....65912
218.....65912
219.....65912, 65917
225.....65912
228.....65912
234.....65912
236.....65912
237.....65912
250.....65912
252.....65912, 65917

**49 CFR**

214.....66460
232.....66460
243.....66460
541.....70115

**Proposed Rules:**

571.....70491

**50 CFR**

17 .....67356, 69192, 69312
21.....65595
216.....65327
224.....68371
226.....68042, 68371
300 .....66313, 67359, 68133
622 .....66316, 68373, 68802, 69058, 70120
635.....68135
648 .....66323, 66324, 67090, 67362, 70472
660 .....67095, 68133, 69060
679 .....66324, 67102, 67376, 68374, 68610, 68635, 68805, 69063, 69064, 70286

**Proposed Rules:**

17 .....67154, 68657, 70154
223.....69417
229.....65918
600.....67411
622 .....67411, 69418, 69819
648.....68202, 68396
660.....70497
697.....65918

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List November 21, 2014**

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