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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AI30

Conservation Reserve Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the Conservation Reserve Program (CRP) regulations to implement provisions of the Agricultural Act of 2014 (the 2014 Farm Bill). This rule specifies eligibility requirements for enrollment of grassland in CRP and adds references to veteran farmers and ranchers to the provisions for Transition Incentives Program contracts, among other changes. The provisions in this rule for eligible land primarily apply to new CRP offers and contracts. For existing contracts, this rule provides additional voluntary options for permissive uses, early terminations, conservation and land improvements, and incentive payments for tree thinning. This rule also makes conforming changes to provisions applicable to multiple Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) programs, which include CRP, administered by FSA, including acreage report requirements, compliance monitoring, and equitable relief provisions.

DATES: *Effective Date:* This rule is effective July 16, 2015.

Comment Date: We will consider comments that we receive by September 14, 2015.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, please specify RIN 0560–AI30 and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Director, Conservation and Environmental Programs Division (CEPD), U.S. Department of Agriculture (USDA) FSA CEPD, Mail Stop 0513, Room 4709–S, 1400 Independence Ave. SW., Washington, DC 20250–0513.

All written comments will be available for inspection online at *www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, telephone: (202) 720–9563. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at 202–720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview of This Rule

This rule amends CRP regulations in 7 CFR part 1410 to implement changes required by the 2014 Farm Bill (Pub. L. 113–79) and makes additional discretionary changes that are needed to clarify eligibility requirements and terms. It also makes discretionary and technical changes to 7 CFR part 718 that are relevant to CRP implementation. This document first provides background information on CRP, then discusses the changes to the CRP regulations, followed by a discussion of the changes to the part 718 regulations.

CRP Background and CRP Signups

The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, and wildlife, restoring wetlands, improving other natural resources, and addressing issues raised by State, regional, and national conservation initiatives by converting environmentally sensitive cropland and marginal pastureland from the production of agricultural commodities to a long-term vegetative cover, or to improve conditions of grassland. CRP is administered by FSA on behalf of CCC. Since its inception in 1985, CRP has proven to be one of the largest and most successful conservation programs in USDA history. In exchange for annual rental payments, participating farmers and ranchers agree to remove environmentally sensitive land from agricultural production and establish conservation covers comprised of grasses, legumes, forbs, shrubs and tree species that will improve environmental health by preventing soil erosion, improving air and water quality, and enhancing wildlife habitat. In addition, participants with suitable land may restore wetlands and establish shallow water areas for wildlife. Enrollment of eligible grassland in CRP will result in adoption of sustainable grazing practices and preservation of wildlife habitat. Participants also receive cost-share payments and other one-time incentive payments for certain practices to establish, maintain, and manage the conservation covers throughout 10 to 15 year CRP contracts. A wide range of conservation practices may be enrolled under CRP, including but not limited to, introduced or native grasses and legumes, hardwood trees, wildlife habitat, grass waterways, filter strips, riparian buffers, wetlands, rare and declining habitat, upland bird habitat, longleaf pine, duck nesting habitat, and pollinator habitat.

There are three major types of CRP signups: general, continuous, and grassland. Each of the three types has specific enrollment provisions, as described below. The grassland type is a new type added by the 2014 Farm Bill. For all signups, potential participants must submit an offer for enrollment at the local FSA county office or USDA service center.

Enrollment through general signup is based on a competitive offer process during designated signup periods. The general signup occurs when the Secretary of Agriculture announces USDA will accept general signup offers for enrollment. Offers from potential program participants are ranked against each other at the national level. Ranking is based on the environmental benefits expected to result from the proposed conservation practices and expected costs. Each offer is assigned an Environmental Benefit Index (EBI) score depending on ranking factors designed to reflect the expected environmental

benefits and costs. The EBI ranking system is specified in detail in the CRP handbook. These EBI factors include wildlife habitat benefits, water quality benefits, farm benefits due to reduced erosion, air quality benefits, benefits that last beyond the contract period, per acre expected costs, and local preference factors for certain benefits. In a general signup, the offer process is competitive and not all offers will necessarily rank high enough to be selected for CRP.

For practices and land with especially high environmental value, enrollment through continuous signup is available year-round without ranking periods. The continuous signup is focused on environmentally sensitive land and offers are not ranked against each other. Land eligible for continuous signup includes, but is not limited to, agricultural land with a high erodibility index; land in riparian areas that border rivers, streams, and lakes; land suitable for wetland restoration; and certain land to be dedicated to other specialized conservation measures. Subject to the acreage caps allocated to States, all continuous signup offers that meet the eligibility requirements are accepted.

Enrollment through the new grassland signup authorized by the 2014 Farm Bill will be administered on a separate continuous signup basis, and offers will be evaluated periodically and ranked. For grassland signup, this rule specifies the applicable new categories of eligible land and new grassland contract provisions. Eligible grassland include land that contain forbs or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use. Up to 2 million acres may be enrolled in CRP as grassland.

This rule does not change the basic administrative structure and nature of CRP.

Overview of Changes to CRP Regulations

The 2014 Farm Bill reduced the CRP acreage enrollment cap and made several changes to CRP. For example, it mandated that non-easement functions of the repealed Grassland Reserve Program be carried out under CRP, with enrollment of up to 2 million acres authorized. These enrollments count against the CRP acreage cap. In addition, the 2014 Farm Bill mandates changes to routine, prescribed, and emergency grazing, managed harvesting frequency, tree thinning payments, and other provisions.

This rule implements the changes to CRP required by the 2014 Farm Bill. These changes include revised permissive use provisions for emergency harvesting and grazing, and other commercial uses on CRP land. This rule also establishes a penalty-free early CRP contract termination opportunity in fiscal year (FY) 2015 for contracts that have been in effect for at least 5 years and meet certain environmental criteria. It specifies that CRP participants can make certain conservation and land improvements for economic use in the final year of the CRP contract that facilitate protection of enrolled land after contract expiration, and establishes a new type of incentive payment to encourage participants to perform tree thinning and related measures on CRP land. As discussed earlier, it also adds references to veteran farmers and ranchers to the Transition Incentives Program, and includes provisions to reflect the new eligibility requirements for grassland in CRP. This rule also includes the following discretionary provisions to clarify requirements where the 2014 Farm Bill did not define terms or otherwise provided FSA discretion in implementation:

- The ''infeasible to farm'' provision allows enrollment of the remainder of a field in which CRP practices other than buffers are enrolled on at least 75 percent of the acres in the field, if the remaining land is ''infeasible to farm;''
- Grasslands are now eligible for CRP and FSA may enroll up to 2 million acres;
- Up to $10 million in incentive payments may be made to encourage tree thinning and other measures that improve the environmental performance of CRP tree plantings;
- Land may be transferred from CRP to the Agricultural Conservation Easement Program (ACEP); and
- The amount of cropland (that is not in a National Conservation Priority Area) that can be in a State Conservation Priority Area (CPA) was reduced from 33 percent to 25 percent.

The changes to the CRP regulations are discussed in this document in the order that they appear in 7 CFR part 1410.

Many of the changes to CRP required by the 2014 Farm Bill have already been implemented through an extension of authorization published June 5, 2014 (79 FR 32435–32436). Specifically, the extension announced the continuation of continuous signup, 2014 Transition Incentives Program, and early contract termination opportunities in FY 2015. This rule implements the remaining provisions required by the 2014 Farm Bill, including the new grassland eligibility provisions and the revisions to permissive uses, as well as the discretionary changes.

Definitions

This rule makes the following changes to the definitions specified in § 1410.2:

The rule adds a new definition for the new ACEP authorized by the 2014 Farm Bill. The 2014 Farm Bill allows USDA to modify a CRP contract to allow a participant to transfer CRP land into ACEP.

The rule adds a new definition for ''common grazing practices'' that applies to the new grassland enrollments. For enrollments of eligible grassland, section 2004 of the 2014 Farm Bill allows the Secretary to permit common grazing practices, including maintenance and necessary cultural practices, on the enrolled land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species appropriate to that locality.

This rule modifies the definition of ''conservation plan'' to include provisions for grassland enrollments.

This rule clarifies that ''Erodibility Index (EI)'' means that FSA uses the higher of the erodibility from water or wind.

This rule adds definitions for ''forb, ''grassland,'' ''improved rangeland or pastureland,'' ''pastureland,'' ''rangeland,'' and ''shrubland'' because they are relevant for grassland enrollments.

This rule revises the definition of ''infeasible to farm'' to add discretion for the Deputy Administrator to determine that land is infeasible to farm for reasons in addition to the piece of land being too small or isolated to be economically viable.

This rule adds a new definition of ''nesting season'' to reflect the 2014 Farm Bill requirement that permitted activities on CRP land must consider certain categories of bird nesting seasons.

This rule adds a new definition of ''veteran farmer or rancher'' as specified in the 2014 Farm Bill.

This rule removes the following definitions that are no longer used in the CRP regulations: ''cropped wetlands,'' ''farmed wetlands,'' ''Water Bank Program (WBP),'' and ''wetlands farmed under natural conditions.'' This rule also removes definitions of ''beginning farmer or rancher,'' and ''limited resource farmer or rancher'' from 7 CFR part 1410, because those terms are defined in 7 CFR part 718, which is referenced in 7 CFR part 1410. It removes terms including ''merchantable timber,'' ''present value,'' and ''private non-industrial forest land'' that were only needed to implement the Emergency Forestry

Conservation Reserve Program, which the 2014 Farm Bill repealed.

Maximum County Acreage

Section 1410.4, ''Maximum County Acreage'' specifies that acreage placed in CRP and the Wetlands Reserve Program (WRP) cannot exceed 25 percent of the total cropland in a county. This rule revises that section to specify that cropland enrolled under WRP or ACEP wetland reserve easements, as applicable, is included with CRP cropland as part of the maximum county acreage limits. These changes are required for consistency with the 2014 Farm Bill. This rule does not change the existing waiver provisions in this section that allow the 25 percent limit to be exceeded in some circumstances.

Eligible Persons

Section 1410.5 ''Eligible Persons'' is amended to add references to veteran farmers and ranchers that are required by the 2014 Farm Bill. This rule also removes a redundant provision from this section concerning ownership or operation of the land for at least 12 months prior to submitting an offer for CRP.

Eligible Land

This adds new provisions to § 1410.6 ''Eligible Land'' to reflect changes required by the 2014 Farm Bill. As provided for in the existing CRP regulations, eligible land for CRP includes cropland with a history of production of tillable crops or marginal pastureland. The purpose of these eligibility requirements, which are not changing with this rule, is to ensure CRP is used to convert environmentally sensitive land to a long-term environmentally beneficial cover. As part of an effort to consolidate the USDA conservation programs, the 2014 Farm Bill adds grassland as a category of eligible land for CRP, and ends authorization for the Grassland Reserve Program.

This rule amends the dates of the cropping history required for certain cropland to be eligible for CRP. Previously, eligible cropland must have been planted or considered planted for 4 of the 6 years during the period of 2002 through 2007. This rule changes the relevant cropping history period to 2008 through 2013.

This rule adds additional provisions regarding infeasible-to-farm land eligibility, as required by the 2014 Farm Bill. Specifically, it adds eligibility for land in a portion of a field not enrolled in CRP if more than 75 percent of the land in the field is enrolled as a conservation practice other than a buffer or filterstrip practice, and the remainder of the field is determined to be infeasible to farm.

This rule removes provisions for eligible land concerning scour erosion, cropped wetland and associated acres, and land associated with non-cropped wetlands. These discretionary changes are needed for clarity and consistency with current policy. This rule also clarifies that land on which environmental measures are already required to be taken by State, local, or Tribal laws is ineligible for CRP.

Duration of Contracts

This rule amends § 1410.7, ''Duration of Contracts,'' to clarify that continuous and general signup contracts can be between 10 years and 15 years in length. The rule also specifies that grassland signup contracts will be 15 years in length. The additional provision for grassland contracts is required by the 2014 Farm Bill; the other changes are technical clarifications that do not change the existing eligible land or contract requirements.

The current policy on contract extensions is not changing with this rule. Contracts can be extended, but the total contract period including the extension(s) cannot exceed 15 years in length. For example, a 10 year contract can be extended for 1 to 5 years, but a contract currently in year 13 could only be extended for 1 or 2 years. In the case of a contract extension, existing contract terms are extended, except when new mandatory requirements apply, such as when AGI eligibility requirements for CRP are changed by the 2014 Farm Bill.

CPA

This rule modifies § 1410.8, ''Conservation Priority Areas,'' to reduce the total acreage within a State that can be approved for inclusion in a state CPA from 33 percent to 25 percent of the cropland not in a designated CRP national CPA. This discretionary change will help to ensure the most suitable, highest priority land is enrolled. The 2014 Farm Bill also removed some named specific CPAs, but because those CPAs were not named in the regulations, implementing that change does not require a change to the regulations.

Conversion to Trees

This rule removes § 1410.9, ''Conversion to Trees,'' because that section is obsolete. It only applied to CRP contracts that began before November 28, 1990.

Restoration of Wetlands and Farmable Wetlands Program

Section 1410.10, ''Restoration of Wetlands,'' is amended to include references to wetland reserve easements under ACEP. This rule modifies § 1410.11 ''Farmable Wetlands Program'' to specify that a constructed wetland that is developed to receive surface and subsurface flow from row crop agricultural production is eligible for enrollment. This rule also specifies that the total enrollment cap under farmable wetlands is reduced from 1 million acres to 750,000 acres. Both these changes are required by the 2014 Farm Bill.

Emergency Forestry Program

Section 2702 of the 2014 Farm Bill repeals authority for Emergency Forestry CRP enrollment; this rule removes § 1410.12, ''Emergency Forestry Program,'' to reflect this change. As noted earlier, the definitions used only in this section have also been removed from the Definitions section. The end of authorization for new Emergency Forestry contracts, and the removal of the regulations for Emergency Forestry enrollments, does not change existing Emergency Forestry contracts.

Grassland Enrollments

The 2014 Farm Bill terminates authority for new enrollments under the Grassland Reserve Program (7 CFR part 1415) but also provides new authority for enrollment of certain grassland into CRP. Previously, only cropland of various types and marginal pastureland was eligible for enrollment in CRP. This rule adds new section on grassland enrollments in § 1410.13, with conforming changes that add grassland provisions to § 1410.23, ''Eligible Practices,'' § 1410.30, ''Signup and Offer Types,'' § 1410.31, ''Acceptability of Offers,'' and § 1410.40, ''Cost Share Payments.''

In general, expiring Grassland Reserve Program lands are authorized to be enrolled in CRP, as well as grassland that was not in the Grassland Reserve Program but meet the provisions of § 1410.6 for eligible grassland. Grassland previously enrolled in the Grassland Reserve Program will continue to be subject to 7 CFR part 1415 for existing contracts and easements that have not expired. The 2014 Farm Bill sets an acreage cap of 2 million acres on the new grassland type of enrollment.

CRP Conservation Plan

This rule modifies § 1410.22, ''CRP Conservation Plan,'' to add provisions and references for the new grassland

contracts. It also contains other minor edits, including adding a reference to forest stewardship plans.

Acceptability of Offers

This rule amends § 1410.31, ''Acceptability of Offers,'' to establish new provisions for the grassland offer acceptance process. In ranking and evaluating grassland signup offers, FSA will consider various factors, including, but not limited to, whether the offer includes expiring CRP or Grassland Reserve Program land, row crop to grassland conversion, multi-species cover, livestock grazing operations, and State priority enrollment criteria and focus areas.

Contract Modifications

This rule adds references to veteran farmers to the provisions for Transition Incentives Program contracts, as required by the 2014 Farm Bill. The 2014 Farm Bill also adds discretion for FSA to modify or terminate contracts to allow transition of CRP lands into other Federal or State conservation programs, as is reflected in this rule. This rule specifies that CRP participants who terminate CRP contracts in order to participate in ACEP or other Federal or State easement programs are generally not required to refund CRP payments or interest, or pay liquidated damages to the CCC. However, participants will be required to repay CRP Signing Incentive Payments and Practice Incentive Payments when enrolling CRP land in wetlands reserve easements under ACEP.

The 2014 Farm Bill allows contract modifications for resource conserving uses in the final year of the contract. This rule adds provisions that allow an owner or operator in the final year of the CRP contract to make land improvements for economic use, provided that those land improvements maintain protection of the land after expiration of the contract and are conducted in a manner consistent with an approved CRP conservation plan. Such land enrolled in resource conserving use will not be eligible to be re-enrolled in CRP for 5 years following expiration of the contract. The rental payment for that last year of the CRP contract during which resource conserving use land improvements are implemented will be reduced by an amount commensurate with the economic value derived from practice implementation.

Annual Rental and Incentive Payments

This rule amends the provisions in § 1410.42, ''Annual Rental and Incentive Payments,'' to reflect the incorporation of grassland signup and tree thinning incentives. The 2014 Farm Bill authorizes CCC to provide incentives for tree thinning to improve resource conditions, primarily wildlife habitat enhancement of CRP lands established to trees.

Grassland rental rates will be based on levels not to exceed 75 percent of the estimated grazing value of the land, as required by the 2014 Farm Bill. Tree thinning incentive payments to encourage landowners and operators to implement forest management practices that improve resource condition or enhance wildlife habitat cannot exceed 150 percent of the total cost of the practice installation.

This rule also clarifies provisions for cropland soil rental rates to better reflect that these rates are based on the relative non-irrigated cropland productivity of soils within a county using soil productivity data and prevailing county average cash rental estimates for non-irrigated cropland. This rule also clarifies that marginal pastureland rental rates are based on estimates of the prevailing rental values of marginal pastureland in riparian areas. These clarifications are discretionary.

Section 1410.42 specifies a $50,000 per fiscal year payment limit on CRP rental payments, which is not changing with this rule because the 2014 Farm Bill does not change the payment limits for CRP.

Average Adjusted Gross Income (AGI) Limitation

Section 1605 of the 2014 Farm Bill establishes income limitations that apply to 2015 and subsequent crop, program, or fiscal year benefits for programs in Title II of the 2014 Farm Bill, which includes CRP. FSA previously implemented these limitations in 7 CFR part 1400 through a final rule published on April 14, 2014 (79 FR 21086–21118). This rule makes a conforming change to § 1410.44 to reflect the new AGI limits. The 2014 Farm Bill reduces the average AGI limitation for CRP from $1,000,000 to $900,000.

Previously, there was a waiver to the AGI limit for conservation programs if at least 66.66 percent of the participant's income was from farming, or on a case-by-case basis for other reasons to protect environmentally sensitive land of special significance. The AGI waivers for conservation practices are not reauthorized in the 2014 Farm Bill; therefore, this rule removes the waiver provisions in § 1410.44 to reflect this change.

Permissive Uses

CRP land uses are limited to the list of uses specified in § 1410.63, ''Permissive Uses.'' The intent is to ensure that CRP land is not used for activities that would tend to defeat the conservation purposes of CRP, while allowing limited activities that are consistent with CRP goals, such as grazing to control invasive species. Permissive uses must be consistent with the conservation of soil, water quality, and wildlife habitat, including habitat during the nesting season for certain categories of birds in the area. To achieve this goal, this rule adds and revises provisions for permissive uses as required by the 2014 Farm Bill. In general, these provisions include new restrictions and payment reductions related to harvesting, grazing, and other commercial land uses. There are also new grazing, haying, mowing, harvesting, and fire prevention permissive uses that apply only to the new grassland signup type.

Wind turbines are permitted on CRP land, provided that wind turbines are installed in numbers and locations as determined appropriate by CCC considering the location, size, and other physical characteristics of land and the extent to which the land contains listed threatened or endangered wildlife and wildlife habitat, and the purposes of CRP. Wind turbines are not a new permissive use, but it is slightly revised by the 2014 Farm Bill, which adds the provision about threatened or endangered wildlife and wildlife habitat.

This rule modifies the provisions for customary forestry maintenance activities to make an incentive payment to encourage proper thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land. These are consistent with the 2014 Farm Bill requirements.

No barrier fencing or boundary limitation can be established or maintained that prohibits wildlife access to or from the CRP acreage unless required by State law as part of any permissive use. This is a discretionary clarification that is consistent with 2014 Farm Bill requirements that permissive uses be consistent with the conservation of wildlife habitat.

This rule amends the provisions for managed harvesting and other commercial use including managed harvesting of biomass, to reflect the payment reduction of not less than 25 percent and the limitation that the activity occur at least every 5 years but

not more than once every 3 years, as specified in the 2014 Farm Bill.

This rule modifies the provisions for routine grazing to be consistent with the 2014 Farm Bill restriction on routine grazing to not more than once every 2 years, with a payment reduction of not less 25 percent unless CRP participant is a beginning farmer or rancher.

The 2014 Farm Bill eliminates the payment reduction for emergency haying, emergency grazing, or other commercial use of the forage on the land in response to drought, flooding, or other emergency. This rule amends § 1410.63 to reflect this change.

Language is added to § 1410.63 to clarify that there is no payment reduction for harvesting, grazing, or other commercial use of the forage on the land in response to a drought, flooding, or other emergency, when conducted consistent with an approved CRP conservation plan, irrespective of whether the harvested material is used or sold by the contract holder.

This rule specifies a permissive use for grazing of program acreage that has been established to vegetative buffers incidental to agricultural production adjacent to the buffers, provided the use does not destroy the permanent vegetative cover, in exchange for a 25 percent payment reduction for the land being grazed. This is a clarification of the existing ''incidental grazing'' use that was already permitted as a type of grazing use but has not previously been specified in the regulations as a separate permissive use. Incidental grazing, which requires the payment reduction, does not include prescribed grazing to control kudzu or other invasive species. Prescribed grazing to control invasive species also requires a payment reduction, except that a beginning farmer or rancher may conduct prescribed grazing without a payment reduction.

This rule specifies the permissive activities under the new grassland enrollment component of CRP, which include common grazing practices; haying, mowing, or harvesting outside of nesting season; wildfire considerations; grazing-related activities, such as fencing; and other activities as determined by the Deputy Administrator.

Transition Incentives Program

This rule adds the term ''veteran'' throughout § 1410.64, ''Transition Incentives Program,'' to reflect that eligibility under this program includes veteran farmers and ranchers in addition to beginning and socially disadvantaged farmers and ranchers. The definition of ''veteran'' as specified in the 2014 Farm Bill and in this rule specifies that to be eligible for the CRP Transition Incentives Program, the veteran must have farmed not more than 10 years. Therefore, while the addition of the term ''veteran'' will improve our outreach efforts to veterans and makes it more clear that they are eligible for the Transition Incentives Program, the eligible veterans would already have been eligible as beginning farmers.

''Preparing to plant a crop'' has been added as an appropriate conservation and land improvement practice during the last year of the CRP contract that is being transitioned to a beginning, veteran, or socially disadvantaged farmer or rancher under the Transition Incentives Program. This additional improvement practice is specified in the 2014 Farm Bill.

Miscellaneous Conforming and Editorial Changes in CRP Regulations

In addition to the changes required by the 2014 Farm Bill and the substantive discretionary changes discussed above, this rule makes a number of nonsubstantive changes to make the CRP regulations clear and consistent. For example, where appropriate, references to ''CCC'' have been replaced with ''Deputy Administrator'' to better reflect the office responsible for applicable determinations and decisions. ''Shall'' has been replaced with ''will'' or ''must'' for plain language and to add clarity to requirements. Obsolete provisions are removed in 7 CFR part 1410.

Provisions Applicable to Multiple Programs

This rule amends FSA regulations in 7 CFR part 718 ''Provisions Applicable to Multiple Programs'' that govern base acres and acreage reports for CRP and certain other FSA commodity programs and CCC programs operated by FSA. The statutory authority for the regulations in 7 CFR part 718 come from the 2014 Farm Bill, the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110–246) and the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171).

As discussed previously, the purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, restoring wetlands, improving other natural resources and addressing issues raised by State, regional, and national conservation initiatives by converting environmentally sensitive cropland and marginal pasture land from the production of agricultural commodities to a long-term vegetative cover. Enrollment of eligible grassland in CRP will result in adoption of sustainable grazing practices and preservation of wildlife habitat. To be eligible for CRP, cropland must have a cropping history for 2008 through 2013, as specified in this rule. Many FSA programs, particularly the Agricultural Risk Coverage (ARC) and Price Loss Coverage (PLC) programs authorized by the 2014 Farm Bill, specify that eligible land includes land that has base acres, which are cropland acres with a cropping history for certain years dating back to the 1980s. When cropland is enrolled in CRP, the base acres on a farm that exceed the farm's remaining cropland that is not devoted to CRP must be reduced to reflect the CRP enrollment. In that case, the base acres are voluntarily reduced and the base acres reduced are protected (''put on hold'') for that farm while the land is enrolled in CRP. To ensure that producers are able to transition land with base acres to and from CRP, and preserve eligibility of that land for other FSA programs after the CRP contract ends, it is necessary to clarify a number of terms in part 718 that are relevant to cropping histories, production records, and base acres for multiple programs. In general, the amendments to part 718 in this rule are consistent with current agency practice and merely clarify the regulations without changing FSA policy or practice.

This rule revises the term ''base acres'' to remove obsolete references and replace them with references to the regulations for the new programs authorized by the 2014 Farm Bill. It adds definitions for ''contiguous,'' ''contiguous county,'' and ''contiguous county office'' for use in various programs authorized under the 2014 Farm Bill including the CRP, the Cotton Transition Assistance Program (CTAP), ARC and PLC, disaster assistance programs, and the Noninsured Crop Disaster Assistance Program (NAP). The addition of the definitions of ''contiguous,'' ''contiguous county,'' and ''contiguous county office'' are necessary to clarify the policy concerning changing a farm's administrative county. The addition of the term ''common land unit (CLU)'' is needed because FSA now uses CLU numbers instead of field numbers for many production and acreage reports. The rule adds new definitions for ''double cropping,'' and ''subsequent crop,'' which are relevant to the cropping history requirements for multiple programs. The rule amends the definition of ''entity'' to be consistent with the definition in 7 CFR part 1400.

This rule makes clarifying changes to the definition of ''owner.'' The intent of these amendments to the definitions is to have clear and consistent regulations and to make it clear to producers what they must do to preserve the eligibility of land for multiple programs, including CRP.

This rule removes obsolete provisions in § 718.3, ''State Committee Responsibilities,'' regarding county rates for measurement services. The State Committee does not set measurement service rates.

This rule amends § 718.9 regarding signature requirements to replace the reference to ''husband'' and ''wife'' with a reference to ''spouse.'' It also changes the signature authority provisions to clarify the validity of documents that were previously acted on and approved by a county office or county committee, as required by section 1617 of the 2008 Farm Bill. These provisions have already been implemented, but were not in the regulations.

This rule amends § 718.102 to clarify the programs for which participants must submit acreage reports. It amends § 718.103 to clarify the requirements for documenting prevented planting. These are not new requirements; this reflects a discretionary decision to include detailed requirements previously in the handbooks in the regulations. This is needed to ensure that producers correctly document prevented planting, which is relevant to cropping history for the purposes of program eligibility for CRP and other programs.

This rule amends § 718.106, ''Non-compliance and Acreage Reports,'' to remove references to good faith or willful falsification. This is a program integrity issue to clarify that false acreage reports may result in program ineligibility, independent of motivation for the false report.

This rule amends § 718.112, ''Redetermination,'' to be consistent with current policy on when producers must submit requests for redetermination of crop acreage, appraised yield, or farm stored production.

This rule amends § 718.201, ''Farm Reconstitution,'' to be consistent with current policy, and to include references to land eligible for new programs authorized by the 2014 Farm Bill. This rule makes similar changes to § 718.205, ''Substantive Changes in Farming Operation, and Changes in Related Legal Entities,'' and § 718.206, ''Determining Farms, Tracts, Allotments, Quotas, and Bases When Reconstitution is Made by Division.'' As discussed earlier, these changes are relevant to preserving base acres for a given farm as land is transitioned into CRP and back into other FSA programs. This rule also amends § 718.206 to specify that, within 30 days after a prescribed form, letter, or contract providing base acres is issued, owners of the reconstituted farm may request a different designation of base acres, so long as all the owners agree in writing to the designation.

This rule amends § 718.301, ''Applicability,'' by adding a new paragraph that clarifies that relief provisions are not a means by which persons can obtain a review of a program's regulations or the agency's interpretations of its own regulations. This is a discretionary clarification to clarify program integrity provisions that is consistent with current policy. Similar clarifying amendments are made to other sections in subpart D, ''Equitable Relief from Ineligibility.'' This rule amends § 718.306 to clarify that if a determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant, the determination is not final. Another amendment clarifies that FSA will correct errors and incorrect decisions.

Miscellaneous Conforming and Editorial Changes to Part 718 Related to CRP

In addition, this rule makes minor plain language changes, such as replacing ''shall'' with ''will,'' to several sections of part 718. This rule removes obsolete provisions related to CRP referring to actions taken prior to the 2008 Farm Bill. The definition of ''agricultural commodity'' is removed because the term is not used in the subpart in which it was defined.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Section 2608 of the 2014 Farm Bill requires that the programs of Title II be implemented by interim rules effective on publication with an opportunity for notice and comment.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this interim rule as significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this proposed rule are summarized below. The full cost benefit analysis is available on *regulations.gov*.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Cost Benefit Analysis

The mandatory and discretionary changes to CRP specified in this rule are expected to have a minimal cost impact for CRP as a whole, although individual producers could experience measurable increases or decreases in financial and environmental benefits. Incentive payments for tree thinning, Transition Incentives Program payments, and new permissive uses specified in this rule are expected to increase costs to the government by $67 million for FY 2014 through 2018. That includes $10 million for tree thinning, $28 million for Transition Incentives Program payments, and $29 million for rental payments that are no longer reduced for emergency haying and grazing. Enrolling grasslands is expected to

reduce costs by $31 million during FY 2014 through 2018, resulting in an estimated net overall cost of $36 million for FY 2014 through 2018, an average of $7.3 million per year.

The acreage cap for CRP specified in the 2014 Farm Bill is expected to reduce overall payments to producers (and costs to the government) for CRP by $616 million total between FY 2014 and FY 2018 ($2.8 billion between FY 2014 and FY 2023). However, that cost reduction is not the result of the specific provisions in this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the Secretary of Agriculture and FSA are not required by any law to publish a proposed rule for this rulemaking initiative. CCC is required by section 2608 of the 2014 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Evaluation

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), FSA prepared a Supplemental Programmatic Environmental Impact Statement (SPEIS) for the changes to CRP proposed as a result of the mandatory provisions of the 2014 Farm Bill. The CRP Final SPEIS was completed as required by NEPA, the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA's NEPA regulations for compliance with NEPA (7 CFR part 799).

FSA provided notice of intent (NOI) to prepare the CRP SPEIS in the **Federal Register** on November 29, 2013 (78 FR 71561–71562), and requested public comment on the preliminary alternatives for analyzing changes to CRP that were proposed as a result of the mandatory provisions of the 2014 Farm Bill. The Draft SPEIS public comment period began with a Notice of Availability (NOA) published in the **Federal Register** on July 15, 2014 (79 FR 41247–41249), and public meetings were held in several locations across the country in July and August, 2014. The Final SPEIS public comment period began with a NOA published in the **Federal Register** on December 23, 2014 (79 FR 76952–76955).

Many of the changes to CRP from the 2014 Farm Bill did not require analysis in the SPEIS because they were administrative in nature, clarified the mandatory provisions of the 2014 Farm Bill, would not result in major changes to the current administration of CRP, and were addressed in previous NEPA documentation concerning CRP. Only those changes that did not meet these criteria were included in the SPEIS.

As part of this CRP rulemaking initiative, FSA prepared a Record of Decision, which identified the alternative selected for implementation and outlines the rationale, as well as a discussion of any final comments received for the SPEIS, and was published on June 18, 2015 (80 FR 34883–86).

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related document regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial action may be brought regarding provisions of this rule, the administrative appeal provisions of 7 CFR parts 11, 624, and 780 must be exhausted.

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates

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

rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Domestic Assistance Program

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

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 2608 of the 2014 Farm Bill, which provides that these regulations be promulgated and the program administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 718

Acreage allotments, Drug traffic control, Loan programs-agriculture, Marketing quotas, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1410

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

For the reasons explained above, CCC and FSA amend 7 CFR parts 718 and 1410 as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

■ 1. Revise the authority for part 718 to read as follows:

Authority: 7 U.S.C. 1501–1524, 1921–2008r, 7201–7334, 7901–8002 and 9011–9097, 15 U.S.C. 714b and c, and 16 U.S.C. 3801–3847.

■ 2. Revise § 718.1(a) to read as follows:

§ 718.1 Applicability.

(a) This part is applicable to all programs specified in chapters VII and XIV of this title that are administered by the Farm Service Agency (FSA) and to any other programs that adopt this part by reference. This part governs how FSA administers marketing quotas, allotments, base acres, and acreage reports for those programs to which this part applies. The regulations to which this part applies are those that establish procedures for measuring allotments and program eligible acreage, for determining program compliance, farm reconstitutions, application of finality, and equitable relief from compliance or ineligibility.

* * * * *

■ 3. Amend § 718.2 as follows:

■ a. Revise the definitions for ''Base acres'', ''Entity'', and ''Owner''; and

■ b. Add, in alphabetical order, definitions for ''Common land unit'', ''Contiguous'', ''Contiguous county'', ''Contiguous county office'', ''Double cropping'', ''State committee'', and ''Subsequent crop'';

■ c. In the definition of ''Crop reporting date'', remove the words ''date the'' and add the words ''date upon which the'' in their place; and

■ d. In the definition of ''Minor child'', add the words and punctuation ''For the purpose of programs under chapters VII and XIV of this title,'' before the word ''State''.

The revisions and additions read as follows:

§ 718.2 Definitions.

* * * * *

Base acres means, with respect to a covered commodity on a farm, the number of acres in effect on September 30, 2013, as defined in the regulations in part 1412, subpart B, of this title that were in effect on that date, subject to any reallocation, adjustment, or reduction. The term ''base acres'' includes any generic base acres as specified in part 1412 planted to a covered commodity as specified in part 1412.

* * * * *

Common land unit means the smallest unit of land that has an identifiable border and all of the following in common:

(1) Owner;

(2) Management;

(3) Cover; and

(4) Where applicable, producer association.

* * * * *

Contiguous means sharing any part of a boundary but not overlapping.

Contiguous county means a county contiguous to the reference county or counties.

Contiguous county office means the FSA county office that is in a contiguous county.

* * * * *

Double cropping means, as determined by the Deputy Administrator on a regional basis, consecutive planting of two specific crops that have the capability to be planted and carried to maturity for the intended uses, as reported by the producer, on the same acreage within a 12-month period. To be considered double cropping, the planting of two specific crops must be in an area where such double cropping is considered normal, or could be considered normal, for all growers under normal growing conditions and growers are typically able to repeat the same cycle successfully in a subsequent 12-month period.

Entity means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

* * * * *

Owner means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government; however, such agency is not eligible to receive any program payment;

(2) One who is buying farmland under a contract for deed; or

(3) One who has a life-estate in the property.

* * * * *

State committee means the FSA State committee.

* * * * *

Subsequent crop means a crop following an initial crop that is not in an approved double cropping combination.

* * * * *

§ 718.3 [Amended]

■ 4. Amend § 718.3 as follows:

■ a. In paragraph (a)(2), add the word ''or'' at the end;

■ b. In paragraph (a)(3), remove the semicolon and add a period in its place;

■ c. Remove paragraphs (a)(4), (5), and (6); and

■ d. In paragraph (b), remove the references to ''§ 718.108'' and ''§ 718.111'' and add references to ''§ 718.109'' and ''§ 718.112'', respectively in their place.

■ 5. Revise § 718.7 to read as follows:

§ 718.7 Furnishing maps.

(a) A reasonable number, as determined by FSA, of reproductions of photographs, mosaic maps, and other

maps will be made available to the owner of a farm, an insurance company reinsured by the Federal Crop Insurance Corporation (FCIC), or a private party contractor performing official duties on behalf of FSA, CCC, and other USDA agencies.

(b) For all others, reproductions will be made available at the rate FSA determines will cover the cost of making such items available.

§ 718.8 [Amended]

■ 6. Amend § 718.8(e) by removing the word ''COC'' and adding the words ''county committee'' in its place.

■ 7. Amend § 718.9 as follows:

■ a. Revise paragraphs (a) and (b) introductory text; and

■ b. Add paragraph (f).

The revisions and addition read as follows:

§ 718.9 Signature requirements.

(a) When a program authorized by this chapter or chapter XIV of this title requires the signature of a producer, landowner, landlord, or tenant, then a spouse may sign all such FSA or CCC documents on behalf of the other spouse, except as otherwise specified in this section, unless such other spouse has provided written notification to FSA and CCC that such action is not authorized. The notification must be provided to FSA for each farm.

(b) A spouse may not sign a document on behalf of the other spouse with respect to:

* * * * *

(f) Documents that were previously acted on and approved by the FSA county office or county committee will not subsequently be determined inadequate or invalid because of the lack of signature authority of any person signing the document on behalf of the applicant or any other individual, entity, general partnership, or joint venture, unless the person signing the program document knowingly and willfully falsified the evidence of signature authority or a signature. However, FSA may require affirmation of the document by those parties deemed appropriate for an affirmation, as determined by the Deputy Administrator. Nothing in this paragraph relieves participants of any other program requirements.

§ 718.101 [Amended]

■ 8. Amend § 718.101(a)(1) by removing the reference to ''§ 718.103'' and adding a reference to ''§ 718.104'' in its place.

§ 718.102 [Amended]

■ 9. Amend § 718.102 as follows:

■ a. In paragraph (a), remove the words ''annually submit accurate information'' and add the words ''submit accurate information annually'' in their place;

■ b. In paragraph (b)(1), remove the words ''the programs governed by part 1412 of this title'' and add the words ''programs for which eligibility for benefits is tied to base acres'' in their place;

■ c. In paragraph (b)(6), remove the word ''intended'';

■ d. Revise paragraphs (b)(7) and (c); and

■ e. Add paragraph (d).

The revisions and addition read as follows:

§ 718.102 Acreage reports.

* * * * *

(b) * * *

(7) All producers reporting acreage as prevented planted acreage or failed acreage must provide documentation that meets the provisions of § 718.103 to the FSA county office where the farm is administered.

(c) The annual acreage reports required in paragraph (a) of this section must be filed with the county committee by the farm operator, farm owner, producer of the crop on the farm, or duly authorized representative by the final reporting date applicable to the crop as established by the Deputy Administrator.

(d) Participants in programs to which this part is applicable must report all crops, in all counties, in which they have an interest. This includes crops on cropland and noncropland, including native or improved grass that will be hayed or grazed.

■ 10. Amend § 718.103 as follows:

■ a. Revise paragraphs (b) and (c);

■ b. Remove paragraphs (d) and (e);

■ c. Redesignate paragraphs (f) and (g) as paragraphs (d) and (e);

■ d. In newly redesignated paragraph (e), remove the words ''shall apply'' and add the word ''applies'' it their place;

■ e. Add paragraphs (f) and (g);

■ f. Remove paragraph (h);

■ g. Redesignate paragraphs (i) through (n) as paragraphs (h) through (m), respectively;

■ h. In newly redesignated paragraph (i), remove the words ''the COC. The COC will'' and add the words ''the county committee. The county committee may'' in their place; and

■ i. In newly redesignated paragraph (m)(2), remove the word ''and'' at the end of the sentence and add the word ''or'' in its place.

The revisions and additions read as follows:

§ 718.103 Prevented planted and failed acreage.

* * * * *

(b) FSA may approve acreage as ''prevented planted acreage'' if all other conditions for such approval are met and provided the conditions in paragraphs (b)(1) through (6) of this section are met.

(1) Except as specified in paragraph (b)(2) of this section, producers must report the acreage, on forms specified by FSA, within 15 calendar days after the final planting date determined for the crop by FSA.

(2) If the acreage is reported after the period identified in paragraph (b)(1) of this section, the application must be filed in time to permit:

(i) The county committee or its authorized representative to make a farm visit to verify eligible disaster conditions that prevented the specified acreage or crop from being planted; or

(ii) The county committee or its authorized representative the opportunity to determine, based on visual inspection, that the acreage or crop in question was affected by eligible disaster conditions such as damaging weather or other adverse natural occurrences that prevented the acreage or crop from being planted.

(3) A farm visit to inspect the acreage or crop is required for all late-filed acreage reports where prevented planting credit is sought. Under no circumstance may acreage reported after the 15-day period referenced in paragraph (b)(1) of this section be deemed acceptable unless the criteria in paragraph (b)(2) of this section are met. State and county committees do not have the authority to waive the field inspection and verification provisions for late-filed reports.

(4) All determinations made during field inspections must be documented on each late-filed acreage report, with results also recorded in county committee minutes to support the documentation.

(5) The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision.

(6) The prevented planted acreage report was approved by the county committee. The county committee may disapprove prevented planted acreage credit if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage, the producer must show to the satisfaction of FSA that the producer intended to plant the acreage. Documentation supporting such intent includes documents related to field preparation, seed purchase, and any

other information that shows the acreage could and would have been planted and harvested absent the natural disaster or eligible cause of loss that prevented the planting.

* * * * *

(f) Acreage ineligible for prevented planting coverage includes, but is not limited to, acreage:

(1) With respect to which the planting history or conservation plans indicate it would remain fallow for crop rotation purposes;

(2) Used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs;

(3) Not planted because of a management decision;

(4) Affected by the containment or release of water by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of water;

(5) Where any other person receives a prevented planted payment for any crop for the same crop year, unless the acreage meets all the requirements for double cropping under this part;

(6) Where pasture or other forage crop is in place on the acreage during the time that planting of the crop generally occurs in the area;

(7) Where another crop is planted (previous or subsequent) that does not meet the double cropping definition;

(8) Where any volunteer or cover crop is hayed, grazed, or otherwise harvested on the acreage for the same crop year;

(9) Where there is an inadequate supply of irrigation water beginning on the Federal crop insurance sale closing date for the previous crop year or the Noninsured Crop Disaster Assistance Program (NAP) application closing date for the crop as specified in part 1437 of this title through the final planting date of the current year;

(10) On which a failure or breakdown of irrigation equipment or facilities, unless the failure or breakdown is due to a natural disaster;

(11) That is under quarantine imposed by a county, State, or Federal government agency;

(12) That is affected by chemical or herbicide residue, unless the residue is due to a natural disaster;

(13) That is affected by drifting herbicide;

(14) On which a crop was produced, but the producer was unable to obtain a market for the crop;

(15) Involving a planned planting of a ''value loss crop'' as that term is defined for NAP as specified in part 1437 of this title, including, but not limited to, Christmas trees, aquaculture, or ornamental nursery, for which NAP assistance is provided under value loss procedure;

(16) For which the claim for prevented planted credit relates to trees or other perennials unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(17) That is affected by wildlife damage;

(18) Upon which, the reduction in the water supply for irrigation is due to participation in an electricity buy-back program, or the sale of water under a water buy-back or legislative changes regarding water usage, or any other cause which is not a natural disaster; or

(19) That is devoted to non-cropland.

(g) CCC may allow exceptions to acreage ineligible for prevented planting coverage when surface water or ground water is reduced because of a natural disaster (as determined by CCC).

* * * * *

§ 718.104 [Amended]

■ 11. Amend § 718.104 as follows:

■ a. In paragraph (a), introductory text, remove words ''date, and be considered timely filed, if'' and add the words ''date and processed by FSA if'' in their place;

■ b. In paragraph (a)(1), remove the words and punctuation ''is in the field,'' and add the words and punctuation ''remains in the field, permitting FSA to verify and determine the acreage;'' in their place;

■ c. In paragraph (a)(2), add the words ''amount of'' in front of the word ''acreage''; and

■ d. In paragraph (b), remove the word ''shall'' and add the word ''must'' in its place.

§ 718.105 [Amended]

■ 12. Amend § 718.105(c)(2) by removing the word ''when'' and adding the words ''upon which'' in its place.

■ 13. Revise § 718.106 to read as follows:

§ 718.106 Non-compliance and false acreage reports.

(a) Participants who provide false or inaccurate acreage reports may be ineligible for some or all payments or benefits, subject to the requirements of § 718.102(b)(1) and (3).

(b) [Reserved]

■ 14. Revise § 718.111 to read as follows:

§ 718.111 Notice of measured acreage.

(a) FSA will provide notice of measured acreage and mail it to the farm operator. This notice constitutes notice to all parties who have ownership, leasehold interest, or other interest in such farm.

(b) [Reserved]

■ 15. Amend § 718.112 as follows:

■ a. Revise paragraph (a); and

■ b. In paragraph (b), introductory text, remove the words ''The county committee shall'' and add the words ''FSA will'' in their place.

The revision reads as follows:

§ 718.112 Redetermination.

(a) A redetermination of crop acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Redetermination may be requested by a producer with an interest in the farm if the producer pays the cost of the redetermination. The request must be submitted to FSA within 5 calendar days after the initial appraisal of the yield of a crop, or before the farm-stored production is removed from storage. A redetermination will be undertaken in the manner prescribed by the Deputy Administrator. A redetermination will be used in lieu of any prior determination unless it is determined by the representative of the Deputy Administrator that there is good cause not to do so.

* * * * *

■ 16. Revise the heading of subpart C to read as follows:

Subpart C—Reconstitution of Farms, Allotments, Quotas, and Base Acres

■ 17. Revise § 718.201(a), (c) introductory text, and (c)(1) to read as follows:

§ 718.201 Farm constitution.

(a) In order to implement FSA programs and monitor compliance with regulations, FSA must have records on what land is being farmed by a particular producer. This is accomplished by a determination of what land or group of lands ''constitute'' an individual unit or farm. Land that was properly constituted under prior regulations will remain so constituted until a reconstitution is required by paragraph (c) of this section. The constitution and identification of land as a ''farm'' for the first time and the subsequent reconstitution of a farm made thereafter will include all land operated by an individual entity or joint operation as a single farming unit except that it may not include:

(1) Land under separate ownership unless the owners agree in writing or have previously agreed in writing and the labor, equipment, accounting system, and management are operated in common by the operator, but separate from other tracts;

(2) Land under a lease agreement of less than 1 year duration;

(3) Federally owned land unless it is rangeland on which no crops are planted and on which there are no crop base acres established;

(4) State-owned wildlife lands unless the former owner has possession of the land under a leasing agreement;

(5) Land constituting a farm that is declared ineligible to be enrolled in a program under the regulations governing the program;

(6) For base acre crops, land located in counties that are not contiguous except where:

(i) Counties are divided by a river;

(ii) Counties do not share a common border because of a correction line adjustment; or

(iii) The land is within 20 miles, by road, of other land that will be a part of the farming unit;

(7) Land subject to either a default election or a valid election made under part 1412 of this title for each and all covered commodities constituted with land that has a different default election or valid election for each and all covered commodities, irrespective of whether or not any of the land has base acres; or

(8) Land subject to an election of individual coverage under the Agriculture Risk Coverage Program (ARC–IC) in any State constituted with any land in another State.

* * * * *

(c) A reconstitution of a farm either by division or by combination is required whenever:

(1) A change has occurred in the operation of the land since the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as specified in paragraph (a) of this section, except that no reconstitution will be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease, or increase the amount of program benefits received;

* * * * *

■ 18. Revise § 718.206 to read as follows:

§ 718.206 Determining farms, tracts, and base acres when reconstitution is made by division.

(a) The methods for dividing farms, tracts, and base acres are, in order of precedence: Estate, designation by landowner, cropland, and default. The proper method will be determined on a crop-by-crop basis.

(b) The estate method for reconstitution is the pro-rata distribution of base acres for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the base acres for that tract will be determined according to paragraphs (c) through (e) of this section.

(1) Base acres must be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(2) If there is no will or the county committee determines that the terms of a will are not clear as to the division of base acres, the base acres will be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which base acres have been established. An agreement by the administrator or executor will not be accepted in lieu of an agreement by the heirs or devisees.

(3) If base acres are not apportioned as specified in paragraph (b)(1) or (2) of this section, the base acres must be divided as specified in paragraph (d) or (e) of this section, as applicable.

(c) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the base acres, including historical acreage that has been double cropped, between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers.

(1) If the county committee determines that base acres cannot be divided in the manner designated by the owner because the owner's designation does not meet the requirements of paragraph (c)(2) of this section, FSA will notify the owner and permit the owner to revise the designation to meet the requirements. If the owner does not furnish a revised designation of base acres within a reasonable time after such notification, or if the revised designation does not meet the requirements, the county committee will divide the base acres in a pro-rata manner in accordance with paragraph (d) or (e) of this section.

(2) The landowner may designate a manner in which base acres are divided by filing a signed written memorandum of understanding of the designation of base acres with the county committee before the transfer of ownership of the land. Both the transferring owner and transferee must sign the written designation of base acres.

(i) Within 30 days after a prescribed form, letter, or notice of base acres is issued by FSA following the reconstitution of a farm but before any subsequent transfer of ownership of the land, all owners in existence at time of the reconstitution request may seek a different manner of base acre designation by agreeing in writing by executing a form CCC–517 or other designated form.

(ii) The landowner must designate the base acres that will be permanently reduced when the sum of the base acres exceeds the effective cropland plus double-cropped acres for the farm.

(iii) When the part of the farm from which the ownership is being transferred was owned for less than 3 years, the designation by landowner method of designating base acres cannot be used unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell base acres. In the absence of such a determination, and if the farm contains land that has been owned for less than 3 years, the part of the farm that has been owned for less than 3 years will be considered as a separate farm and the base acres must be assigned to that farm in accordance with paragraph (d) or (e) of this section. Such apportionment will be made prior to any designation of base acres with respect to the part that has been owned for 3 years or more.

(3) The designation by landowner method may be applied, at the owner's request, to land owned by an Indian Tribal Council that is leased to two or more producers for the production of any crop of a commodity for which base acres have been established. If the land is leased to two or more producers, an Indian Tribal Council may request that the county committee divide the base acres between the applicable tracts in the manner designated by the Council. The use of this method is not subject to the requirements specified in paragraph (c)(2) of this section.

(d) The cropland method for reconstitution is the pro-rata distribution of base acres to the resulting tracts in the same proportion that each resulting tract bears to the cropland for the parent tract. This method of division will be used if paragraphs (b) and (c) of this section do not apply.

(e) The default method for reconstitution is the separation of tracts from a farm with each tract maintaining the base acres attributed to the tract when the reconstitution is initiated.

(f) Farm program payment yields calculated for the resulting farms of a division may be increased or decreased if the county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in the farm program payment yield on a resulting farm will be offset by a corresponding decrease on another resulting farm of the division.

■ 19. Revise § 718.207 to read as follows:

§ 718.207 Determining base acres when reconstitution is made by combination.

(a) When two or more farms or tracts are combined for a year, that year's base acres, with respect to the combined farm or tract, as required by applicable program regulations, will not be greater than the sum of the base acres for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

(b) [Reserved]

■ 20. Amend § 718.301 as follows:

■ a. In paragraph (a), add the punctuation and words '', as amended'' at the end of the first sentence;

■ b. Remove paragraph (b);

■ c. Redesignate paragraph (c) as paragraph (b); and

■ d. Add paragraph (c).

The addition reads as follows:

§ 718.301 Applicability.

* * * * *

(c) The relief provisions of this part cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of law or regulations governing the program benefit or assistance.

§ 718.302 [Amended]

■ 21. In § 718.302, remove the definition of ''Agricultural commodity''.

■ 22. Revise § 718.303 to read as follows:

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, if an action or inaction by a participant is based upon good faith reliance on the action or advice of an authorized representative of an FSA county or State committee, and that action or inaction results in the participant's noncompliance with the requirements of a covered program that is to the detriment of the participant, then that action or inaction still may be approved by the Deputy Administrator as meeting the requirements of the covered program, and benefits may be extended or payments made in as specified in § 718.305.

(b) This section applies only to a participant who:

(1) Relied in good faith upon the action of, or information provided by, an FSA county or State committee or an authorized representative of such committee regarding a covered program;

(2) Acted, or failed to act, as a result of the FSA action or information; and

(3) Was determined to be not in compliance with the requirements of that covered program.

(c) This section does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

■ 23. Revise § 718.304 to read as follows:

§ 718.304 Failure to fully comply.

(a) When the failure of a participant to fully comply with the terms and conditions of a covered program precludes the providing of payments or benefits, relief may be authorized as specified in § 718.305 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by FSA to have made a good faith effort to comply fully with the terms and conditions of the covered program and have performed substantial actions required for program eligibility.

■ 24. Amend § 718.306 as follows:

■ a. Revise paragraphs (a) introductory text, (a)(2) and (4), and (b); and

■ b. Add paragraph (c).

The revisions and addition read as follows:

§ 718.306 Finality.

(a) A determination by an FSA State or county committee (or employee of such committee) becomes final on an application for benefits and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless any of the following exceptions exist:

* * * * *

(2) The determination was in any way based on erroneous, innocent, or purposeful misrepresentation; false statement; fraud; or willful misconduct by or on behalf of the participant;

* * * * *

(4) The participant knew or had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, the erroneous decision will be corrected according to paragraph (c) of this section.

(1) If, as a result of the erroneous decision, payment was issued, no action will be taken by FSA, CCC, or a State or county committee to recover unearned payment amounts unless one or more of the exceptions in paragraph (a) of this section applies;

(2) If payment was not issued before the error was discovered, the payment will not be issued. FSA and CCC are under no obligation to issue payments or render decisions that are contrary to law or regulation.

(c) FSA and CCC will modify and correct determinations when errors are discovered. As specified in paragraph (b) of this section, FSA or CCC may be precluded from recovering unearned payments that issued as a result of the erroneous decision. FSA or CCC's inability to recover or demand refunds of unearned amounts as specified in paragraph (b) will only be effective through the year in which the error was found and communicated to the participant.

■ 25. Amend § 718.307 as follows:

■ a. In paragraph (a), introductory text, remove the words ''an SED'' and add the words ''an SED, after consultation with and approval from OGC but'' in their place, and remove the reference to ''§§ 718.303 and 718.304'' and add a reference to ''§§ 718.303 through 718.305'' in its place;

■ b. In paragraph (a)(2), remove the word ''person'' and add the word ''participant'' in its place;

■ c. In paragraph (a)(3), remove the words ''in that year'';

■ d. In paragraph (a)(4), remove the words ''the SED (or the SED's predecessor)'' and add the words ''an SED'' in their place;

■ e. Revise paragraph (d); and

■ f. In paragraph (e), remove the last sentence.

The revision reads as follows:

§ 718.307 Special relief approval authority for State Executive Directors.

* * * * *

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that requirements for granting relief under § 718.303 or § 718.304 have been met, that the form of relief is authorized under § 718.305, and that the granting of the relief is within the lawful authority of the SED.

* * * * *

PART 1410—CONSERVATION RESERVE PROGRAM

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

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

■ 27. Revise § 1410.1(f) and (j) to read as follows:

§ 1410.1 Administration.

* * * * *

(f) Notwithstanding other provisions of this section, the suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives will be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by the Deputy Administrator, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case will such determination compel the Deputy Administrator to execute a contract that the Deputy Administrator does not believe will serve the purposes of CRP established by this part. Any approved technical authority will use CRP guidelines established by the Deputy Administrator.

* * * * *

(j) Except as agreed by CCC and the participant together, the regulations in this part apply to all contracts approved after July 16, 2015.

■ 28. Amend § 1410.2 as follows:

■ a. In paragraphs (a) and (b), introductory text, remove the words ''shall be'' each time they appear and add the word ''are'' in their place,

■ b. Amend paragraph (b) as follows:

■ i. Add, in alphabetical order, definitions for ''Agricultural Conservation Easement Program'', ''Common grazing practices'', ''Forb'', ''Grassland'', ''Improved rangeland or pastureland'', ''Nesting season'', ''Pastureland'', ''Rangeland'', ''Shrubland'', and ''Veteran farm or rancher'';

■ ii. Revise the definitions for ''Conservation plan'', ''Conserving use'', ''Considered planted'', ''Erodibility Index'', ''Highly Erodible Land'', ''Infeasible to farm'', and ''Local FSA Office''; and

■ iii. Remove the definitions of ''Beginning farmer or rancher'', ''Cropped wetlands'', ''Farmed wetlands'', ''Limited resource farmer or rancher'', ''Merchantable timber'', ''Present value'', ''Private non-industrial forest land'', ''Private non-industrial forest landowner'', ''Water Bank Program (WBP)'', and ''Wetlands farmed under natural conditions''.

The revisions and additions read as follows:

§ 1410.2 Definitions.

* * * * *

(b) * * *

Agricultural Conservation Easement Program means the program that provides for the establishment of wetland easements on land under subtitle H of Title XII of the Food Security Act of 1985, as amended by section 2301 of the Agricultural Act of 2014.

* * * * *

Common grazing practices means grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

* * * * *

Conservation plan means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures. For grassland signup enrollments where grazing is occurring or is likely to occur, the conservation plan will contain provisions for common grazing practices and related activities consistent with achieving CRP purposes and maintaining the health and viability of grassland resources.

* * * * *

Conserving use means a use of land that meets crop rotation requirements, as specified by the Deputy Administrator, for: Alfalfa, multi-year grasses, and legumes planted during 2008 through 2013; for summer fallow during 2008 through 2013; or for land on which the contract expired during the period 2008 through 2013 and on which the grass cover required by the CRP contract continues to be maintained as though still enrolled. Land that meets this definition of ''conserving use'' will be considered to have been planted to an agricultural commodity for the purposes of eligibility specified in § 1410.6(a)(1).

Considered planted means land devoted to a conserving use during the crop year or during any of the 2 years preceding the crop year if the contract expired; cropland enrolled in CRP; or land for which the producer received insurance indemnity payment for prevented planting.

* * * * *

Erodibility index (EI), as prescribed by the Deputy Administrator, is an index used to determine the inherent erodibility from either from water or wind, but not both combined, of a soil in relation to the soil loss tolerance for that soil.

* * * * *

Forb means any herbaceous plant other than those in the grass family.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland, as determined by the Deputy Administrator.

Highly Erodible Land (HEL) means land determined to have an EI equal to or greater than 8 on the acreage offered, as determined by the Deputy Administrator.

Improved rangeland or pastureland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily consumed by livestock.

Infeasible to farm means an area of land that is too small or isolated to be economically farmed, or is otherwise suitable for such classification, as determined by the Deputy Administrator.

* * * * *

Local FSA office means the FSA county office serving the area in which the FSA records are located for the farm or ranch.

* * * * *

Nesting season means the nesting season for birds in the local area that are economically significant, in significant decline, or conserved in accordance with Federal or State law, as determined by the Deputy Administrator in consultation with the State technical

committee established as specified in part 610 of this title.

* * * * *

Pastureland means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and cultural treatments, such as tillage, aeration, fertilization, mowing, and weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

* * * * *

Rangeland means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used with little or no chemicals or fertilizer being applied. Grassland, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon juniper are also included as rangeland.

* * * * *

Shrubland means land where the dominant plant species are shrubs, which are plants that are persistent, have woody stems, and a relatively low growth habit.

* * * * *

Veteran farmer or rancher means a farmer or rancher who has served in the Armed Forces, as defined in 38 U.S.C. 101(10), and who either:

(1) Has not operated a farm or ranch; or

(2) Has operated a farm or ranch for not more than 10 years.

* * * * *

■ 29. Revise § 1410.4 to read as follows:

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section and certain shelterbelts, windbreaks, and wet and saturated soils enrolled under ACEP, the maximum cropland acreage that may be placed in the CRP and the wetland reserve easements of WRP and ACEP, as appropriate, may not exceed 25 percent of the total cropland in the county. No more than 10 percent of the cropland in a county may be subject, in the aggregate, to a CRP or wetland reserve easement.

(b) The restrictions in paragraph (a) of this section may be waived by the Deputy Administrator as follows:

(1) If the Deputy Administrator determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title; or

(2) Cropland in a county enrolled under provisions as specified in § 1410.30 or § 1410.50 may be excluded from the restrictions in paragraph (a) of this section, as determined by the Deputy Administrator, provided that the county government concurs.

(c) These restrictions on participation are in addition to any other restriction imposed by law.

§ 1410.5 [Amended]

■ 30. Amend § 1410.5 as follows:

■ a. In paragraph (a)(2)(iii), remove the words ''are such that'';

■ b. Remove paragraph (b);

■ c. Redesignate paragraph (c) as paragraph (b); and

■ d. In newly redesignated paragraph (b), remove the words ''beginning or socially disadvantaged'' and add the words ''beginning, socially disadvantaged, or veteran'' in their place.

■ 31. Amend § 1410.6 as follows:

■ a. Revise paragraph (a)(1);

■ b. In paragraph (a)(2)(i), remove the words ''in a CREP for similar water quality purposes as determined by CCC'' and add the words ''under a Conservation Reserve Enhancement Program (CREP) agreement for similar water quality purposes as determined by the Deputy Administrator'' in their place;

■ c. Revise paragraph (a)(3);

■ d. Add paragraph (a)(4);

■ e. Remove paragraph (b)(2) and redesignate paragraphs (b)(3) through (10) as paragraphs (b)(2) through (9), respectively;

■ f. Revise newly designated paragraphs (b)(2) and (3);

■ g. In newly redesignated paragraph (b)(4), add the words ''as determined by the Deputy Administrator'' at the end;

■ h. In newly designated paragraph (b)(5), remove the word ''CCC'' each times it appears and add the words ''Deputy Administrator'' in its place;

■ i. Revise newly designated paragraph (b)(6);

■ j. Remove paragraphs (b)(11) and (12) and redesignate paragraph (b)(13) as paragraph (b)(10);

■ k. In newly designated paragraph (b)(10), remove the period at the end of the paragraph and add the words and punctuation ''; or'' in its place;

■ l. Add paragraph (b)(11);

■ m. Revise paragraph (c); and

■ n. Add paragraph (d).

The revisions and additions read as follows:

§ 1410.6 Eligible land.

(a) * * *

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in § 1410.2, to an agricultural commodity in 4 of the 6 crop years from 2008 through 2013, as determined by the Deputy Administrator, including field margins that are incidental to the planting of crops if:

(i) Including such field margins is determined appropriate by the Deputy Administrator; and

(ii) The field margins are physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; or

* * * * *

(3) Acreage enrolled in CRP during the final year of the CRP contract, provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the CCC; or

(4) Grassland as specified in paragraph (c) of this section.

(b) * * *

(2) Be non-irrigated or irrigated cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer, only as determined by, and only when specifically authorized by, the Deputy Administrator;

(3) Be land in a portion of a field not enrolled in CRP, if either:

(i) More than 50 percent of the remainder of the field is enrolled as a buffer or filterstrip practice; or

(ii) More than 75 percent of the field is enrolled as a conservation practice other than a buffer or filterstrip; and

(iii) With respect to both paragraphs (b)(3)(i) and (ii) of this section, the remainder portion of the field is determined to be infeasible to farm, as defined in § 1410.2, and enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate, as determined by the Deputy Administrator;

* * * * *

(6) Be non-irrigated or irrigated cropland that produces or serves as the recharge area for saline seeps, or acreage that is functionally related to such saline seeps, or where a rising water table contributes to increased levels of

salinity at or near the ground surface, as determined by the Deputy Administrator;

* * * * *

(11) Land that meets other continuous signup land eligibility criteria, as established by the Deputy Administrator.

(c) For land to be eligible under a grassland signup as specified in § 1410.30, the land must, as established by the Deputy Administrator:

(1) Not be cropland or marginal pastureland at the time of enrollment as grassland. Land enrolled under an expiring CRP contract may be eligible to be re-enrolled as grassland during the final year of the CRP contract, provided the scheduled expiration date of the current CRP contract is the day before the effective date of the new CRP contract, and suitable grass, legume, forb or shrub covers predominate, and;

(2) Be needed and suitable for enrollment as grassland following a determination that such land:

(i) Contain forbs or shrubland, including improved rangeland and pastureland, for which grazing is the predominant use;

(ii) Is located in an area historically dominated by grassland;

(iii) Is able to provide habitat for animal and plant populations of significant ecological value if the land is retained in its current use or restored to a natural condition; and

(iv) Meets other grassland signup land eligibility criteria as may be established by the Deputy Administrator.

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, land will be ineligible for enrollment if, as determined by the Deputy Administrator, the land is one of the following:

(1) Federally-owned land, unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is either restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities, or requires any resource-conserving measures, during any part of the proposed contract term;

(3) Land already enrolled in the CRP, unless authorized by § 1410.6(a)(3), as determined by the Deputy Administrator;

(4) Land for which Tribal, State, or other locals laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices and the owners or operators of such land have been notified in writing of such requirements; or

(5) Land that is required to be used, or otherwise dedicated to mitigate actions undertaken, or planned to be undertaken, on other land, or to mitigate other actions taken by landowners or operators, as determined by the Deputy Administrator.

■ 32. Revise § 1410.7 to read as follows:

§ 1410.7 Duration of contracts.

(a) Contracts with land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors will be for a term of 10 years to 15 years, as requested by the applicant.

(b) Other general and continuous signup contracts under this part will be for a term of 10 to 15 years, as determined by the Deputy Administrator.

(c) Grassland signup contracts will be for a term of 15 years.

(d) All contracts will expire on September 30 of the final calendar year of the contract.

§ 1410.8 [Amended]

■ 33. Amend § 1410.8 as follows:

■ a. In paragraph (b), remove the word ''CCC'' and add the words ''Deputy Administrator'' in its place and remove the number ''33'' and add the number ''25'' in its place;

■ b. In paragraph (d), introductory text, remove the word ''shall'' and add the word ''will'' in its place and add the words ''before 5 years'' at the end of the paragraph; and

■ c. In paragraph (d)(2), remove the word ''By'' and add the words ''As determined appropriate by'' in its place.

§ 1410.9 [Removed]

■ 34. Remove § 1410.9.

■ 35. Revise § 1410.10(a) to read as follows:

§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by the Deputy Administrator, subject to any restrictions as may be imposed by law, apply to transfer such acres that are devoted to an approved cover from CRP to a wetland reserve easement under WRP or ACEP, as appropriate. Transferred acreage will be terminated from CRP effective the day a WRP or ACEP wetland reserve easement is filed. Participants will receive a prorated CRP annual payment for the part of the year the acreage was enrolled in CRP as specified in § 1410.42. Cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

* * * * *

■ 36. Amend § 1410.11 as follows:

■ a. In paragraph (b)(2), remove the words ''to receive flow from a row crop agricultural drainage system'' and add the words ''so as to receive surface and subsurface flow from row crop agricultural production'' in their place; and

■ b. Revise paragraph (d) introductory text.

The revision reads as follows:

§ 1410.11 Farmable Wetlands Program.

* * * * *

(d) Total enrollment in CRP under this section may not exceed 750,000 acres. In addition, the maximum size of land enrolled under this section may not exceed, as determined by the Deputy Administrator:

* * * * *

§ 1410.12 [Removed]

■ 37. Remove § 1410.12.

■ 38. Add § 1410.13 to read as follows:

§ 1410.13 Grassland enrollments.

(a) Land may be enrolled in CRP under grassland signup as specified in §§ 1410.6, 1410.30, and 1410.31. Eligible grassland includes grassland that was previously enrolled in the Grassland Reserve Program, as specified in part 1415 of this chapter.

(b) Grassland enrollments will generally be administered under all the provisions of this part, except where specific provisions apply only to grassland enrollments.

(c) Grassland enrolled in CRP is eligible for the Transition Incentives Program as specified in § 1410.64.

(d) Grassland previously enrolled in rental contracts under terms of the Grassland Reserve Program specified in part 1415 of this chapter will continue to be subject to the provisions of those contracts.

■ 39. Amend § 1410.22 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. In paragraph (c), remove the word ''shall'' and add the words ''or forest stewardship plan must'' in its place; and

■ c. Revise paragraph (f).

The revisions read as follows:

§ 1410.22 CRP conservation plan.

(a) The producer must obtain a CRP conservation plan that complies with CCC guidelines and is approved by the conservation district for the land to be entered in CRP. If the conservation district declines to review the CRP conservation plan, or disapproves the conservation plan, such approval may be waived by the Deputy Administrator.

(b) The practices and management activities included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, improve grassland, or achieve other environmental benefits as applicable. The producer must undertake management activities on the land as needed throughout the term of the CRP contract to implement the conservation plan.

* * * * *

(f) For general signup and continuous signup contracts except grasslands, mid-contract management must be conducted to implement management activities, such as disking and prescribed burning according to an approved conservation plan, as part of the CRP contractual obligation on all contracts entered into under general signup and continuous signup, as specified in § 1410.30.

§ 1410.23 [Amended]

■ 40. Amend § 1410.23 as follows:

■ a. In paragraph (a)(1), remove the words ''and permanent wildlife habitat'' and add the words ''permanent wildlife habitat, and grassland improvements'' in their place;

■ b. In paragraph (a)(3), remove the words ''the program'' and add the word ''CRP'' in their place; and

■ c. In paragraph (b), remove the word ''aquiculture'' and add the word ''aquaculture'' in its place.

■ 41. Revise § 1410.30 to read as follows:

§ 1410.30 Signup.

(a) Offers for contracts may be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems necessary. Generally, continuous signup is limited to those offers that provide appropriate environmental benefits, as determined by the Deputy Administrator, or that would otherwise rank highly under § 1410.31(b) and include high priority practices such as filter strips, riparian buffers, shelterbelts, field windbreaks, living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, and practices to benefit certain approved public wellhead protection areas.

(b) Grassland signups will be conducted year-round with periodic ranking periods, as determined by the Deputy Administrator. The eligible offers that rank the highest according to the environmental benefits ranking plan established under § 1410.31(e), as determined by the Deputy Administrator, will be accepted, provided sufficient acres and funds are available.

■ 42. Amend § 1410.31 as follows:

■ a. In paragraphs (a), (b) introductory text, (b)(7), and (d) introductory text and (d)(3), remove the words ''the program'' each time they appear and add the word ''CRP'' in their place; and

■ b. Add paragraphs (e) and (f).

The additions read as follows:

§ 1410.31 Acceptability of offers.

* * * * *

(e) Grassland signup offers will be periodically batched, evaluated, and ranked on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, as determined by the Deputy Administrator, and further provided that:

(1) The offered land is eligible under §§ 1410.4 and 1410.6, as determined by the Deputy Administrator;

(2) The producer is eligible under § 1410.5;

(3) The producer accepts either the maximum payment rate the Deputy Administrator is willing to offer to enroll the acreage in CRP, or a lesser rate; and

(4) The offer ranks above the minimum ranking level applicable to each ranking period needed for offer acceptance, as determined by the Deputy Administrator.

(5) Notwithstanding the preceding, acceptance or rejection of any grassland signup offers will be in the sole discretion of the Deputy Administrator and offers may be rejected for any reason as determined necessary and appropriate to accomplish the goals of CRP.

(f) In ranking and evaluating grassland signup offers, different factors, as determined by the Deputy Administrator, may be considered from time to time for priority purposes to accomplish the goals of CRP. Such factors may include, but are not limited to:

(1) Existence of expiring CRP or Grassland Reserve Program land;

(2) Existing grassland;

(3) Multi-species cover existence and predominance of native species;

(4) Livestock grazing operation;

(5) State priority enrollment criteria (non-land based) and State Focus Area (land-based) determined in consultation with State Technical Committee;

(6) Whether the applicant is an eligible beginning, veteran, or socially disadvantaged farmer or rancher; and

(7) Other factors as determined by the Deputy Administrator.

■ 43. Amend § 1410.32 by revising paragraphs (c)(2), (f)(7), (g), and (h) to read as follows:

§ 1410.32 CRP contracts.

* * * * *

(c) * * *

(2) An offer to enroll land in CRP will be irrevocable for such period as is determined and announced by the Deputy Administrator. The producer will be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable, as determined by the Deputy Administrator. The Deputy Administrator may waive payment of such liquidated damages, if the Deputy Administrator determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and CRP.

* * * * *

(f) * * *

(7) The Deputy Administrator determines that such a termination is needed in the public interest, or is otherwise necessary and appropriate to further the goals of CRP.

(g) Except as allowed and approved by the Deputy Administrator, where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest, as determined by the Deputy Administrator, and must pay liquidated damages as provided for in the contract. The Deputy Administrator may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of CRP. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by the Deputy Administrator.

(h) During the final year of the CRP contract's term, the participants on a CRP contract will not be in violation of the terms of the contract if both the following are met:

(1) During the final year of the contract the land is enrolled in the Conservation Stewardship Program, and such enrollment is reported promptly to the Deputy Administrator; and

(2) The land management and conservation practice measures that are

conducted under the Conservation Stewardship Program are not in violation of the approved CRP conservation plan and are otherwise consistent with this part, as determined by the Deputy Administrator.

■ 44. Amend § 1410.33 as follows:

■ a. In paragraph (a)(4), remove the words ''beginning or socially disadvantaged'' and add the words ''beginning, socially disadvantaged, or veteran'' in their place; and

■ b. Add paragraphs (e) and (f).

The additions read as follows:

§ 1410.33 Contract modifications.

* * * * *

(e) CCC may terminate or modify a CRP contract when the land is transferred into WRP, ACEP, or other Federal or State programs, as determined by the Deputy Administrator.

(1) For contracts terminated or modified for enrollment in other Federal or State programs, participants will not be required to repay CRP payments or pay interest and liquidated damages to CCC, as otherwise required for contract violations under § 1410.52, unless determined otherwise by the Deputy Administrator, with the following exception:

(2) Participants will be required to repay CRP Signing Incentive Payments and Practice Incentive Payments if land containing a wetland reserve easement is enrolled in ACEP.

(f) During the final year of the CRP contract's term, CCC will allow an owner or operator to make conservation and land improvements (resource conserving uses) for economic use that facilitate maintaining protection of enrolled land after expiration of the contract, but only under the following conditions:

(1) All provisions are identified in an approved CRP conservation plan;

(2) Land improved in accordance with paragraph (f) of this section will not be eligible to be re-enrolled in CRP for 5 years after the date of the expiration or termination of the contract; and

(3) CCC will reduce the final annual rental payment otherwise payable under the contract by an amount commensurate with the economic value of the resource conserving use activity carried out.

§ 1410.40 [Amended]

■ 45. Amend § 1410.40 as follows:

■ a. In paragraph (a), remove the word ''shall'' and add the word ''will'' in its place and remove the word ''CCC'' and add the words ''the Deputy Administrator'' in its place;

■ b. In paragraph (d)(1), remove the words ''wellheads; and'' and add the words ''wellheads, grassland improvement, or other conservation measures, as determined by the Deputy Administrator; and'' in their place; and

■ c. In paragraphs (e) and (f), remove the word ''shall'' each time it appears and add the word ''will'' in its place.

■ 46. Amend § 1410.41 by revising paragraph (a) to read as follows:

§ 1410.41 Levels and rates for cost share payments.

(a) As determined by the Deputy Administrator, CCC will not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan. CCC may allow cost-share payments for maintenance costs, consistent with the provisions of § 1410.40 and the Deputy Administrator may determine the period and amount of such cost-share payments.

* * * * *

■ 47. Amend § 1410.42 as follows:

■ a. Revise paragraphs (b) and (f) introductory text;

■ b. In paragraphs (c) and (e), remove the word ''shall'' each time it appears and add the word ''will'' in its place; and

■ c. Add paragraph (h).

The revisions and addition read as follows:

§ 1410.42 Annual rental payments.

* * * * *

(b) Annual rental payments per acre include a payment based on a weighted average soil rental rate, marginal pastureland rental rate, or grassland rate, as appropriate, and an incentive payment as a portion of the annual payment for certain practices, as determined by the Deputy Administrator. In addition, a national maximum annual rental payment rate may also be established by the Deputy Administrator for certain categories of CRP offers and contracts.

* * * * *

(f) The Deputy Administrator will prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated for cropland based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. For marginal pastureland, rental rates will be based on estimates of the prevailing rental values of marginal pastureland in riparian areas. Grassland rental rates will be based on not more than 75 percent of the estimated grazing value of the land. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, will indicate, when appropriate, that:

* * * * *

(h) CCC may make tree thinning incentive payments to owners and operators of enrolled land in an amount sufficient to encourage proper tree thinning and other practices to improve the condition of resources, promote forest management, or enhance wildlife habitat on the land, as determined by the Deputy Administrator. Incentive payments for tree thinning and other tree stand practices will:

(1) Not exceed 150 percent of the total cost of the practice, as determined by the Deputy Administrator; and

(2) Only be available for practices outlined in the tree planting plan under the approved CRP conservation plan.

■ 48. Revise § 1410.44 to read as follows:

§ 1410.44 Average adjusted gross income.

(a) Benefits under this part will not be available to persons or legal entities whose average adjusted gross income exceeds $900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, or who otherwise do not meet the AGI requirements specified in part 1400 of this chapter.

(b) [Reserved]

■ 49. Amend § 1410.52 as follows:

■ a. In paragraph (a)(2)(i), add a comma after the word ''contract'', and remove the word ''together''; and

■ b. Revise paragraph (c).

The revision reads as follows:

§ 1410.52 Violations.

* * * * *

(c) The Deputy Administrator may reduce a demand for a refund under this section to the extent the Deputy Administrator determines that such relief would be appropriate and will not deter the accomplishment of the goals of CRP.

* * * * *

■ 50. Revise § 1410.53 to read as follows:

§ 1410.53 Executed CRP contract not in conformity with the regulations.

(a) If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is found to contain material errors of fact or is not in conformity with this part, these regulations will prevail, and the Deputy Administrator may, at his or her sole discretion, terminate or modify the CRP contract,

effective immediately or at a later date as the Deputy Administrator determines appropriate.

(b) [Reserved]

■ 51. Amend § 1410.62 by revising paragraph (g) to read as follows:

§ 1410.62 Miscellaneous.

* * * * *

(g) As determined by the Deputy Administrator, incentives may be authorized to foster opportunities for Indian tribes and beginning, limited resource, socially disadvantaged, and veteran farmers and ranchers, and to enhance long-term environmental goals.

* * * * *

■ 52. Amend § 1410.63 as follows:

■ a. In paragraph (b)(2), add the word ''and'' at the end;

■ b. In paragraph (b)(3), remove the words ''plan; and'' and add the word and punctuation ''plan.'' in their place;

■ c. Remove paragraph (b)(4);

■ d. Revise paragraph (c); and

■ e. Add paragraphs (d) and (e).

The revisions and additions read as follows:

§ 1410.63 Permissive uses.

* * * * *

(c) No barrier fencing or boundary limitations that prohibit wildlife access to or from the CRP acreage are allowed as part of any permissive use, unless required by State law.

(d) The following activities may be permitted, as determined by the Deputy Administrator, on CRP enrolled land insofar as they are consistent with the conservation purposes of CRP including timing, frequency, and duration as provided in an approved CRP conservation plan that identifies appropriate vegetative management requirements:

(1) Managed harvesting and other commercial uses, including managed harvesting of biomass, but only in exchange for a payment reduction of not less than 25 percent as determined by the Deputy Administrator, and only in accordance with vegetative management requirements, harvest period, and a harvest frequency developed in coordination with the State Technical committee and timing of harvesting activities outside the nesting season at least every 5 years, but not more than once every 3 years, and only as identified in an approved CRP conservation plan;

(2) Routine grazing in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the nesting season developed in coordination with the State Technical Committee, of not more than once every 2 years, and only as identified in an approved CRP conservation plan. Routine grazing will only be permitted in exchange for a payment reduction of not less than 25 percent, as determined by the Deputy Administrator, except that a beginning farmer or rancher may conduct routine grazing without payment reduction;

(3) Prescribed grazing for the control of invasive species in accordance with appropriate vegetative management requirements and stocking rates for the land, grazing frequency, and grazing periods outside the nesting season, and only as identified in an approved CRP conservation plan. Prescribed grazing will only be permitted in exchange for a payment reduction of not less than 25 percent, as determined by the Deputy Administrator, except that a beginning farmer or rancher may conduct prescribed grazing by without payment reduction;

(4) Harvesting, grazing, or other commercial use of the forage on the land in response to a drought, flooding, or other emergency, consistent with an approved CRP conservation plan;

(5) Wind turbines on CRP land installed in numbers and locations as determined appropriate by the Deputy Administrator considering the location, size, and other physical characteristics of the land, the extent to which the land contains threatened or endangered wildlife and wildlife habitat, and the purposes of CRP, but only in exchange for a payment reduction as determined by the Deputy Administrator;

(6) Spot grazing, if necessary for control of weed infestation, and not to exceed a 30-day period according to an approved conservation plan, but only in exchange for a payment reduction as determined by the Deputy Administrator;

(7) Intermittent and seasonal use of vegetative buffer practices incidental to agricultural production on lands adjacent to the buffer such that the permitted use does not destroy the permanent vegetative cover, as determined by the Deputy Administrator, only as identified in an approved CRP conservation plan, and in exchange for a payment reduction of not less than 25 percent;

(8) The sale of carbon, water quality, or environmental credits, as determined appropriate by CCC;

(9) When enrolled land is established to tree planting practices or otherwise converted to forestry uses, customary forestry activities are authorized such as, but not limited to, thinning and prescribed burning, in a manner consistent with the participant's conservation plan. Such activities must be designed to promote forest health, enhance wildlife habitat, and improve the general resource conditions of enrolled lands. An incentive payment is authorized as specified in § 1410.42(h).

(e) For land enrolled under a grassland signup type as authorized by § 1410.30(b) only, the following activities may also be permitted, as determined by the Deputy Administrator:

(1) Common grazing practices, including maintenance and necessary cultural practices, on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species appropriate to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions during the nesting season;

(3) Fire pre-suppression, fire-related rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities; and

(5) Other activities as determined by the Deputy Administrator, when the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under a grassland CRP contract.

■ 53. Amend § 1410.64 as follows:

■ a. Revise paragraphs (a) introductory text, (a)(2), and (a)(6);

■ b. In paragraphs (a)(4), (a)(5), (b) introductory text and (b)(1), (c), (d), and (e), remove the words ''beginning or'' each time they appear and add the words ''beginning, veteran, or'' in their place;

■ a. Revise paragraph (f); and

■ c. Remove paragraph (g).

The revisions read as follows:

§ 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, the retired or retiring owner or operator must:

* * * * *

(2) Sell or lease (under a qualifying irrevocable lease of at least 5 years in length) expiring CRP land to a beginning, veteran, or socially disadvantaged farmer or rancher who will return some or all of the land to production using sustainable grazing or crop production methods;

* * * * *

(6) Allow the beginning, veteran, or socially disadvantaged farmer or rancher to install conservation practices and initiate land improvements, including preparing to plant a crop, that

are consistent with the conservation plan during the last year of the contract.

* * * * *

(f) The eligible retired or retiring owner or operator and the eligible beginning, veteran, or socially disadvantaged farmer or rancher must agree to be jointly and severally responsible for complying with both the provisions of the Transition Incentives Program agreement and the provisions of this part, and must also agree to be jointly and severally responsible for any payment adjustments that may result from violations of the terms or conditions of the Transition Incentives Program agreement or this part.

§§ 1410.1, 1410.2, 1410.3, 1410.6, 1410.8, 1410.10, 1410.11, 1410.22, 1410.32, 1410.33, 1410.40, 1410.41, 1410.43, 1410.50, 1410.51, 1410.60, 1410.61, and 1410.62 [Amended]

■ 54. In addition to the amendments set forth above, in 7 CFR part 1410, remove the word ''CCC'' each time it appears and add the words ''the Deputy Administrator'' in its place, in the following places:

■ a. In § 1410.1(g), (h), and (i);

■ b. In § 1410.2, in the definitions of ''Agricultural commodity'', ''Commercial pond-raised aquaculture facility'', ''Field'', ''Field windbreak, shelterbelt, and/or living snowfence'', ''Offer'', ''Offeror'', ''Operator'', ''Perennial crop'', and ''Technical assistance'';

■ c. In § 1410.3(b) and (d);

■ d. In § 1410.6(a)(2);

■ e. In § 1410.8(a);

■ f. In § 1410.10(b);

■ g. In § 1410.11(b) introductory text, (b)(1), (e), and (g);

■ h. In § 1410.22(e);

■ i. In § 1410.32(b)(3), (d) introductory text, and (f)(2);

■ j. In § 1410.33(d);

■ k. In § 1410.40(b) and (g);

■ l. In § 1410.41(b) and (c);

■ m. In § 1410.43;

■ n. In § 1410.50(a);

■ o. In § 1410.51(a)(1) and (c);

■ p. In § 1410.60(a);

■ q. In § 1410.61; and

■ r. In § 1410.62(h).

Val Dolcini,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2015–17317 Filed 7–15–15; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0086; Directorate Identifier 2014–NM–191–AD; Amendment 39–18206; AD 2015–14–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A310–203 airplanes. This AD is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. This AD was prompted by reports that side link clevis bolts of the front engine mount do not meet the design service goal (DSG) requirements on airplanes equipped with General Electric Company CF6–80A3 engines. This AD requires repetitive replacement of all side link clevis engine mount bolts. We are issuing this AD to prevent failure of the front engine mount, and consequent possible departure of the engine.

DATES: This AD becomes effective August 20, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 20, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0086*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—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0086.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149.

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 all Airbus Model A310–203 airplanes. The NPRM published in the **Federal Register** on February 18, 2015 (80 FR 8575). The NPRM is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. The NPRM was prompted by reports that side link clevis bolts of the front engine mount do not meet the DSG requirements on airplanes equipped with General Electric Company CF6–80A3 engines. The NPRM proposed to require repetitive replacement of all side link clevis engine mount bolts. We are issuing this AD to prevent failure of the front engine mount, and consequent possible departure of the engine.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0191, dated August 29, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A310–203 airplanes. The MCAI states:

> During fatigue analysis performed in the scope of the Extended Service Goal, taking into account the certification loads and the new lift-off loads, Airbus determined that side link clevis engine mount bolts do not meet the Design Service Goal (DSG) requirements on aeroplanes equipped with CF6–80A3 engines.
>
> This condition, if not corrected, could lead to failure of the front engine mount, possibly resulting in-flight separation of the engine from the aeroplane.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A310–71–2038 to introduce a life limit on the side link clevis engine mount bolts.
>
> For the reason described above, this [EASA] AD requires implementation of the new life limit and replacement of all side link clevis engine mount bolts that have exceeded the new limit.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/*

#!documentDetail;D=FAA-2015-0086-0003.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 8575, February 18, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant 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 (80 FR 8575, February 18, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 8575, February 18, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletin A310–71–2038, including Appendices 01 and 02, dated April 8, 2014. The service information describes procedures for replacement of all side link clevis bolts on the CF6–80A3 front engine mount and subsequent re-identification of the newly installed bolts with a cross (to differentiate them from the old ones). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

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

We also estimate that it will take about 142 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 $2,900 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $194,610, or $14,970 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-2015-0086;* 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):

2015–14–08 Airbus: Amendment 39–18206. Docket No. FAA–2015–0086; Directorate Identifier 2014–NM–191–AD.

(a) Effective Date

This AD becomes effective August 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–203 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports that side link clevis bolts of the front engine mount do not meet the Design Service Goal (DSG) requirements on airplanes equipped with General Electric Company CF6–80A3 engines. We are issuing this AD to prevent failure of the front engine mount, and consequent possible departure of the engine.

(f) Compliance

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

(g) Repetitive Bolt Replacement

Within 18 months after the effective date of this AD, replace the side link clevis bolts, nuts, and bushings of the front engine mount on both engines, and re-identify the new installed bolts with a cross (to differentiate them from the old ones), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–71–2038, including Appendices 01 and 02, dated April 8, 2014. Repeat the replacement thereafter at intervals not to exceed 29 years.

(h) 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; 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: 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.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0191, dated August 29, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0086-0003.*

(j) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A310–71–2038, including Appendices 01 and 02, dated April 8, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.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 July 2, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–17202 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD; Amendment 39–18177; AD 2015–12–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with certain Honeywell part numbers (P/Ns) of Woodward fuel control unit (FCU) assemblies, installed. The AD number in the document headings is incorrect. Additionally, the Amendment number in the regulatory text is incorrect. This document corrects these two errors. In all other respects, the original document remains the same.

DATES: This final rule is effective on July 22, 2015. The effective date of AD 2015–12–04, Amendment 39–18177 (80 FR 34534, June 17, 2015) remains July 22, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 Document 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: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2015–12–04, Amendment 39–18177, 80 FR 34534, June 17, 2015), requires initial and repetitive dimensional inspections of the affected fuel control drives and insertion of certain airplane operating procedures into the applicable flight manuals.

As published, the AD number in the document headings is incorrect. Additionally, the Amendment number in the regulatory text of AD 2015–12–04 is incorrect.

No other part of the final rule has been changed.

The effective date of AD 2015–12–04 remains July 22, 2015.

Correction of Non-Regulatory Text

In the **Federal Register** of June 17, 2015, AD 2015–12–04; Amendment 39–18177 (80 FR 34534) is corrected as follows:

On page 34534, in the 2nd column, on line 6, change ''2014–12–04'' to ''2015–12–04''.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), and adding the following new AD:

2015–12–04 Honeywell International Inc.: Amendment 39–18177; Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD.

(a) Effective Date

This AD is effective August 20, 2015.

(b) Affected ADs

This AD replaces AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006).

(c) Applicability

This AD applies to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with Honeywell part numbers (P/Ns) for Woodward fuel control unit (FCU) assemblies listed in Table 1 to paragraph (c) of this AD, installed.

TABLE 1 TO PARAGRAPH (C)—AFFECTED FCU ASSEMBLY P/NS

Group No.	Engine	FCU Assembly P/Ns
1	TPE331–1, –2, and –2UA	P/N 869199–13, –20, –21, –22, –23, –24, –25, –26, –27, –28, –29, –31, –32, –33, –34, and –35.

TABLE 1 TO PARAGRAPH (C)—AFFECTED FCU ASSEMBLY P/NS—Continued

Group No.	Engine	FCU Assembly P/Ns
2 *	TPE331–1, –2, and –2UA	P/N 869199–9, –10, –11, –12, –14, –16, –17, and –18.
3	TPE331–3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10AV, –10GP, –10GT, –10P, and –10T.	P/N 893561–7, –8, –9, –10, –11, –14, –15, –16, –20, –26, –27, and –29; or P/N 897770–1, –3, –7, –9, –10, –11, –12, –14, –15, –16, –25, –26, and –28.
4 *	TPE331–3U, –3UW, –5, –5B, –6, –6A, and –10T.	P/N 893561–4, –5, –12, and –13 or P/N 897770–5, –8, and –13.
5	TPE331–10, –10R, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR.	P/N 897375–2, –3, –4, –5, –8, –9, –10, –11, –12, –13, –14, –15, –16, –17, –19, –21, –24, –25, –26, and –27; or P/N 897780–1, –2, –3, –4, –5, –6, –7, –8, –9, –10, –11, –14, –15, –16, –17, –18, –19, –20, –21, –22, –23, –24, –25, –26, –27, –30, –32, –34, –36, –37, and –38; or P/N 893561–17, –18, and –19.

* New/added FCU assembly P/Ns

(d) Unsafe Condition

We are issuing this AD to prevent failure of the fuel control drive that could result in damage to the engine and airplane.

(e) Compliance

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

(1) Inspection of Engines With FCU Assembly P/Ns in Groups 2 and 4

For FCU assembly P/Ns in Groups 2 and 4 listed in Table 1 to paragraph (c) of this AD:

(i) At the next scheduled inspection of the fuel control drive, or within 500 hours-in-service (HIS) after the effective date of this AD, whichever occurs first, inspect the fuel control drive for wear.

(ii) Thereafter, re-inspect the fuel control drive within every 1,000 HIS since-last-inspection (SLI).

(2) Inspection of Engines With FCU Assembly P/Ns in Groups 1, 3, and 5

For FCU assembly P/Ns in Groups 1, 3, or 5 listed in Table 1 to paragraph (c) of this AD:

(i) If on the effective date of this AD the FCU assembly has 950 or more HIS SLI, inspect the fuel control drive for wear within 50 HIS from the effective date of this AD.

(ii) If on the effective date of this AD the FCU assembly has fewer than 950 HIS SLI, inspect the fuel control drive for wear before reaching 1,000 HIS.

(iii) Thereafter, re-inspect the fuel control drive for wear within every 1,000 HIS SLI.

(3) Airplane Operating Procedures

Within 60 days after the effective date of this AD, insert the information in Figure 1 to paragraph (e) of this AD, into the Emergency Procedures Section of the Airplane Flight Manual (AFM), Pilot Operating Handbook (POH), and the Manufacturer's Operating Manual (MOM).

Figure 1 to Paragraph (e) – Airplane Operating Procedures

NOTE

Procedures in dotted line boxes are immediate action items to be performed by the pilot / flight crew.

RAPID, UNCOMMANDED ACCELERATION DURING ENGINE START (Propeller ON Start Locks)

- Engine Start – Abort Immediately – Move condition lever to EMERGENCY STOP.

WARNING

Do not attempt to re-start engine. Report to maintenance.

ON GROUND or IN FLIGHT:

RAPID, UNCOMMANDED INCREASE IN RPM, TORQUE, FUEL FLOW AND/OR TURBINE TEMPERATURE (Propeller OFF Start Locks)

- Identify Malfunctioning Engine (multi-engine airplane) – Cross check for high torque, RPM, fuel flow, and turbine temperatures.
- Engine shut down - Move condition lever to EMERGENCY STOP.

WARNING

Never retard the power levers aft of flight idle in flight or on the ground.

WARNING

Do not attempt an engine re-start. Report to maintenance.

(f) Optional Terminating Action

Replacing the affected FCU assembly with an FAA-approved FCU assembly P/N not listed in this AD is terminating action for the initial and repetitive inspections required by this AD, and for inserting the information in Figure 1 to paragraph (e) of this AD into the AFM, POH, and MOM.

(g) Definitions

For the purposes of this AD:

(1) The ''fuel control drive'' is a series of mating splines located between the fuel pump and fuel control governor.

(2) The fuel control drive consists of four drive splines: the fuel pump internal spline, the fuel control external ''quill shaft'' spline, and the stub shaft internal and external splines.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov*.

(2) Information pertaining to operating recommendations for affected engines after a fuel control drive failure is contained in Honeywell International Inc., Operating Information Letter (OIL) OI331–12R6, dated May 26, 2009, for multi-engine airplanes; and in OIL OI331–18R4, dated May 26, 2009, for single-engine airplanes. Information on fuel control drive inspection can be found in Section 72–00–00 of the applicable TPE331 maintenance manuals. These Honeywell International Inc., OILs and the TPE331 maintenance manuals, which are not incorporated by reference in this AD, can be obtained from Honeywell International Inc., using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut;* phone: 800–601–3099.

(4) 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.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on June 26, 2015.

Ann C. Mollica,

Acting Directorate Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–16587 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD; Amendment [39–18209; AD 2015–06–02 R1]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising an airworthiness directive (AD) 2015–06–02 for GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective August 20, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 24, 2015 (80 FR 14810, March 20, 2015).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123; 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 20590.

For service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes. The NPRM was published in the **Federal Register** on April 17, 2015 (74 FR 21193), and proposed to revise AD 2015–06–02, Amendment 39–18120 (80 FR 14810; March 20, 2015).

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information originated by an airworthiness authority of another country. The MCAI states that:

> A recent review of the engine mount installation on the GA8–TC 320 aircraft has highlighted the omission of engine mount fire seal washers during the assembly process.
>
> The current engine mount configuration does not meet the certification basis for the aircraft, specifically regulation 23.865 of the Federal Aviation Regulations of the United States of America, where engine mounts located in designated fire zones are required to be suitably shielded so that they are capable of withstanding the effects of a fire.
>
> The Gippsland Aeronautics GA8–TC 320 aircraft require the installation of an approved steel washer at each of the engine mount locations to address a potential risk of reduced engine retention capability in the event of a fire.
>
> This AD, AD/GA8/8 Amdt 1, amends the applicability statement to be inclusive of the affected aircraft serial number range.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1123-0007.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (74 FR 21193, April 17, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the 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 (74 FR 21193, April 17, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (74 FR 21193, April 17, 2015).

Relative Service Information Under 1 CFR Part 51

We reviewed GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014. The service bulletin describes procedures for inspecting the orientation of the engine isolator mounts to verify proper installation, re-installing if necessary, and installing steel washers on the forward side of each side of the engine isolator mounts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 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 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* by searching for and locating Docket No. FAA–2014–1123; 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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 Amendment 39–18120 (80 FR 14810, March 20, 2015), and adding the following new AD:

2015–06–02 R1 GA 8 Airvan (Pty) Ltd: Amendment 39–18209; Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 20, 2015.

(b) Affected ADs

This AD revises AD 2015–06–02, Amendment 39–18120 (80 FR 14810; March 20, 2015).

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd GA8–TC320 airplanes, all serial numbers up to and including GA8–TC 320–14–205, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We are issuing this AD to revise the applicable airplane serial numbers and to detect and correct the omission of steel washers at each isolator mount location, which, if not corrected, could result in reduced engine retention capability in the event of a fire.

(f) Actions and Compliance

Unless already done, comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(3) of this AD:

(1) Within the next 300 hours time-in-service after April 24, 2015 (the effective date retained from AD 2015–22–14) or within the next 12 months after April 24, 2015 (the effective date retained from AD 2015–22–14), whichever occurs first, inspect the orientation of the engine isolator mounts to verify that the mounts have been installed properly following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(2) Before reinstalling the engine isolator mounts following the inspection required in paragraph (f)(1) of this AD, before further flight, install a part number J–2218–61 steel washer on the forward side of each of the four engine isolator mounts, following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(3) If during the inspection required in paragraph (f)(1) of this AD, any of the engine isolator mounts are found to not comply with the specifications found in the Accomplishment Instructions of GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014, before further flight, re-install the isolators to the correct orientation, or if damage is found, replace with airworthy parts.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority (CASA) AD No. AD/GA8/8, Amdt 1, dated March 26, 2015. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1123-0007.*

(i) 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 April 24, 2015 (80 FR 14810, March 20, 2015).

(i) GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(ii) Reserved.

(4) For GippsAero service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.*

(5) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123.

(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 Kansas City, Missouri, on July 7, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–17193 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0926; Directorate Identifier 2014–NM–085–AD; Amendment 39–18204; AD 2015–14–06]

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 747–8 and 747–8F series airplanes. This AD was prompted by an analysis, which indicated that in a limited flight envelope with specific conditions, divergent flutter could occur during a high g-load maneuver in combination with certain system failures. This AD requires replacing the lateral control electronic (LCE) modules, replacing the inboard elevator power control packages (PCPs), installing new external compensators for the PCPs, and revising the maintenance or inspection program. We are issuing this AD to prevent certain system failures from resulting in divergent flutter, and subsequent loss of continued safe flight and landing.

DATES: This AD is effective August 20, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 20, 2015.

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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0926.

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–2014–0926; 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: Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@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 747–8 and 747–8F series airplanes. The NPRM published in the **Federal Register** on December 17, 2014 (79 FR 75100). The NPRM was prompted by an analysis, which indicated that in a limited flight envelope with specific conditions, divergent flutter could occur during a high g-load maneuver in combination with certain system failures. The NPRM proposed to require replacing the LCE modules, replacing the inboard elevator PCPs, installing new external compensators for the PCPs, and revising the maintenance or inspection program. We are issuing this AD to prevent certain system failures from resulting in divergent flutter, and subsequent loss of continued safe flight and landing.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supported the NPRM (79 FR 75100, December 17, 2014).

Conclusion

We reviewed the relevant data, considered the comment 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 75100, December 17, 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 75100, December 17, 2014).

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Boeing Alert Service Bulletin 747–27A2506, dated February 3, 2014, which describes procedures for replacing the LCE modules.
- Boeing Service Bulletin 747–27A2513, Revision 1, dated July 18, 2014, which describes procedures for installing the inboard elevator compensator and replacing the PCP.

We have also reviewed Boeing 747–8/8F Certification Maintenance Requirements (CMRs) Document D011U721–02–03, Revision December 2013, which contains the following tasks in Section G., ''CMR Tasks'':

- Item Number 27–CMR–10, ''Lubricate inboard elevator hinge bearings.''
- Item Number 27–CMR–11, ''Functional check of inboard elevator hinge bearing and power control unit rod end bearing free play.''

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

Costs of Compliance

We estimate that this AD affects 8 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
Replacement of LCEs	4 work-hours × $85 per hour = $340	$0	$340	$2,720
Replacement of inboard elevator PCPs and installation of external inboard elevator compensators.	57 work-hours × $85 per hour = $4,845	44,894	49,739	397,912
Revision to maintenance or inspection program.	1 work-hour × $85 per hour = $85	0	85	680

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):

2015–14–06 The Boeing Company: Amendment 39–18204; Docket No. FAA–2014–0926; Directorate Identifier 2014–NM–085–AD.

(a) Effective Date

This AD is effective August 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 747–8 and 747–8F series airplanes, as identified in Boeing Alert Service Bulletin 747–27A2506, dated February 3, 2014.

(2) Model 747–8 and 747–8F series airplanes, as identified in Boeing Service Bulletin 747–27A2513, Revision 1, dated July 18, 2014.

(3) Model 747–8 series airplanes that are operated less than 1,200 flight hours per calendar year.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an analysis, which indicated that in a limited flight envelope with specific conditions, divergent flutter could occur during a high g-load maneuver in combination with certain system failures. We are issuing this AD to prevent certain system failures from resulting in divergent flutter, and subsequent loss of continued safe flight and landing.

(f) Compliance

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

(g) Replacement of Lateral Control Electronic (LCE) Modules

For airplanes identified in paragraph (c)(1) of this AD: Within 12 months after the effective date of this AD, replace the LCE modules with new LCE modules having revised software, and do an operational test of the LCE modules, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–27A2506, dated February 3, 2014. If the operational test fails, before further flight, do corrective actions and repeat the operational test and applicable corrective actions until the operational test passes.

(h) Replacement of Inboard Elevator Power Control Packages (PCPs) and Installation of External Inboard Elevator Compensators

For airplanes identified in paragraph (c)(2) of this AD: Within 60 months after the effective date of this AD, replace both inboard elevator PCPs with new PCPs that have the internal compensators removed, install two larger external compensators for each PCP, and do an operational test of each inboard elevator PCP, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27A2513, Revision 1, dated July 18, 2014. If the operational test fails, before further flight, do corrective actions and repeat the operational test and applicable corrective actions until the operational test passes.

(i) Revision to the Maintenance or Inspection Program

For all airplanes: Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Item Numbers 27–CMR–10, ''Lubricate inboard elevator hinge bearings,'' and 27–CMR–11, ''Functional check of inboard elevator hinge bearing and power control unit rod end bearing free play,'' of Section G., ''CMR Tasks,'' of the Boeing 747–8/8F Certification Maintenance Requirements (CMRs) Document D011U721–02–03, Revision December 2013. The initial compliance times and repetitive intervals for

the lubrication and functional check are specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) For airplanes identified in paragraphs (c)(1) and (c)(2) of this AD that are not identified in paragraph (c)(3) of this AD:

(i) The initial compliance time for the lubrication of the inboard elevator hinge bearings is within 18 months after the most recent lubrication. The repetitive lubrication intervals are specified in Item Number 27–CMR–10, ''Lubricate inboard elevator hinge bearings,'' of Section G., ''CMR Tasks,'' of the Boeing 747–8/8F Certification Maintenance Requirements (CMRs) Document D011U721–02–03, Revision December 2013.

(ii) The initial compliance time for the functional check of the inboard elevator hinge bearing and power control unit rod end bearing freeplay is within 12 months after the effective date of this AD. The repetitive functional check intervals are specified in Item Number 27–CMR–11, ''Functional check of inboard elevator hinge bearing and power control unit rod end bearing free play,'' of Section G., ''CMR Tasks,'' of the Boeing 747–8/8F Certification Maintenance Requirements, D011U721–02–03, Revision December 2013.

(2) For airplanes identified in paragraph (c)(3) of this AD:

(i) The initial compliance time for the lubrication of the inboard elevator hinge bearings is within 24 months after the most recent lubrication. Repeat the lubrication thereafter at intervals not to exceed 24 months.

(ii) The initial compliance time for the functional check of the inboard elevator hinge bearing and power control unit rod end bearing freeplay is within 36 months after the effective date of this AD. Repeat the functional check thereafter at intervals not to exceed 36 months.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane an LCE having part number (P/N) CA49253–001 or CA49253–002, or an inboard elevator PCP having P/N 327400–1009.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–27A2513, dated February 4, 2014, which is not incorporated by reference in this AD.

(l) 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 (m)(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 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.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition

(m) Related Information

(1) For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@faa.gov.*

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

(n) 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 747–27A2506, dated February 3, 2014.

(ii) Boeing Service Bulletin 747–27A2513, Revision 1, dated July 18, 2014.

(iii) Boeing 747–8/8F Certification Maintenance Requirements (CMRs) Document D011U721–02–03, Revision December 2013.

(3) 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.

(4) 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.

(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 July 1, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–17023 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0428; Directorate Identifier 2014–NM–067–AD; Amendment 39–18205; AD 2015–14–07]

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 airplanes. This AD was prompted by reports of deficiencies in the flight control module (FCM) software. This AD requires installing certain FCM software. We are issuing this AD to correct deficiencies in the FCM software, which, if not corrected, could prevent continued safe flight and landing.

DATES: This AD is effective August 20, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 20, 2015.

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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0428.

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–2014–0428; 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 Document 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: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@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 July 2, 2014 (79 FR 37684). The NPRM was prompted by reports of deficiencies in the FCM software. The NPRM proposed to require installing certain FCM software. We are issuing this AD to correct deficiencies in the FCM software, which, if not corrected, could prevent continued safe flight and landing.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 37684, July 2, 2014) and the FAA's response to each comment.

Support for the NPRM (79 FR 37684, July 2, 2014)

United Airlines Engineering, the Air Line Pilots Association International (ALPA), and Boeing expressed support for the NPRM (79 FR 37684, July 2, 2014). United Airlines Engineering also indicated that all of its airplanes were modified as of April 2, 2014, with no adverse effects.

Request To Issue Alternative Methods of Compliance (AMOCs)

Boeing requested that we issue AMOCs for several items it identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014. Boeing requested AMOCs to do the following actions.

- Install the FCM operational program software (OPS) in the Mass Storage Device 1 only.
- To identify the existing FCM OPS software as either part number HNP5E–AL01–5010 (Block Point 1) or part number HNP5F–AL01–5011 (Block Point 2) software.
- To specify that the FCM loadable diagnostic information (LDI) database (DB) and FCM air data reference function (ADRF) DB software are not required to be reloaded if the FCM OPS software part number HNP5C–AL01–5012 can be successfully loaded without reloading the databases.

We agree that the issues raised by the commenter should be addressed. The issues are addressed in a new revision to Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014. We have revised paragraphs (c), (g), and (h) of this AD to reference Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015, as the appropriate source of service information for accomplishing the required actions. There has been no expansion to the applicability or scope of this AD. Use of either Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014, or Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015, is acceptable. No further work is necessary on airplanes on which operators have done the actions described in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014. We have added new paragraph (j) of this AD to provide credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014. We have re-designated subsequent paragraphs accordingly.

However, we disagree with issuing AMOCs at this time. AMOCs provide an alternative method of compliance to the methods required to be used in the associated AD. An AMOC is issued only after an AD has been issued and only after data are provided to show that the proposed solution is complete and addresses the unsafe condition.

Request To Issue an AMOC for Later Software Versions

Boeing requested that we issue an AMOC to allow installation of the FCM Block Point 4 software or later FCM software in lieu of the FCM Block Point 3 software proposed by the NPRM (79 FR 37684, July 2, 2014). Boeing explained that the FCM Block Point 4 software or later FCM software updates are an alternative to the Block Point 3 software, and that operators may wish to install Block Point 4 or later FCM software due to the additional product improvements provided in the later software versions.

We agree that FCM Block Point 4 (or later FAA-approved FCM software versions) includes the Block Point 3 updates and therefore corrects the unsafe condition identified in this AD. We have retained the compliance time specified in paragraph (g) of the proposed AD (79 FR 37684, July 2, 2014); clarified and moved the required software installation from paragraph (g) of the proposed AD to new paragraph (g)(1) of this AD; and added new paragraphs (g)(2), (g)(3), and (g)(4) of this AD, which specify to install FCM Block Point 4 in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014, or to install FCM Common Block Point 1 in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270027–00, Issue 002, dated March 9, 2015, or to install any later FAA-approved FCM software version using a method approved in accordance with the procedures specified in paragraph (k) of this AD. As stated previously, an AMOC is issued only after an AD has been issued and only after data are provided to show that the proposed solution is complete and addresses the unsafe condition. Also, as previously stated, we have added new paragraph (j) of this AD to provide credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB270027–00, Issue 001, dated September 26, 2014.

In addition, we recommend that Boeing incorporate the provision for later approved parts in its service information, when appropriate. This provision is described in FAA Advisory Circular (AC) 20–176A, dated June 16, 2014. (See *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/*

979ddd1479e1ec6f86257cfc0052d4e9/$FILE/AC%2020-176A.PDF.)

Request To Clarify the Minimum Concurrent Requirement

Boeing requested that we revise paragraph (h) of the NPRM (79 FR 37684, July 2, 2014) to clarify that the minimum concurrent requirement for Group 1 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014, is to install the FCM LDI DB software and central maintenance computer function (CMCF) LDI DB software. Boeing stated that the updated FCM OPS software is installed per Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014, and therefore, the previous FCM OPS software version specified in Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013, does not need to be installed.

We agree with the commenter's request for clarification. This clarification was addressed in the new revision of Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015, which we have replicated in the final rule by revising paragraph (h) to include the statement ''. . . or at a minimum install the FCM LDI DB and CMCF LDI DB software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.

Request To Revise the Discussion Section of the NPRM (79 FR 37684, July 2, 2014)

Boeing requested that we revise the source of the deficiency provided in the first sentence of the Discussion section of the NPRM (79 FR 37684, July 2, 2014), which stated, in part, ''We have received reports of in-service incidents and identified an indicating system shortcoming due to. . . .'' Boeing stated that the issues are with the flight control system, not the indicating system.

We agree with the commenter that the shortcoming is in the flight control system, not the indicating system. However, this section is not repeated in the final rule. Therefore no change is needed to this AD.

Request To Clarify Paragraph (i) of the Proposed AD (79 FR 37684, July 2, 2014)

Boeing requested that we revise paragraph (i) of the proposed AD (79 FR 37684, July 2, 2014), which referred to installation of ''new'' software. Boeing requested that we remove the word ''new'' from that sentence. Boeing stated that only the FCM OPS software is new, and that the FCM LDI DB, FCM ADRF DB, and CMCF LDI DB software identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014, are previous software versions.

We agree with the request, for the reasons provided by the commenter. We have revised paragraph (i) of this AD accordingly.

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 minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 37684, July 2, 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 37684, July 2, 2014).

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

Related Service Information Under 1 CFR Part 51

Boeing has issued the following service bulletins.

- Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013. This service information describes procedures for installing FCM OPS, FCM LDI DB, and CMCF LDI DB software, and doing a software configuration check.
- Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015. This service information describes procedures for installing FCM OPS, FCM LDI DB, and FCM ADRF DB software, and doing a software configuration check.
- Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014. This service information describes procedures for installing FCM OPS, FCM LDI DB, FCM ADRF DB, and CMCF LDI DB software, and doing a software configuration check.
- Boeing Service Bulletin B787–81205–SB270027–00, Issue 002, dated March 9, 2015. This service information describes procedures for installing FCM OPS, FCM LDI DB, FCM Compatibility DB, and CMCF LDI DB software, and doing a software configuration check.

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

Costs of Compliance

We estimate that this AD affects 11 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
FCM BP3 software installation	2 work-hours × $85 per hour = $170	$0	$170	$1,870
Concurrent FCM BP2 software installation (Group 1 airplanes).	2 work-hours × $85 per hour = $170	630	800	8,800

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.

The parts cost for the FCM BP3 software installation is not included in our cost estimate. It is considered Boeing-provided loadable software, which is referenced in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015, under ''Parts & Materials Supplied by the Operator.''

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):

2015–14–07 The Boeing Company: Amendment 39–18205; Docket No. FAA–2014–0428; Directorate Identifier 2014–NM–067–AD.

(a) Effective Date

This AD is effective August 20, 2015.

(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–SB270020–00, Issue 002, dated February 12, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of deficiencies in the flight control module (FCM) software. We are issuing this AD to correct deficiencies in the FCM software, which, if not corrected, could prevent continued safe flight and landing.

(f) Compliance

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

(g) FCM Software Installation

Within 6 months after the effective date of this AD: Do the actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) Use the onboard data load function (ODLF) to install FCM Block Point 3 software (including FCM operational program software (OPS), FCM loadable diagnostic information (LDI) database (DB) software, and FCM air data reference function (ADRF) DB software), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015.

(2) Use the ODLF to install FCM Block Point 4 software (including FCM OPS, FCM LDI DB software, FCM ADRF DB software, and central maintenance computer function (CMCF) LDI DB software), in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

(3) Use the ODLF to install FCM Common Block Point 1 software (including FMC OPS, FCM LDI DB software, FCM Compatibility DB software, and CMCF LDI DB software), in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB270027–00, Issue 002, dated March 9, 2015.

(4) Install any later FAA-approved FCM software version using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(h) Concurrent Requirements

For Group 1 airplanes, as identified in Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 002, dated February 12, 2015: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, use the ODLF to install FCM OPS, FCM LDI DB, and CMCF LDI DB software, or at a minimum install the FCM LDI DB and CMCF LDI DB software, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 2013.

(i) Parts Installation Prohibition

After installation of the software specified in paragraphs (g) and (h) of this AD, no person may install any previous versions of the FCM OPS, FCM LDI DB, FCM ADRF DB, or CMCF LDI DB software, on any airplane.

(j) 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 Boeing Alert Service Bulletin B787–81205–SB270020–00, Issue 001, dated February 6, 2014; or Boeing Service Bulletin B787–81205–SB270027–00, Issue 001, dated September 26, 2014; which are not incorporated by reference in this AD.

(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) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(l) Related Information

(1) For more information about this AD, contact Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6546; fax: 425–917–6590; email: *douglas.tsuji@faa.gov.*

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

(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–SB270020–00, Issue 002, dated February 12, 2015.

(ii) Boeing Service Bulletin B787–81205–SB270023–00, Issue 001, dated July 24, 2014.

(iii) Boeing Service Bulletin B787–81205–SB270027–00, Issue 002, dated March 9, 2015.

(iv) Boeing Alert Service Bulletin B787–81205–SB270017–00, Issue 001, dated September 18, 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) 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 July 2, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–17203 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1177; Directorate Identifier 2015–CE–009–AD; Amendment 39–18208; AD 2015–14–10]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for PILATUS AIRCRAFT LTD. Model PC–12/47 and PC–12/47E airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the aileron trim tab disconnecting above 10,000 feet altitude. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective August 20, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 20, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1177; or in person at Document 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 service information identified in this AD, contact PILATUS AIRCRAFT LTD, Customer Support Manager, CH–6371 STANS, Switzerland; phone: +41 (0)41 619 33 33; fax: +41 (0)41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to adding an AD that would apply to PILATUS AIRCRAFT LTD. Model PC–12/47 and PC–12/47E airplanes. The NPRM was published in the **Federal Register** on May 1, 2015 (80 FR 24854). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> During a continued airworthiness review, a potential unsafe condition was identified that could result from a disconnected aileron trim tab occurring above an altitude of 10.000 feet.
>
> This condition, if not corrected, could lead, in case of a disconnection of an aileron trim tab, to undamped aeroplane vibrations, potentially resulting in structural failure.
>
> To address this potential unsafe condition, Pilatus Aircraft Ltd. issued SB No. 27–021 to provide instructions for replacement of the aileron tab counter balance weight.
>
> For the reason described above, this AD requires replacement of the aileron tab counter balance weight with a new, slightly heavier, aileron tab counter balance weight.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1177-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request Revision of Paragraph (e) Reason of the AD

Johan Kruger stated the sentence of paragraph (e) Reason in the proposed AD was incomplete and misleading:

> We are issuing this AD to prevent a disconnected aileron trim tab, which could lead to undamped airplane vibrations, potentially resulting in structural failure.

Johan Kruger proposed replacing the above sentence with this sentence similar to the MCAI:

> We are issuing this AD to prevent undamped airplane vibrations, potentially resulting in structural failure in case of a disconnected aileron trim tab.

We agree with the commenter that the proposed sentence is clarification of the unsafe condition. We have adopted the proposed sentence in paragraph (e) of the AD.

Request Correction of Part Number (P/N)

Johan Kruger stated the cited part number (P/N) 27.15.12.037 of the aileron trim tab assembly quoted is wrong in paragraphs (f)(2) and (f)(3) of the proposed AD; the correct P/N is 527.15.12.037. We infer that the commenter requested correction of the incorrect P/N.

We agree with the commenter that the P/N in the proposed AD is incorrect. We have changed the incorrect P/N to 527.15.12.037 in paragraphs (f)(2) and (f)(3) of the AD.

Request Correction of Misleading Wording in Paragraph (f)(4) of the AD

Johan Kruger commented the wording in paragraph 2(f)(4) is misleading, ''. . . provided that an aileron trim tab assembly, P/N 527.15.12.037 or 527.15.12.038 is not installed on the airplane.''

Johan Kruger further wrote that Pilatus proposed the wording be changed to read, ''. . . provided that an

aileron trim tab assembly, P/N 527.15.12.037 or 527.15.12.038 is not installed on that aileron assembly.''

We infer the commenter means paragraph (f)(4) of the AD.

We agree with the commenter. Aileron trim tab assemblies will only be associated with aileron assemblies and not by airplane. The aileron assemblies themselves are associated with the airplane number. We have adopted the proposed wording in paragraph (f)(4) of the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the 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 (80 FR 24854, May 1, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 24854, May 1, 2015).

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

Relative Service Information Under 1 CFR Part 51

We reviewed PILATUS AIRCRAFT LTD. PILATUS PC–12 Service Bulletin No: 27–021, dated January 20, 2015. The service information describes procedures for replacement of the aileron tab counter balance weight. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Costs of Compliance

We estimate that this AD will affect 303 products of U.S. registry. We also estimate that it would take about 5.5 work hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $1,000 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $444,652.50, or $1,467.50 per product.

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.

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, 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* by searching for and locating Docket No. FAA–2015–1177; 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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 AD:

2015–14–10 PILATUS AIRCRAFT LTD.: Amendment 39–18208; Docket No. FAA–2015–1177; Directorate Identifier 2015–CE–009–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following PILATUS AIRCRAFT LTD. model and serial number airplanes, certificated in any category.

(1) Model PC–12/47, manufacturer serial numbers (MSNs) 684 through MSN 888; and

(2) Model PC–12/47E, MSNs 545, and 1001 through 1520.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the aileron trim tab disconnecting above 10,000 feet altitude. We are issuing this AD to prevent undamped airplane vibrations, potentially resulting in structural failure in case of a disconnected aileron trim tab.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) *For airplanes equipped with aileron trim tab assembly, part number (P/N) 527.15.12.037 or 527.15.12.038; or aileron assembly, P/N 557.05.12.015, 557.05.12.016, 557.05.12.017, or 557.05.12.018:* Within 12 months after August 20, 2015 (the effective date of this AD), replace the aileron tab counter balance weight and re-identify the aileron trim tab assembly following the

instructions of PILATUS PC–12 Service Bulletin No: 27–021, dated January 20, 2015.

(2) *For airplanes that on August 20, 2015 (the effective date of this AD) has an aileron trim tab assembly, P/N 527.15.12.037 or 527.15.12.038, installed:* After modification of that airplane as required by paragraph (f)(1) of this AD, do not install another aileron trim tab assembly with P/N 527.15.12.037 or 527.15.12.038.

(3) *For airplanes that on August 20, 2015 (the effective date of this AD) does not have an aileron trim tab assembly, P/N 527.15.12.037 or 527.15.12.038, installed:* After August 20, 2015 (the effective date of this AD), do not install an aileron trim tab assembly with P/N 527.15.12.037 or 527.15.12.038.

(4) *For all airplanes:* After August 20, 2015 (the effective date of this AD), you are allowed to install on an airplane an aileron assembly, having a P/N 557.05.12.015, 557.05.12.016, 557.05.12.017, or 557.05.12.018, provided that an aileron trim tab assembly, P/N 527.15.12.037 or 527.15.12.038 is not installed on that aileron assembly.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0060, dated April 10, 2015, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1177-0002.*

(i) 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) PILATUS AIRCRAFT LTD. PILATUS PC–12 Service Bulletin No: 27–021, dated January 20, 2015.

(ii) Reserved.

(3) For PILATUS AIRCRAFT LTD. service information identified in this AD, contact PILATUS AIRCRAFT LTD, Customer Support Manager, CH–6371 STANS, Switzerland; phone: +41 (0)41 619 33 33; fax: +41 (0)41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1177.

(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 Kansas City, Missouri, on July 7, 2015.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–17200 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–0045; Airspace Docket No. 14–ASO–22]

Establishment of Class E Airspace; Defuniak Springs, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Defuniak Springs, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Defuniak Springs Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, August 20, 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: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection 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/code_of_federal-regulations/ibr_locations.html.* FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

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:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Defuniak Springs Airport, Defuniak Springs, FL.

History

On April 24, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Defuniak Springs Airport, Defuniak Springs, FL (80 FR 22949). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 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 6.4-mile radius of Defuniak Springs Airport, Defuniak Springs, FL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures 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.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, 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 Defuniak Springs, FL [New]

Defuniak Springs Airport, FL
(Lat. 30°43′52″ N., long. 86°9′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Defuniak Springs Airport.

Issued in College Park, Georgia, on July 6, 2015.

Gerald E. Lynch,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–17286 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Stage 3 Compliance for Jets Weighing 75,000 Pounds or Less After December 31, 2015

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice reminding operators of noise compliance deadline.

SUMMARY: The Federal Aviation Administration is reminding operators of jet airplanes weighing 75,000 pounds or less that after December 31, 2015, operations in the contiguous United States may be conducted only with airplanes that comply with at least Stage 3 noise levels. Operators that fail to meet this requirement may be subject to civil penalties. Certain operations of airplanes not meeting Stage 3 may be conducted under special flight authorizations granted by the FAA on a case by case basis.

DATES: Compliance is due after December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Questions regarding this restriction and its applicability may be directed to Rebecca Cointin AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–4770; email: *rebecca.cointin@faa.gov*. For legal questions, contact Karen Petronis, AGC–220, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3073; email *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The noise from smaller jet airplanes continues to have an impact on communities near airports. In recognition of this impact, Congress addressed the operations of these airplanes in Section 506 of the FAA Modernization and Reform Act of 2012. That section states: ''[A]fter December 31, 2015, a person may not operate a civil subsonic jet airplane with a maximum weight of 75,000 pounds or less, and for which an airworthiness certificate (other than an experimental certificate) has been issued, to or from an airport in the United States unless the Secretary of Transportation finds that the aircraft complies with [S]tage 3 noise levels.'' Stage 3 noise levels are the certificated noise levels as established in 14 CFR part 36.

In 2013, the FAA codified this statutory requirement as § 91.881. The prohibition applies to all civil operations in the 48 contiguous United States regardless of purpose (except for those airplanes that have an experimental airworthiness certificate). The law also provides for operation of otherwise prohibited airplanes after that date under certain circumstances. The authorized purposes were codified in § 91.883, which includes the procedure for applying for a special flight authorization from the FAA.

Operators of airplanes that do not comply with Stage 3 noise levels may

choose to replace them, or to incorporate noise-reduction technologies that may be available to make the airplanes Stage 3 noise compliant. Operators that continue to fly non-compliant airplanes after December 31, 2015, will be subject to applicable civil penalties.

Issued in Washington, DC, on July 10, 2015.

Lourdes Maurice,

Director, Office of Environment and Energy.

[FR Doc. 2015–17382 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31025; Amdt. No. 3650]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 16, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2015.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION:

This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 19, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jul–15	WI	New Richmond	New Richmond Rgnl	5/7846	06/02/15	This NOTAM, published in TL 15–15, is hereby rescinded in its entirety.
23–Jul–15	WI	Baraboo	Baraboo Wisconsin Dells	5/0094	6/9/2015	RNAV (GPS) RWY 1, Amdt 1A.
23–Jul–15	WI	Baraboo	Baraboo Wisconsin Dells	5/0095	6/9/2015	LOC/DME RWY 1, Amdt 1B.
23–Jul–15	WI	Baraboo	Baraboo Wisconsin Dells	5/0097	6/9/2015	RNAV (GPS) RWY 19, Amdt 1A.
23–Jul–15	OH	Jackson	James A Rhodes	5/0679	6/9/2015	VOR/DME–A, Amdt 2A.
23–Jul–15	OH	Jackson	James A Rhodes	5/0680	6/9/2015	RNAV (GPS) RWY 19, Amdt 1B.
23–Jul–15	OH	Jackson	James A Rhodes	5/0681	6/9/2015	RNAV (GPS) RWY 1, Amdt 1B.
23–Jul–15	IA	Algona	Algona Muni	5/2064	6/8/2015	RNAV (GPS) RWY 12, Orig-B.
23–Jul–15	IA	Algona	Algona Muni	5/2065	6/8/2015	RNAV (GPS) RWY 30, Amdt 1A.
23–Jul–15	IA	Algona	Algona Muni	5/2066	6/8/2015	VOR/DME–A, Amdt 7A.
23–Jul–15	TX	Rocksprings	Edwards County	5/2350	6/9/2015	VOR RWY 14, Amdt 5.
23–Jul–15	MO	Caruthersville	Caruthersville Memorial	5/4038	6/9/2015	VOR/DME RWY 18, Orig.
23–Jul–15	MO	Caruthersville	Caruthersville Memorial	5/4042	6/9/2015	RNAV (GPS) RWY 18, Amdt 1A.
23–Jul–15	MO	Caruthersville	Caruthersville Memorial	5/4043	6/9/2015	RNAV (GPS) RWY 36, Amdt 1.
23–Jul–15	WI	Middleton	Middleton Muni—Morey Field	5/4207	6/9/2015	VOR RWY 28, Orig.
23–Jul–15	NM	Angel Fire	Angel Fire	5/4335	6/8/2015	RNAV (GPS) RWY 17, Amdt 1B.
23–Jul–15	WI	Monroe	Monroe Muni	5/4607	6/9/2015	RNAV (GPS) RWY 12, Orig.
23–Jul–15	WI	Monroe	Monroe Muni	5/4608	6/9/2015	RNAV (GPS) RWY 30, Orig.
23–Jul–15	WI	Monroe	Monroe Muni	5/4609	6/9/2015	VOR/DME RWY 30, Amdt 8.
23–Jul–15	CA	Vacaville	Nut Tree	5/9713	6/9/2015	RNAV (GPS) Z RWY 20, Orig-A.
23–Jul–15	CA	Vacaville	Nut Tree	5/9714	6/9/2015	VOR/DME–A, Amdt 5.
23–Jul–15	WI	Middleton	Middleton Muni—Morey Field	5/9940	6/9/2015	LOC/DME RWY 10, Amdt 1.
23–Jul–15	WI	Middleton	Middleton Muni—Morey Field	5/9941	6/9/2015	RNAV (GPS) RWY 10, Amdt 1.
23–Jul–15	WI	Middleton	Middleton Muni—Morey Field	5/9942	6/9/2015	RNAV (GPS) RWY 28, Amdt 2.

[FR Doc. 2015–16986 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31022; Amdt. No. 3647]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 16, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2015.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 5, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 July 2015

Lexington, KY, Blue Grass, ILS OR LOC RWY 4, Amdt 17B
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 35, Amdt 3A

Effective 20 August 2015

Koliganek, AK, Koliganek, RNAV (GPS) RWY 9, Amdt 1
Koliganek, AK, Koliganek, RNAV (GPS) RWY 27, Amdt 1
Koliganek, AK, Koliganek, Takeoff Minimums and Obstacle DP, Amdt 3
San Francisco, CA, San Francisco Intl, VOR–B, Amdt 7, CANCELED
Denver, CO, Centennial, ILS OR LOC/DME RWY 35R, Amdt 10
Denver, CO, Centennial, RNAV (GPS) RWY 17L, Amdt 1
Denver, CO, Centennial, RNAV (GPS) Y RWY 35R, Amdt 2
Denver, CO, Centennial, RNAV (GPS) Z RWY 35R, Amdt 1
Venice, FL, Venice Muni, NDB RWY 31, Amdt 2B, CANCELED
New Bedford, MA, New Bedford Rgnl, Takeoff Minimums and Obstacle DP, Amdt 8

Forsyth, MT, Tillitt Field, NDB RWY 26, Amdt 4
Forsyth, MT, Tillitt Field, RNAV (GPS) RWY 26, Amdt 1
Gastonia, NC, Gastonia Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Lincolnton, NC, Lincolnton-Lincoln County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Monroe, NC, Charlotte-Monroe Executive, Takeoff Minimums and Obstacle DP, Amdt 2
Salisbury, NC, Rowan County, Takeoff Minimums and Obstacle DP, Amdt 2
Williston, ND, Sloulin Fld Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Teterboro, NJ, Teterboro, VOR/DME–A, Amdt 2D, CANCELED
Lancaster, SC, Lancaster County-Mc Whirter Field, Takeoff Minimums and Obstacle DP, Amdt 2
Rock Hill, SC, Rock Hill/York Co/Bryant Field, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. 2015–16968 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31024; Amdt. No. 3649]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 16, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 16, 2015.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION:

This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find

that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 19, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 23 July 2015

Gallatin, TN, Sumner County Rgnl, RNAV (GPS) RWY 17, Amdt 2
Gallatin, TN, Sumner County Rgnl, RNAV (GPS) RWY 35, Amdt 2
Gallatin, TN, Sumner County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4

Effective 20 August 2015

Roanoke, VA, Roanoke Rgnl/Woodrum Field, LDA Y RWY 6, Amdt 12
Roanoke, VA, Roanoke Rgnl/Woodrum Field, LDA Z RWY 6, Orig
Roanoke, VA, Roanoke Rgnl/Woodrum Field, RNAV (GPS) RWY 6, Amdt 3

[FR Doc. 2015–16983 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31023; Amdt. No. 3648]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 16, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 2015.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff

Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 5, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows: EFFECTIVE UPON PUBLICATION

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jul–15	OH	Athens/Albany	Ohio University	5/0186	06/02/15	Takeoff Minimums and (Obstacle) DP, Orig.
23–Jul–15	CO	Holyoke	Holyoke	5/0908	06/02/15	RNAV (GPS) RWY 14, Orig-D.
23–Jul–15	CO	Holyoke	Holyoke	5/0909	06/02/15	RNAV (GPS) RWY 32, Orig-C.
23–Jul–15	MI	Detroit	Willow Run	5/0927	06/02/15	RNAV (GPS) RWY 23L, Amdt 1A.
23–Jul–15	TX	Dumas	Moore County	5/0955	5/26/15	RNAV (GPS) RWY 1, Orig.
23–Jul–15	TX	Dumas	Moore County	5/0957	5/26/15	RNAV (GPS) RWY 19, Orig.
23–Jul–15	TX	Dumas	Moore County	5/0958	05/26/15	VOR/DME–A, Amdt 6.
23–Jul–15	MI	Three Rivers	Three Rivers Muni Dr Haines	5/1435	5/20/15	VOR–A, Amdt 10.
23–Jul–15	OH	Bucyrus	Port Bucyrus-Crawford County.	5/1689	05/26/15	VOR OR GPS RWY 22, Amdt 4A.
23–Jul–15	TX	Fort Hood/Killeen ..	Robert Gray AAF	5/2282	05/20/15	ILS OR LOC RWY 33, Amdt 1.
23–Jul–15	TX	Fort Hood/Killeen ..	Robert Gray AAF	5/2283	05/20/15	RNAV (GPS) RWY 15, Amdt 1.
23–Jul–15	TX	Fort Hood/Killeen ..	Robert Gray AAF	5/2285	05/20/15	RNAV (GPS) RWY 33, Amdt 1.
23–Jul–15	TX	Fort Hood/Killeen ..	Robert Gray AAF	5/2286	05/20/15	VOR–A, Amdt 2.
23–Jul–15	TX	Fort Hood/Killeen ..	Robert Gray AAF	5/2287	05/20/15	COPTER VOR RWY 33, Amdt 2.
23–Jul–15	UT	Vernal	Vernal Rgnl	5/2584	05/20/15	RNAV (GPS) RWY 34, Amdt 1B.
23–Jul–15	UT	Vernal	Vernal Rgnl	5/2585	05/20/15	VOR RWY 34, Amdt 8.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/3233	05/20/15	RNAV (GPS) RWY 1, Amdt 1.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/3234	05/20/15	VOR/DME RWY 14, Amdt 1.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/3235	05/20/15	VOR/DME RWY 1, Amdt 8.
23–Jul–15	TX	Van Horn	Culberson County	5/4650	05/21/15	NDB RWY 21, Amdt 2B.
23–Jul–15	TX	Van Horn	Culberson County	5/4651	05/21/15	RNAV (GPS) RWY 21, Orig.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/5469	05/20/15	ILS Y OR LOC/DME RWY 32, Amdt 2B.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/5481	05/20/15	RNAV (GPS) RWY 14, Amdt 1.
23–Jul–15	CA	Arcata/Eureka	Arcata	5/5488	05/20/15	ILS Z RWY 32, Amdt 30A.
23–Jul–15	MO	Branson	M Graham Clark Downtown ..	5/5668	05/26/15	Takeoff Minimums and (Obstacle) DP, Amdt 2.
23–Jul–15	TX	Harlingen	Valley Intl	5/5857	06/02/15	VOR/DME Z RWY 31, Orig.
23–Jul–15	WI	New Richmond	New Richmond Rgnl	5/6799	06/02/15	Takeoff Minimums and (Obstacle) DP, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
23–Jul–15	IL	Kankakee	Greater Kankakee	5/7231	06/02/15	VOR RWY 4, Amdt 6B.
23–Jul–15	WI	New Richmond	New Richmond Rgnl	5/7837	06/02/15	RNAV (GPS) RWY 32, Amdt 2A.
23–Jul–15	WI	New Richmond	New Richmond Rgnl	5/7846	06/02/15	RNAV (GPS) RWY 14, Amdt 2B.
23–Jul–15	MI	Boyne City	Boyne City Muni	5/8161	06/02/15	RNAV (GPS) RWY 27, Orig-A.
23–Jul–15	MI	Boyne City	Boyne City Muni	5/8162	06/02/15	RNAV (GPS) RWY 9, Orig-A.
23–Jul–15	MI	Jackson	Jackson County-Reynolds Field.	5/8180	06/02/15	RNAV (GPS) RWY 32, Orig-B.
23–Jul–15	OK	Cushing	Cushing Muni	5/8845	06/02/15	RNAV (GPS) RWY 36, Amdt 1A.
23–Jul–15	KY	Louisville	Louisville Intl-Standiford Field	5/8899	06/02/15	ILS OR LOC RWY 17R, Amdt 3C.
23–Jul–15	KY	Louisville	Louisville Intl-Standiford Field	5/9501	06/02/15	ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 3B.
23–Jul–15	KY	Louisville	Louisville Intl-Standiford Field	5/9502	06/02/15	ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 4B.
23–Jul–15	KY	Louisville	Louisville Intl-Standiford Field	5/9505	06/02/15	ILS OR LOC RWY 17L, Amdt 4B.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9530	05/26/15	ILS OR LOC RWY 22L, Amdt 5A.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9531	05/26/15	RNAV (GPS) RWY 29, Orig-B.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9532	05/26/15	ILS OR LOC/DME RWY 4R, Amdt 2A.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9533	05/26/15	RNAV (GPS) RWY 22L, Amdt 1A.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9534	05/26/15	RNAV (GPS) RWY 4R, Amdt 1A.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9536	05/26/15	VOR/DME RWY 11, Amdt 1E.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9537	05/26/15	RADAR 1, Amdt 10.
23–Jul–15	LA	Lafayette	Lafayette Rgnl/Paul Fournet Field.	5/9538	05/26/15	Takeoff Minimums and (Obstacle) DP, Amdt 2.
23–Jul–15	TX	Fort Worth	Fort Worth Meacham Intl	5/9624	05/20/15	Takeoff Minimums and (Obstacle) DP, Amdt 7.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9628	06/02/15	ILS OR LOC RWY 8, Amdt 13A.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9629	06/02/15	ILS OR LOC RWY 35, Amdt 2B.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9630	06/02/15	VOR/DME RWY 35, Amdt 9A.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9631	06/02/15	RNAV (GPS) RWY 8, Amdt 1A.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9632	06/02/15	RNAV (GPS) RWY 17, Amdt 1A.
23–Jul–15	WI	Mosinee	Central Wisconsin	5/9633	06/02/15	RNAV (GPS) RWY 35, Amdt 1A.
23–Jul–15	CA	Merced	Merced Rgnl/Macready Field	5/9712	06/02/15	ILS OR LOC RWY 30, Amdt 14D.

[FR Doc. 2015–16971 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1245, 1262, 1263, 1264, and 1266

[Docket No: NASA–2015–0007]

RIN 2700–AE21

Administrative Updates

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes nonsubstantive changes to agency regulations to correct citation and spelling errors.

DATES: This direct final rule is effective on September 14, 2015. Comments due on or before August 17, 2015. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RIN 2700–AE21 and may be sent to NASA via the *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: James A. Reistrup, Senior Attorney, Office of the General Counsel, NASA Headquarters, telephone (202) 358–2027.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it makes nonsubstantive changes to correct citations and spelling errors within the parts listed. No opposition to the changes and no significant adverse comments are expected. However, if NASA receives significant adverse comments, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a

change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Background

The revision to these rules are part of NASA's retrospective plan under E.O. 13563 completed in August 2011. NASA's full plan can be accessed on the Agency's open Government Web site at *http://www.nasa.gov/open/*. With the passage of Public Law 111–314, Enactment of Title 51—National and Commercial Space Programs, Dec. 18, 2010, some of the NASA Space Act citations for the United States Code in Title 14 of the CFR needed to be updated to Title 51. In the process of reviewing the regulations for NASA's retrospective plan that are maintained by the Office of the General Counsel, the following parts were identified as needing citation updates and some also needed spelling corrections for a few misspelled words:

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS, Subpart 3—NASA Foreign Patent Program
PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS
PART 1263—DEMAND FOR INFORMATION OR TESTIMONY SERVED ON AGENCY EMPLOYEES; PROCEDURES
PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986
PART 1266—CROSS-WAIVER OF LIABILITY

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113 (a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review

Executive Orders (EO) 13563 and 12866 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). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''not significant'' under section 3(f) of EO 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule removes one section from Title 14 of the CFR and, therefore, does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under EO 13132

EO 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) requires regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any substantial direct effects on state and local governments within the meaning of the EO. Therefore, no Federalism assessment is required.

List of Subjects in 14 CFR Parts 1245, 1262, 1263, 1264, and 1266

Patents, Equal access to justice, Penalties.

Accordingly, under the authority of the National Aeronautics and Space Act, as amended, [51 U.S.C. 20113], NASA amends parts 1245, 1262, 1263, 1264, and 1266 of title 14 as follows:

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Subpart 3—NASA Foreign Patent Program

■ 1. The authority citation for part 1245, subpart 3, is revised to read as follows:

Authority: 51 U.S.C. 20135(g) and E.O. 9865, 12 FR 3907, 3 CFR, 1943–1948 Comp., p. 651, and E.O. 10096, 15 FR 389, 3 CFR, 1949–1953 Comp., p. 292.

■ 2. In § 1245.301, paragraph (a), the last sentence is revised to read as follows:

§ 1245.301 Inventions under NASA contracts.

(a) * * *However, any such waiver is subject to the reservation by the Administrator of the license required to be retained by NASA under 51 U.S.C. 20135(g) of the National Aeronautics and Space Act, as amended.

* * * * *

PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

■ 3. The authority citation for part 1262 is revised to read as follows:

Authority: 5 U.S.C. 504; 51 U.S.C. 20113(a).

§ 1262.201 [Amended]

■ 4. In § 1262.201, paragraph (d), remove the word ''determing,'' and add in its place the word ''determining.''

§ 1262.202 [Amended]

■ 5. In § 1262.202, paragraph (a), remove the word ''defiined,'' and add in its place the word ''defined.''

PART 1263—DEMAND FOR INFORMATION OR TESTIMONY SERVED ON AGENCY EMPLOYEES; PROCEDURES

■ 6. The authority citation for part 1263 is revised to read as follows:

Authority: 44 U.S.C. 3102, 51 U.S.C. 20113(a).

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

■ 7. The authority citation for part 1264 is revised to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.109 [Amended]

■ 8. In § 1264.109, paragraph (c), remove the word ''penalities,'' and add in its place the word ''penalties.''

§ 1264.111 [Amended]

■ 9. In § 1264.111, paragraph (b)(4), remove the word ''precedures,'' and add in its place the word ''procedures.''

§ 1264.116 [Amended]

■ 10. In § 1264.116, paragraph (b), remove the word ''Paticipate,'' and add in its place the word ''Participate.''

§ 1264.124 [Amended]

■ 11. In § 1264.124, the first sentence, remove word ''supoena'' and add in its

place the word ''subpoena'' and remove the word ''supoenaed,'' and add in its place the word ''subpoenaed.''

PART 1266—CROSS-WAIVER OF LIABILITY

■ 12. The authority citation for part 1266 is revised to read as follows:

Authority: 51 U.S.C. 20139 and 51 U.S.C. 20113(a), (e), and (f).

Cheryl E. Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2015–17214 Filed 7–15–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0045]

RIN 1625–AA08

Special Local Regulations; Southeast Drag Boat Championships, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Southeast Drag Boat Championships, a series of high-speed boat races. The event will take place from 10 a.m. until 6 p.m. daily from July 24, 2015 through July 26, 2015. Approximately 50 high-speed race boats are expected to participate in the races. This special local regulation is necessary to provide for the safety of life and property on navigable waters of the United States during the event. Furthermore, this special local regulation will temporarily restrict vessel traffic in a portion of the Atlantic Intracoastal Waterway. Persons and vessels that are not participating in the races will be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from July 24, 2015 until July 26, 2015. This rule will be enforced daily from 10 a.m. until 6 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0045. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, Sector Charleston Waterways Management, U.S. Coast Guard; telephone (843) 740–3184, email *christopher.l.ruleman@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

A. Regulatory History and Information

On May 14, 2015, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Southeast Drag Boat Championships, Atlantic Intracoastal Waterway, Bucksport, SC in the **Federal Register** (78 FR 16205). We received no comments on the proposed rule. No public meeting was requested and none was held.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life and property on navigable waters of the United States during the Southeast Drag Boat Championships.

C. Discussion of Rule

From July 24, 2015 until July 26, 2015, the Bucksport Marina will host the Southeast Drag Boat Championships, a series of high-speed boat races. The event will be held on a portion of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. Approximately 50 high-speed race boats are anticipated to participate in the races.

This special local regulation encompasses certain waters of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. This special local regulation will be enforced daily from 10 a.m. until 6 p.m. on July 24, 2015 until July 26, 2015. This special local regulation consists of a regulated area around vessels participating in the event. Persons and vessels that are not participating in the event are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not expected to be significant for the following reasons: (1) Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the effective period; (2) persons and vessels may still enter, transit through, anchor in, or remain within the race area if authorized by the Captain of the Port Charleston or a designated

representative; and (3) advance notification will be made to the local maritime community via broadcast notice to mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the regulated area from 10 a.m. until 6 p.m. daily from July 24, 2015 through July 26, 2015. However, this special local regulation would be activated, and thus subject to enforcement, for only three days over a weekend. Additionally, traffic will be allowed to pass through the regulated area with the authorization of the Captain of the Port of Charleston or a designated representative, and all vessels will be permitted to operate in the surrounding area during the effective period.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233

■ 2. Add a temporary § 100.35T07–0045 to read as follows:

§ 100.35T07–0045 Special Local Regulations; Southeast Drag Boat Championships, Atlantic Intracoastal Waterway, Bucksport, SC.

(a) *Regulated area.* The following regulated area is established as a special local regulation: All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.46″ N, 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N, 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N, 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N, 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983.

(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 Charleston in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Nonparticipant persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners, Local Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement date.* This rule will be enforced from 10 a.m. until 6 p.m. daily from July 24, 2015 through July 26, 2015.

Dated: June 30, 2015.

B.D. Falk,

Commander, U.S. Coast Guard, Acting Captain of the Port Charleston.

[FR Doc. 2015–17455 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0192]

RIN 1625–AA08

Special Local Regulations; Beaufort Water Festival, Beaufort, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation pertaining to the Beaufort Water Festival from 12:00 p.m. through 4:00 p.m. on July 26, 2015. This action is necessary to ensure safety of life on navigable waters of the United States during the Beaufort Water Festival Air Show. During the enforcement period, this special local regulation establishes a regulated area which all people and vessels will be prohibited from entering, transiting through, anchoring, or remaining within. Vessels may enter, transit through, anchor in, or remain within the area if authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on July 26, 2015, and will be enforced from 12:00 p.m. until 4:00 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2015–0192 and are available online by going to *http://www.regulations.gov,* inserting USCG–2015–0192 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3184, email *christopher.l.ruleman@uscg.mil.* If you have questions on viewing 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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because the Coast Guard did not receive necessary information about the event until March 19, 2015. As a result, the Coast Guard did not have sufficient time to publish a notice of proposed rulemaking and to receive public comments prior to the event. In addition, any delay in the effective date of this rule would be impracticable for the same insufficient time as noted above and because immediate action is needed to minimize potential danger to the race participants, spectators and the public.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Beaufort Water Festival.

C. Discussion of Comments, Changes and the Final Rule

This temporary rule creates a regulated area that will encompass a portion of the Beaufort River that is 700 ft wide by 2600 ft in length, west of the Woods Memorial Bridge in front of Waterfront Park in Beaufort, SC. Spectator vessels may safely transit outside the regulated area, but are prohibited from entering, transiting through, anchoring, or remaining within the regulated area. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. Persons and vessels may not enter, transit through,

anchor in, or remain within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of this special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This rule may have some impact on the public, but these potential impacts will be minimal for the following reasons: (1) The rule will be in effect for only four hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the effective period; (3) advance notification will be made to the local maritime community via broadcast notice to mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Beaufort River from 12:00 p.m. until 4:00 p.m. on July 26, 2015. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for Federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0192 to read as follows:

§ 100.T07–0192 Special Local Regulations; Beaufort Water Festival, Beaufort, SC.

(a) *Regulated areas.* The following regulated area that will encompass a portion of the Beaufort River that is 700 ft wide by 2600 ft in length, whose approximate corner coordinates are as follows: 32°25′47″ N/080°40′44″ W, 32°25′41″ N/080°40′14″ W, 32°25′35″ N/080°40′16″ W, 32°25′40″ N/080°40′46″ W. Spectator vessels may safely transit outside the regulated area, but are prohibited from entering, transiting through, anchoring, or remaining within the regulated area. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

(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 Charleston 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 area unless otherwise authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16 to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement date.* This rule will be enforced from 12:00 p.m. to 4:00 p.m. on July 26, 2015.

Dated: June 30, 2015.

B.D. Falk,

Commander, U.S. Coast Guard, Acting Captain of the Port Charleston.

[FR Doc. 2015–17477 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0227]

RIN 1625–AA00

Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 500-yard safety zone around each of five locations where the Block Island Wind Farm (BIWF) wind turbine generator (WTG) foundations will be constructed in the navigable waters of the Rhode Island Sound, RI. These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF WTG foundations. Vessels are prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present, unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative.

DATES: This rule is effective without actual notice from July 16, 2015 until September 30, 2015. For the purposes of enforcement, actual notice will be used from Wednesday, July 1, 2015, to July 16, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0227. To view documents mentioned in the preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing the docket, please contact Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

BIWF Block Island Wind Farm
FR Federal Register
NTM Notice To Mariners
WTG Wind Turbine Generator
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 21, 2015, we published a NPRM entitled ''Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI'' in the **Federal Register** (80 FR 22144). We received no comments on the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This provision authorizes an agency to make a rule effective less than 30 days after publication in the **Federal Register** when the agency for good cause finds that delaying the effective period for 30 days or more is ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than

30 days after publication in the **Federal Register** because construction of the Block Island Wind Farm is scheduled to begin in early July, the environmental window within which construction can be conducted is short, and no comments opposing the safety zone were received in response to the NPRM. Therefore, it is impracticable to make this rule effective 30 days or more after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; and Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to establish safety zones.

This rule is necessary to provide for the safety of life and navigation, for both workers and the boating public, within the vicinity of the BIWF in Rhode Island Sound, RI.

Background

The Coast Guard is establishing a 500-yard safety zone around each of five locations where the BIWF WTG foundations will be constructed in the navigable waters of the Rhode Island Sound, RI, from July 1 to September 30, 2015. Locations of these platforms are:

Platform	Latitude	Longitude
WTG 1	41°7.544′ N	71°30.454′ W.
WTG 2	41°7.196′ N	71°30.837′ W.
WTG 3	41°6.886′ N	71°31.268′ W.
WTG 4	41°6.612′ N	71°31.747′ W.
WTG 5	41°6.383′ N	71°32.259′ W.

These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF WTG foundations. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present unless authorized by the COTP, Southeastern New England or the COTP's designated representative.

Discussion of Comments, Changes and the Final Rule

No comments were received and no changes were made to the language contained in the NPRM.

C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Executive Order 12866 and Executive Order 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the adverse economic impact of this rule to be minimal. Although this regulation may have some adverse impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from the safety zones during periods of actual construction activity from July 1 to September 30, 2015; and the BIWF is located approximately three miles offshore from Block Island and the safety zones are only 500-yards in radius centered on the five BIWF WTG foundation locations, allowing plenty of room for vessels to pass without having to divert a long distance around the construction areas.

Notification of the BIWF construction activity and the effective enforcement periods of the associated safety zones will be made to mariners through the Rhode Island Port Safety Forum, and local and broadcast NTMs.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: Owners or operators of vessels intending to enter, transit, moor, or anchor within 500 yards of the five BIWF WTG foundation construction locations.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. A final categorical exclusion document and environmental checklist are located in the docket for this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–227 to read as follows:

§ 165.T01–227 Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI.

(a) *Location.* Areas within a 500-yard radius of the following five positions are safety zones:

Platform	Latitude	Longitude
WTG 1	41°7.544′ N	71°30.454′ W.
WTG 2	41°7.196′ N	71°30.837′ W.
WTG 3	41°6.886′ N	71°31.268′ W.
WTG 4	41°6.612′ N	71°31.747′ W.
WTG 5	41°6.383′ N	71°32.259′ W.

(b) *Enforcement period.* From July 1 to September 30, 2015, vessels will be prohibited from entering into any of these safety zones, when enforced, during construction activity of five Block Island Wind Farm (BIWF) wind turbine generators (WTG) located in the positions listed in paragraph (a) of this section.

(c) *Definitions.* The following definitions apply to this section:

Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf.

(d) *Regulations.* (1) The general regulations contained in § 165.23 as well as the following regulations apply to the safety zones established in conjunction with the construction of the Block Island Wind Farm; Rhode Island Sound, RI. These regulations may be enforced for the duration of construction.

(2) Vessels may not enter into, transit through, moor, or anchor in these safety zones during periods of enforcement unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger construction vessels or associated equipment.

(3) Failure to comply with a lawful direction from the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative may result in expulsion from the area, citation for failure to comply, or both.

Dated: June 10, 2015.

J.T. Kondratowicz,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2015–17484 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL; Between Mile Markers 296.1 and 296.7

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal between Mile Marker 296.1 to Mile Marker 296.7 at specified times from August 3, 2015, through September 18, 2015. This action is necessary to protect the waterway, waterway users, and vessels from the hazards associated with the U.S. Fish and Wildlife Service's trial tests on the water for the Asian Carp studies.

During the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced intermittently from 8 a.m. to 6 p.m. on Monday

through Friday, from August 3, 2015, through August 14, 2015. In the event of a postponement of the trial tests due to inclement weather or other unforeseen circumstances, this zone will be enforced intermittently from 8 a.m. to 6 p.m. on Monday through Friday from August 24, 2015, through September 18, 2015, excluding September 7, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT Lindsay Cook, Waterways Department, Coast Guard Marine Safety Unit Chicago, telephone 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone on all waters of the Chicago Sanitary and Ship Canal between Mile Marker 296.1 to Mile Marker 296.7. Enforcement will occur intermittently from 8 a.m. to 6 p.m. on Monday through Friday, from August 3, 2015, through August 14, 2015. In the event of a postponement of the trial tests due to inclement weather or other unforeseen circumstances, this zone will be enforced intermittently from 8 a.m. to 6 p.m. on August 17, 2015, through September 18, 2015, excluding September 7, 2015.

This enforcement action is necessary because the Captain of the Port Lake Michigan has determined that the U.S. Fish and Wildlife Service's trial tests on the water for Asian Carp studies pose risks to life and property. Because of these risks, it is necessary to control vessel movement during the operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up, or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port representative may be contacted via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This document is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Captain of the Port Lake Michigan will also provide notice through other means, which may include Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port Lake Michigan may notify representatives from the maritime industry through telephonic and email notifications.

Dated: June 30, 2015.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2015–17460 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL; Between Mile Markers 286 and 286.5

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, in the vicinity of the Brandon Road Lock and Dam between Mile Marker 286 and Mile Marker 286.5 at specified times from August 17, 2015, through September 18, 2015. This action is necessary to protect the waterway, waterway users, and vessels from the hazards associated with the U.S. Fish and Wildlife Service's trial tests on the water for the Asian Carp studies. During the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced intermittently from 8 a.m. to 6 p.m. on Monday through Friday, from August 17, 2015, through August 21, 2015. In the event of a postponement of the trial tests due to inclement weather or other unforeseen circumstances, this zone will be enforced intermittently from 8 a.m. to 6 p.m. on Monday through Friday from August 24, 2015, through September 18, 2015, excluding September 7, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT Lindsay Cook, Waterways Department, Coast Guard Marine Safety Unit Chicago, telephone 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone in the vicinity of the Brandon Road Lock and Dam between Mile Marker 286 and Mile Marker 286.5. Enforcement will occur intermittently from 8 a.m. to 6 p.m. on Monday through Friday, from August 17, 2015, through August 21, 2015. In the event of a postponement of the trial tests due to inclement weather or other unforeseen circumstances, this zone will be enforced intermittently from 8 a.m. to 6 p.m. on Monday through Friday from August 24, 2015, through September 18, 2015, excluding September 7, 2015.

This enforcement action is necessary because the Captain of the Port Lake Michigan has determined that U.S. Fish and Wildlife Service's trial tests on the water for Asian Carp studies pose risks to life and property. Because of these risks, it is necessary to control vessel movement during the operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up, or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port Lake Michigan or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port representative may be contacted

via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This document is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Captain of the Port Lake Michigan will also provide notice through other means, which may include Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port Lake Michigan may notify representatives from the maritime industry through telephonic and email notifications.

Dated: June 30, 2015.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2015–17459 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0595]

RIN 1625–AA00

Safety Zone; Town of Olcott Fireworks Display; Lake Ontario, Olcott, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Ontario, Olcott, NY. This safety zone is intended to restrict vessels from a portion of Lake Ontario during the Town of Olcott fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display.

DATES: This rule is effective without actual notice from July 16, 2015 until September 6, 2015. For the purposes of enforcement, actual notice will be used from June 25, 2015 until July 16, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0595]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Amanda Garcia, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display. Therefore, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 9:30 p.m. and 11 p.m. on July 10, 2015; July 23, 2015; August 13, 2015; August 27, 2015; and September 6, 2015, a fireworks display will be held on the shoreline of Lake Ontario in Olcott, NY. It is anticipated that numerous vessels will be in the immediate vicinity of the launch point. The Captain of the Port Buffalo has determined that such a launch proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Town of Olcott fireworks display. This zone will be enforced from 9:30 p.m. until 11 p.m. on July 10, 2015; July 23, 2015; August 13, 2015; August 27, 2015; and September 6, 2015. This zone will encompass all waters of Lake Ontario; Olcott, NY within a 1,050-foot radius of position 43°20′23.6″ N. and 078°43′09.5″ W. (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Ontario on the evening of July 10, 2015; July 23, 2015; August 13, 2015; August 27, 2015; and September 6, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0595 to read as follows:

§ 165.T09–0595 Safety Zone; Town of Olcott Fireworks Display; Lake Ontario, Olcott, NY.

(a) *Location.* This zone will encompass all waters of Lake Ontario; Olcott, NY within a 1,050-foot radius of position 43°20′23.6″ N. and 078°43′09.5″ W. (NAD 83).

(b) *Enforcement period.* This regulation will be enforced on July 10, 2015; July 23, 2015; August 13, 2015; August 27, 2015; and September 6, 2015 from 9:30 p.m. until 11 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 25, 2015.

B.W. Roche,

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

[FR Doc. 2015–17483 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AP38

Agency Interpretation of Prosthetic Replacement of a Joint

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is publishing interpretive guidance for diagnostic codes (DC) 5051 through 5056, which establish rating criteria for prosthetic implant replacements of joints of the musculoskeletal system. The Schedule for Rating Disabilities under these DCs allows for a 1-year, 100-percent disability evaluation upon prosthetic replacement of a joint. This final rule clarifies that VA's longstanding interpretation of DCs 5051 through 5056 is that a 100-percent evaluation will be in place for a period of one year when the total joint, rather than the partial joint, has been replaced by a prosthetic implant.

DATES: *Effective Date:* This final rule is effective July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Diagnostic codes (DCs) 5051 through 5056, under 38 CFR 4.71a, govern the Schedule for Rating Disabilities (Rating Schedule) for prosthetic replacement of joints under the musculoskeletal system. These DCs state that a 100-percent evaluation will be sustained for 1 year following the prosthetic replacement of the named joint. This period of total disability evaluation is designed to provide temporary convalescence for major surgery, such as total joint replacement. Following the convalescent period, a Department of Veterans Affairs (VA) or VA-approved examination is conducted to determine any residual disability, and a new rating evaluation is assigned based on such residuals.

The field of orthopedic medicine has progressed to such a degree that total prosthetic replacement of a joint is not always necessary. Surgical procedures, sometimes referred to generally as ''joint replacements,'' may only require partial replacement of the disabled joint.[1] Partial replacement has the benefit of not requiring the same length of time for convalescence.[2] The progression of this area of medical science has raised an issue as to whether a veteran who undergoes a partial replacement of a joint is entitled to the 100-percent rating evaluation during the convalescent period under DCs 5051 through 5056.

VA has long interpreted ''joint replacement,'' as used in § 4.71a, to mean total joint replacement. Recently, the United States Court of Appeals for Veterans Claims (Veterans Court) issued a precedential panel decision upholding VA's interpretation of § 4.71a. In *Hudgens* v. *Gibson,* 26 Vet. App. 558 (2014), the Veterans Court upheld the Board of Veterans' Appeals decision that DC 5055 applies only to total knee prosthetic replacements. The Veterans Court determined that the plain language of DC 5055 was unambiguous. *Id.* at 561. The Veterans Court found that the medical definition of ''knee joint'' encompassed three distinct compartments of the knee and that ''[n]othing in the plain language of the regulation indicates that it applies to replacements of less than a complete knee joint . . .''. *Id.* In addition, the Veterans Court cited DC 5054, for hip joint prosthesis, as an example of when VA intends to evaluate partial joint replacement. Diagnostic Code 5054, also under § 4.71a, provides evaluation criteria for ''[p]rosthetic replacement of the head of the femur *or* of the acetabulum'' (italics added), which together make up the hip joint. *Id.* The Veterans Court concluded that ''DC 5055 applies only to total knee replacements, as the Secretary has demonstrated in other parts of § 4.71(a) [sic] that he is aware of how to include partial joint replacements as part of disability rating criteria in other parts of § 4.71(a) [sic].'' *Id.* at 562.

In view of the above court decision, and VA's longstanding interpretation, VA is amending its regulations to clarify that the language of § 4.71a, Prosthetic Implants, which refers to replacement of

[1] ''Patients with osteoarthritis that is limited to just one part of the knee may be candidates for unicompartmental knee replacement (also called a 'partial' knee replacement).'' ''Unicompartmental Knee Replacement,'' American Academy of Orthopedic Surgeons, Ortho Info, 1 (June 2010), *http://orthoinfo.aaos.org/topic.cfm?topic=A00585* (last visited Mar. 19, 2014).

[2] *Id.*

the named joint, refers to replacement of the joint as a whole, except where it is otherwise stated under DC 5054. To avoid confusion in applying these DCs, VA is adding an explanatory note under 38 CFR 4.71a, directly above DCs 5051 through 5056, which notifies readers that ''prosthetic replacement'' means a total, not a partial, joint replacement, except as it is otherwise stated under DC 5054.

This final rule provides interpretive guidance on VA's meaning of ''prosthetic replacement'' as noted in the preceding discussion and consistent with the recent *Hudgens* v. *Gibson* decision. This guidance does not represent a new agency interpretation or a substantive change to the eligibility criteria for any VA benefit; rather, it provides notice regarding VA's longstanding interpretation of its regulation on prosthetic implants, which the Veterans Court recently upheld. As such, VA is publishing this final rule without opportunity for public comment.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that this is an interpretive rule, which, under 5 U.S.C. 553(b)(A), VA may promulgate without prior opportunity for public comment. *See also Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1206 (2015). This rule merely restates VA's longstanding interpretation of its regulation, which the Veterans Court upheld. Therefore, a prior opportunity for notice and comment is unnecessary. Additionally, based on the above cited justification, VA finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d)(2).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

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

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.116, Vocational Rehabilitation for Disabled Veterans.

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. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on July 6, 2015, for publication.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Dated: July 13, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. In § 4.71a, add a note preceding the footnote after the table ''Prosthetic Implants'' to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

PROSTHETIC IMPLANTS

* * * * *

Note: The term ''prosthetic replacement'' in diagnostic codes 5051 through 5056 means a total replacement of the named joint. However, in DC 5054, ''prosthetic

replacement'' means a total replacement of the head of the femur or of the acetabulum.

* * * * *

■ 3. Amend appendix A to part 4 by revising the entries for diagnostic codes 5051 through 5056 to read as follows:

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec.	Diagnostic Code No.	
*	*	* * * * * *
	5051	Added September 22, 1978. Note July 16, 2015.
	5052	Added September 22, 1978. Note July 16, 2015.
	5053	Added September 22, 1978. Note July 16, 2015.
	5054	Added September 22, 1978. Note July 16, 2015.
	5055	Added September 22, 1978. Note July 16, 2015.
	5056	Added September 22, 1978. Note July 16, 2015.
*	*	* * * * * *

[FR Doc. 2015–17417 Filed 7–15–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0329; FRL–9930–69–Region 10]

Approval and Promulgation of Implementation Plans; Washington: Interstate Transport Requirements for the 2008 Lead and 2010 Nitrogen Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a submittal by the Washington Department of Ecology (Ecology) demonstrating that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for lead (Pb) on October 15, 2008 and nitrogen dioxide (NO_2) on January 22, 2010. Specifically, Ecology conducted an emissions inventory analysis and reviewed monitoring data to show that sources in Washington do not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb and 2010 NO_2 NAAQS in any other state.

DATES: This final rule is effective August 17, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2015–0329. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information the disclosure of which 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 at the Air Programs Unit, Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information please contact Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
II. Final Action
III. Statutory and Executive Orders Review

I. Background Information

On October 15, 2008 (73 FR 66964) and January 22, 2010 (75 FR 6474), the EPA revised the Pb and NO_2 NAAQS, respectively. Within three years after promulgation of a new or revised standard, states must submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2), often referred to as ''infrastructure'' requirements. On May 11, 2015, Ecology submitted a SIP revision to address the CAA section 110(a)(2)(D)(i)(I) requirements demonstrating that sources in Washington do not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb and 2010 NO_2 NAAQS in any other state. On May 27, 2015, the EPA proposed to find that the Washington SIP meets the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 NO_2 NAAQS (80 FR 30200). An explanation of the CAA requirements, a detailed analysis of the submittal, and the EPA's reasons for approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on June 26, 2015. The EPA received no comments on the proposal.

II. Final Action

The EPA reviewed the May 11, 2015 submittal from Ecology demonstrating that sources in Washington do not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb and 2010 NO_2 NAAQS in any other state. The EPA has determined that the Washington SIP meets the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 NO_2 NAAQS. This action is being taken under section 110 of the CAA.

III. Statutory and Executive Orders Review

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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated September 3, 2013. The EPA did not receive a request for consultation.

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 6, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 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 WW—Washington

■ 2. In § 52.2470, table 2 in paragraph (e) is amended by adding the entry ''Interstate Transport for the 2008 Pb and 2010 NO_2 NAAQS'' at the end of the table to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
*	* * *	*	* *	*
110(a)(2) Infrastructure and Interstate Transport				
*	* * *	*	* *	*
Interstate Transport for the 2008 Pb and 2010 NO_2 NAAQS.	Statewide	5/11/15	7/16/15 [Insert **Federal Register** citation].	This action addresses CAA 110(a)(2)(D)(i)(I).

[FR Doc. 2015–17467 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0360; FRL–9930–63–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to the Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia's State Implementation Plan (SIP). The revision adds two compounds to the list of substances not considered to be volatile organic compounds (VOC). EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 14, 2015 without further notice, unless EPA receives adverse written comment by August 17, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0360 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2015–0360, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0360. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs have different levels of reactivity, that is, some VOCs react slowly or form less ozone, and therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been EPA's policy that VOCs with a negligible level of reactivity should be excluded from the regulatory definition of VOC contained at 40 CFR 51.100(s) so as to focus control efforts on compounds that do significantly increase ozone concentrations. This is accomplished by adding the substance to a list of compounds not considered to be VOCs, and thus, excluded from the definition of VOC. EPA believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. On August 28, 2013 (78 FR 53029) and October 22, 2013 (78 FR 62451), EPA revised the definition of VOC contained in 40 CFR 51.100 to exclude two substances from the definition of VOC. The compounds excluded from the definition of VOC are *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) and 2,3,3,3-tetrafluoropropene (also known as HFO-1234yf).

II. Summary of SIP Revision

On May 7, 2015, the Commonwealth of Virginia submitted a formal revision to its SIP which consists of adding two additional compounds to the list of substances that are not considered VOCs found at 9VAC5–10–20. These compounds are *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) and 2,3,3,3-tetrafluoropropene (also known as HFO-1234yf). The May 7, 2015 SIP revision will allow the Virginia SIP to mirror the Federal definition of VOC. EPA believes that by excluding these negligibly reactive compounds from the definition of VOC an incentive is created for industry to use negligibly reactive compounds in place of more highly reactive compounds; therefore, the air quality in Virginia will not be negatively affected by the approval of these SIP revisions particularly as EPA has found these compounds negligibly reactive for ozone formation.

III. Final Action

EPA is approving the SIP revision to the definition of VOC submitted by Virginia on May 7, 2015. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 14, 2015 without further

notice unless EPA receives adverse comment by August 17, 2015. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rulemaking action, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the definition of VOCs as described in section II of this rulemaking action. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. 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 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 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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 September 14, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action, revising the definition of VOCs, 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: July 7, 2015.

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 VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding a new entry for ''Section 5–10–20'' immediately after the existing entries for ''Section 5–10–20'' to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
9 VAC 5, Chapter 10 General Definitions [Part I]				
*	*	*	*	*
5–10–20	Terms Defined	3/12/15	*7/16/15* [Insert **Federal Register** citation].	Definition of VOC is revised by adding two chemicals (*trans* 1-chloro-3,3,3-trifluoroprop-1-ene and 2,3,3,3-tetrafluoropropene) to the list of substances not considered to be VOCs.
*	*	*	*	*

* * * * *

[FR Doc. 2015–17386 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0902; FRL–9930–24–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Johnstown Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Commonwealth of Pennsylvania's request to redesignate to attainment the Johnstown Nonattainment Area (Johnstown Area or Area) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS or standard). EPA has determined that the Johnstown Area attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, EPA is approving as a revision to the Pennsylvania State Implementation Plan (SIP) the associated maintenance plan to show

maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the Johnstown Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for the Johnstown Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. Furthermore, EPA is approving the 2007 base year emissions inventory included in the maintenance plan for the Johnstown Area for both NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on July 16, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0902. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, or by email at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Concurrently, PADEP submitted a maintenance plan for the Johnstown Area as a SIP revision to ensure continued attainment throughout the Johnstown Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. PADEP also submitted a 2007 comprehensive emissions inventory that was included in the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for NO_X, sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).

On April 23, 2015 (80 FR 22672), EPA published a notice of proposed rulemaking (NPR) for Pennsylvania. In the NPR, EPA proposed approval of Pennsylvania's December 3, 2014 request to redesignate the Johnstown Area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plan as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The maintenance plan included the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for both NAAQS which EPA proposed to approve for purposes of transportation conformity. In addition, EPA proposed approval of the 2007 emissions inventory also included in the maintenance plan for the Johnstown Area for both NAAQS to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

The details of Pennsylvania's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

II. Final Actions

EPA is taking final actions on the redesignation request and SIP revisions submitted on December 3, 2014 by the Commonwealth of Pennsylvania for the Johnstown Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. First, EPA finds that the monitoring data demonstrates that the Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and continues to attain both NAAQS. Second, EPA is approving Pennsylvania's redesignation request for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both NAAQS. Approval of this redesignation request will change the official designation of the Johnstown Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Third, EPA is approving the associated maintenance plan for the Johnstown Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Pennsylvania for the Johnstown Area for transportation conformity purposes. In addition, EPA is approving the 2007 emissions inventory for the Johnstown Area as meeting the requirement of section 172(c)(3) of the CAA for both NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this rulemaking action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this rulemaking action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rulemaking action, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rulemaking action relieves the Commonwealth of Pennsylvania of the obligation to comply with nonattainment-related planning requirements for the Johnstown Area pursuant to part D of the CAA and approves certain emissions inventories and MVEBs for the Johnstown Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this rulemaking action to become effective on the date of publication.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to

attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not 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 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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 September 14, 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, approving the redesignation request and maintenance plan for the Johnstown Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and the comprehensive emissions inventory for the Johnstown Area for both NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 25, 2015.

Shawn M Garvin,

Regional Administrator, Region III.

40 CFR parts 52 and 81 are 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 (e)(1) is amended by adding an entry for ''1997 Annual and 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
*	* *	*	*	* *
1997 Annual and 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory.	Johnstown Area	12/3/14	7/16/15 [Insert **Federal Register** citation].	See § 52.2036(w) and § 52.2059(r).

* * * * *

■ 3. Section 52.2036 is amended by adding and reserving paragraph (v) and adding paragraph (w) to read as follows:

§ 52.2036 Base year emissions inventory.

* * * * *

(v) [Reserved]

(w) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2007 base year emissions inventory for the Johnstown 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Pennsylvania Department of

Environmental Protection on December 3, 2014. The emissions inventory includes emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventory are $PM_{2.5}$, nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2).

■ 4. Section 52.2059 is amended by adding and reserving paragraph (q) and adding paragraph (r) to read as follows:

§ 52.2059 Control strategy: Particular matter.

* * * * *

(q) [Reserved]

(r) EPA approves the maintenance plan for the Johnstown nonattainment area for the 1997 annual and 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) submitted by the Commonwealth of Pennsylvania on December 3, 2014. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X mobile vehicle emissions budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Johnstown nonattainment area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

JOHNSTOWN AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ NAAQS FOR CAMBRIA COUNTY IN TONS PER YEAR

Type of control strategy SIP	Year	$PM_{2.5}$	NO_X	Effective date of SIP approval
Maintenance Plan	2017	62.79	1,707.03	7/16/15
	2025	46.71	1,077.46	7/16/15

JOHNSTOWN AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ NAAQS FOR INDIANA COUNTY (PARTIAL) IN TONS PER YEAR

Type of control strategy SIP	Year	$PM_{2.5}$	NO_X	Effective date of SIP approval
Maintenance Plan	2017	7.95	238.50	7/16/15
	2025	4.38	120.98	7/16/15

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for part 81 continues to read as follows:

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

■ 6. In § 81.339, in the tables entitled ''Pennsylvania—1997 Annual $PM_{2.5}$ NAAQS'' and ''Pennsylvania—2006 24-Hour $PM_{2.5}$ NAAQS'' revise the entry for ''Johnstown, PA'' to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * * *	*		*	*
Johnstown, PA:				
Cambria County	7/16/15	Attainment		
Indiana County (part)	7/16/15	Attainment		
Townships of West Wheatfield, Center, East Wheatfield, and Armagh Borough and Homer City Borough.				
* * * *	*		*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

PENNSYLVANIA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * * *	*		*	*
Johnstown, PA:				

PENNSYLVANIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
Cambria County	7/16/15	Attainment		
Indiana County (part)	7/16/15	Attainment		
Townships of West Wheatfield, Center, East Wheatfield, and Armagh Borough and Homer City Borough				
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–16921 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2015–0050; FRL–9930–56–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Lancaster Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Commonwealth of Pennsylvania's request to redesignate to attainment the Lancaster Nonattainment Area (Lancaster Area or Area) for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS or standard). EPA has determined that the Lancaster Area attained both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. In addition, EPA is approving as a revision to the Pennsylvania State Implementation Plan (SIP) the associated maintenance plan to show maintenance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the Lancaster Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for the Lancaster Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. Furthermore, EPA is approving the 2007 base year emissions inventory included in the maintenance plan for the Lancaster Area for both NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on July 16, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0050. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty at (215) 814–3409, or by email at *jones.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Lancaster Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Concurrently, PADEP submitted a maintenance plan for the Lancaster Area as a SIP revision to ensure continued attainment throughout the Lancaster Area over the next 10 years. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. PADEP also submitted a 2007 comprehensive emissions inventory that was included in the maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for NO_X, sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).

On May 1, 2015 (80 FR 24874), EPA published a notice of proposed rulemaking (NPR) for Pennsylvania. In the NPR, EPA proposed approval of Pennsylvania's April 30, 2014 request to redesignate the Lancaster Area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plan as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The maintenance plan included the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for both NAAQS which EPA proposed to approve for purposes of transportation conformity. In addition, EPA proposed approval of the 2007 emissions inventory also included in the maintenance plan for the Lancaster Area for both NAAQS to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

The details of Pennsylvania's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

II. Final Actions

EPA is taking final actions on the redesignation request and SIP revisions submitted on April 30, 2014 by the Commonwealth of Pennsylvania for the Lancaster Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. First, EPA

finds that the monitoring data demonstrates that the Area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and continues to attain both NAAQS. Second, EPA is approving Pennsylvania's redesignation request for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both NAAQS. Approval of this redesignation request will change the official designation of the Lancaster Area from nonattainment to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Third, EPA is approving the associated maintenance plan for the Lancaster Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Pennsylvania for the Lancaster Area for transportation conformity purposes. In addition, EPA is approving the 2007 emissions inventory for the Lancaster Area as meeting the requirement of section 172(c)(3) of the CAA for both NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this rulemaking action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this rulemaking action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rulemaking action, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rulemaking action relieves the Commonwealth of Pennsylvania of the obligation to comply with nonattainment-related planning requirements for the Lancaster Area pursuant to part D of the CAA and approves certain emissions inventories and MVEBs for the Lancaster Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this rulemaking action to become effective on the date of publication.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not 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 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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 September 14, 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, approving the redesignation request and maintenance plan for the Lancaster Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and the comprehensive emissions inventory for the Lancaster Area for both NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 1, 2015.

William C. Early,

Acting, Regional Administrator, Region III.

40 CFR parts 52 and 81 are 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 (e)(1) is amended by adding an entry for ''1997 Annual and 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
*	*	*	*	*
1997 Annual and 2006 24-Hour $PM_{2.5}$ Maintenance Plan and 2007 Base Year Emissions Inventory.	Lancaster Area	4/30/14	7/16/15 *[Insert* **Federal Register** *citation*].	See § 52.2036(x) and § 52.2059(s)

* * * * *

■ 3. Section 52.2036 is amended by adding paragraph (x) to read as follows:

§ 52.2036 Base year emissions inventory.

* * * * *

(x) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2007 base year emissions inventory for the Lancaster 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Pennsylvania Department of Environmental Protection on April 30, 2014. The emissions inventory includes emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventory are $PM_{2.5}$, nitrogen oxides (NO_X), volatile organic compounds (VOCs), ammonia (NH_3), and sulfur dioxide (SO_2).

■ 4. Section 52.2059 is amended by adding paragraph (s) to read as follows:

§ 52.2059 Control strategy: Particular matter.

* * * * *

(s) EPA approves the maintenance plan for the Lancaster nonattainment area for the 1997 annual and 2006 24-hour fine particulate matter ($PM_{2.5}$) NAAQS submitted by the Commonwealth of Pennsylvania on April 30, 2014. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Lancaster nonattainment area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

LANCASTER AREA'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL AND 2006 24-HOUR $PM_{2.5}$ NAAQS FOR LANCASTER COUNTY IN TONS PER YEAR

Type of control strategy SIP	Year	$PM_{2.5}$	NO_X	Effective date of SIP approval
Maintenance Plan	2017	249	6,916	July 16, 2015.
	2025	185	4,447	July 16, 2015.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for part 81 continues to read as follows:

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

■ 6. In § 81.339, in the tables entitled ''Pennsylvania—1997 Annual $PM_{2.5}$ NAAQS'' and ''Pennsylvania—2006 24-Hour $PM_{2.5}$ NAAQS'' revise the entry for ''Lancaster, PA'' to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [2]	Type
*	*	*	*	*
Lancaster, PA:				
Lancaster County	*July 16, 2015* ..	Attainment	.....	

PENNSYLVANIA—1997 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [2]	Type
* * * *	*	*		*

[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

PENNSYLVANIA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [2]	Type
* * * *	*	*		*
Lancaster, PA:				
Lancaster County	*July 16, 2015* ..	Attainment	.....	
* * * *	*	*		*

[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–17471 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0118; FRL–9930–55–OAR]

RIN 2060–AG12

Protection of Stratospheric Ozone: Determination 30 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination of acceptability.

SUMMARY: This determination of acceptability expands the list of acceptable substitutes pursuant to the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. This action lists as acceptable additional substitutes for use in the refrigeration and air conditioning; foam blowing; solvent cleaning; aerosols; and adhesives, coatings, and inks sectors.

DATES: This determination is effective on July 16, 2015.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in the index at *www.regulations.gov*. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Air Docket (Nos. A–91–42 and EPA–HQ–OAR–2003–0118), EPA Docket Center (EPA/DC), William J. Clinton West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Gerald Wozniak by telephone at (202) 343–9624, by email at *wozniak.gerald@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1201 Constitution Avenue NW., Washington, DC 20004.

For more information on the Agency's process for administering the SNAP program or criteria for the evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13,044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion Web site at *www.epa.gov/ozone/strathome.html* including the SNAP portion at *www.epa.gov/ozone/snap/*.

SUPPLEMENTARY INFORMATION:

I. Listing of New Acceptable Substitutes
  A. Refrigeration and Air Conditioning
  B. Foam Blowing
  C. Solvent Cleaning
  D. Aerosols
  E. Adhesives, Coatings, and Inks
II. Section 612 Program
  A. Statutory Requirements and Authority for the SNAP Program
  B. EPA's Regulations Implementing Section 612
  C. How the Regulations for the SNAP Program Work
  D. Additional Information about the SNAP Program
Appendix A: Summary of Decisions for New Acceptable Substitutes

I. Listing of New Acceptable Substitutes

This action presents EPA's most recent decision to list as acceptable several substitutes in the refrigeration and air conditioning; foam blowing; solvent cleaning; aerosols; and adhesives, coatings, and inks sectors. New substitutes are:

- R–450A in new vending machines;
- R–448A in several refrigeration and air conditioning end-uses;
- R–513A in several refrigeration and air conditioning end-uses;
- R–449A in several refrigeration and air conditioning end-uses;

• Hydrofluoroolefin [1] (HFO)-1336mzz(Z) in rigid polyurethane spray foam (high-pressure, two-part uses only); and

• Methoxytridecafluoroheptene isomers (MPHE) in non-mechanical heat transfer, three solvent cleaning end-uses, aerosol solvents, and adhesives and coatings.

For copies of the full list of acceptable substitutes for ozone depleting substances (ODS) in all industrial sectors, visit EPA's Ozone Layer Protection Web site at *www.epa.gov/ozone/snap/lists/index.html*. Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions are also listed in the appendices to 40 CFR part 82, subpart G.

The sections below discuss each substitute listing in detail. Appendix A contains tables summarizing today's listing decisions for these new substitutes. The statements in the ''Further Information'' column in the tables provide additional information, but are not legally binding under section 612 of the Clean Air Act (CAA). In addition, the ''Further Information'' column may not include a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''Further Information'' column of the table to use a substitute consistent with section 612 of the CAA, some of these statements may refer to obligations that are enforceable or binding under federal or state programs other than the SNAP program. In many instances, the information simply refers to standard operating practices in existing industry standards and/or building codes. When using these substitutes, EPA strongly encourages you to apply the information in this column. Many of these recommendations, if adopted, would not require significant changes to existing operating practices.

You can find submissions to EPA for the substitutes listed in this document, as well as other materials supporting the decisions in this action, in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov*.

A. Refrigeration and Air Conditioning

1. R–450A

EPA's decision: EPA finds R–450A acceptable as a substitute for use in new equipment in vending machines.

R–450A, marketed under the trade name Solstice® N–13, is a weighted blend of 42 percent hydrofluorocarbon (HFC)-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and 58 percent HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9).

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''Solstice® N–13 (R–450A) SNAP Information Notice.'' EPA performed assessments to examine the health and environmental risks of this substitute. These assessments are available in Docket EPA–HQ–OAR–2003–0118 under the following name:

• ''Risk Screen on Substitutes for Use in Retail Food Refrigeration, Vending Machines, and Commercial Ice Machines Substitute: R–450A''

EPA previously listed R–450A as acceptable for use as a refrigerant in several refrigeration and air conditioning end-uses (October 21, 2014, 79 FR 62,863).

Environmental information: R–450A has an ozone depletion potential (ODP) of zero. Its components, HFC-134a and HFO-1234ze(E), have global warming potentials (GWPs) of 1,430 [2] and one to six,[3] respectively. When these values are weighted by mass percentage, then R–450A has a 100-year integrated GWP (100-yr GWP) of about 600. The components of R–450A are both excluded from the definition of volatile organic compounds (VOC) under CAA regulations (see 40 CFR 51.100(s)) addressing the development of state implementation plans (SIPs) to attain and maintain the national ambient air quality standards (NAAQS). Knowingly venting or releasing this refrigerant blend is limited by the venting prohibition under section 608(c)(2) of the CAA, codified at 40 CFR 82.154(a)(1).[4]

Flammability information: R–450A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of exposure to this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The American Industrial Hygiene Association (AIHA) has established Workplace Environmental Exposure Levels (WEELs) of 1,000 ppm and 800 ppm as 8-hour time-weighted averages (TWAs) for HFC-134a and HFO-1234ze(E), the components of R–450A, respectively. The manufacturer of R–450A recommends an acceptable exposure limit (AEL) for the workplace of 880 ppm on an 8-hour TWA for the blend. EPA anticipates that users will be able to meet each of the AIHA WEELs and the manufacturer's AEL, and address potential health risks by following requirements and recommendations in the manufacturer's safety data sheet (SDS), in the American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 15, and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in this end-use: R–450A has an ODP of zero, comparable [5] to or lower than other listed substitutes. R–450A's GWP of about 600 is higher than that of some acceptable substitutes in this end-use, such as CO_2 with a GWP of one and propane (R–290), isobutane (R–600a), and R–441A with GWPs ranging from three to eight; is comparable to IKON–B's GWP of approximately 550; and is lower than FRIGC FR–12's GWP of approximately 1,080.[6] Flammability risks are low, as discussed above, and are comparable to flammability risks of other available substitutes in the same end-use. The toxicity risks are similar to those for many other refrigerants and, as with those other refrigerants, can be minimized by use consistent with the AIHA WEELs, ASHRAE 15 and other

[1] Hydrofluoroolefins are unsaturated hydrofluorocarbons having at least one double bond.

[2] Unless otherwise stated, all GWPs in this document are from: IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., Qin, D., Manning, M., Chen, Z., Marquis, M., Averyt, K. B., Tignor M., and Miller, H. L. (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html*.

[3] Hodnebrog, Ø., Etminan, M., Fuglestvedt, J. S., Marston, G., Myhre, G., Nielsen, C. J., Shine, K. P., Wallington, T. J., Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review, *Reviews of Geophysics,* 51, 300–378, doi:10.1002/rog.20013, 2013; Javadi, M. S., Søndergaard, R., Nielsen, O. J., Hurley, M. D., and Wallington, T. J.: Atmospheric chemistry of trans-CF3CH=CHF: products and mechanisms of hydroxyl radical and chlorine atom initiated oxidation. *Atmospheric Chemistry and Physics,* 8, 3141–3147, 2008.

[4] For more information, including definitions, see 40 CFR part 82 subpart F.

[5] This is in contrast to the historically used ODS hydrochlorofluorocarbon (HCFC)–22 with an ODP of 0.055.

[6] Propane (R–290), isobutane (R–600a), and R–441A are acceptable, subject to use conditions, in this end-use. These three substitutes are subject to a use condition restricting charge sizes to 150 grams (g) or less and thus may limit their use for equipment that requires larger charge sizes.

industry standards, recommendations in the SDS, and other safety precautions common in the refrigeration and air conditioning industry; moreover, these risks are common to many refrigerants, including many of those already listed as acceptable under SNAP.

EPA finds R–450A acceptable in the end-use listed above, because the overall environmental and human health risk posed by R–450A is lower than or comparable to the risks posed by other substitutes acceptable in the same end-use.

2. R–448A

EPA's decision: EPA finds R–448A acceptable as a substitute for use in:

- Commercial ice machines (new and retrofit equipment)
- Refrigerated transport (new and retrofit equipment)
- Retail food refrigeration—low-temperature stand-alone equipment (*i.e.,* equipment designed to maintain internal temperatures at 32 °F (0° C) or below) (new and retrofit equipment)
- Retail food refrigeration—supermarket systems and remote condensing units (new and retrofit equipment)

R–448A, marketed under the trade name Solstice® N–40, is a weighted blend of 26 percent HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); 26 percent HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); 21 percent HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); 20 percent HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No 754–12–1); and 7 percent HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9).

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''Solstice® N–40 (R–448A) SNAP Information Notice.'' EPA performed assessments to examine the health and environmental risks of this substitute. These assessments are available in Docket EPA–HQ–OAR–2003–0118 under the following names:

- ''Risk Screen on Substitutes for Use in Retail Food Refrigeration and Commercial Ice Machines Substitute: R–448A''
- ''Risk Screen on Substitutes for Use in Refrigerated Transport Substitute: R–448A''

Environmental information: R–448A has an ODP of zero. Its components, HFC-32, HFC-125, HFC-134a, HFO-1234yf, and HFO-1234ze(E) have GWPs of 675; 3,500; 1,430; one to four;[7] [8] and one to six;[9] respectively. If these values are weighted by mass percentage, then R–448A has a GWP of about 1,390. The components of R–448A are excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Knowingly venting or releasing this refrigerant blend is limited by the venting prohibition under section 608(c)(2) of the CAA, codified at 40 CFR 82.154(a)(1).

Flammability information: R–448A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of exposure to this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The AIHA has established WEELs of 1,000 ppm as an 8-hr TWA for HFC-32, HFC-125, and HFC-134a; 500 ppm for HFO-1234yf; and 800 ppm for HFO-1234ze(E), the components of R–448A. The manufacturer of R–448A recommends an AEL of 890 ppm on an 8-hour TWA for the blend. EPA anticipates that users will be able to meet the AIHA WEELs and manufacturer's AEL, and address potential health risks by following requirements and recommendations in the SDS, in ASHRAE 15, and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in these end-uses: R–448A has an ODP of zero, comparable[10] to or lower than the other substitutes acceptable in these end-uses.

In refrigerated transport, many substitutes listed as acceptable have comparable or higher GWPs, such as HFC-134a, R–404A, and other HFC refrigerant blends, with GWPs ranging from 1,430 to approximately 3,990; other substitutes listed as acceptable substitutes for refrigerated transport have a lower GWP including R–450A, CO_2, direct nitrogen expansion, and Stirling cycle, with GWPs ranging from zero to about 600.

For commercial ice machines, many substitutes listed as acceptable have comparable or higher GWPs, such as HFC-134a, R–404A, and other HFC blends with GWPs ranging from approximately 1,400 to 3,990; other substitutes listed as acceptable substitutes for commercial ice machines have a lower GWP including ammonia absorption, ammonia vapor compression, Stirling cycle, and R–450A with GWPs ranging from zero to about 600.

R–448A's GWP of about 1,390 is comparable to or lower than a number of other substitutes listed as acceptable in retail food refrigeration—supermarket systems and remote condensing units, including three of the more commonly used substitutes at this time: HFC-134a, R–407A, and R–407C, with GWPs ranging from 1,430 to approximately 2,110. R–448A's GWP of about 1,390 is higher than the GWP of some other acceptable substitutes in retail food refrigeration—supermarket refrigeration systems and remote condensing units, including CO_2 with a GWP of one and R–450A with a GWP of about 600.

R–448A's GWP of about 1,390 is comparable to the GWP of several refrigerants listed as acceptable for the retail food refrigeration-low-temperature stand-alone equipment end-use: HFC-134a with a GWP of 1430 and a number of HFC blends with GWPs in the range of 1,100 to 1,500.[11] The GWP of R–448A is higher than that of some other listed substitutes for the low-temperature stand-alone equipment end-use, including CO_2, propane, isobutane, and R–441A (with GWPs ranging from one to eight).

Flammability risks are low, as discussed above, and are comparable to flammability risks of other available substitutes in the same end-uses. Toxicity risks can be minimized by use consistent with the AIHA WEELs,

[7] Hodnebrog *et al.,* 2013. *Op. cit.*

[8] Nielsen, O. J., Javadi, M. S., Sulbaek Andersen, M. P., Hurley, M. D., Wallington, T. J., Singh, R. Atmospheric chemistry of $CF_3CF{=}CH_2$: Kinetics and mechanisms of gas-phase reactions with Cl atoms, OH radicals, and O_3. *Chemical Physics Letters* 439, 18–22, 2007.

[9] Hodnebrog *et al.,* 2013 and Javadi *et al.,* 2008. *Op. cit.*

[10] This is in contrast to the historically used ODS chlorofluorocarbon (CFC)-12, R–502A, and HCFC–22 with ODPs ranging from 0.055 to 1.0.

[11] Historically, under the SNAP listings, we have not subdivided the retail food refrigeration—stand-alone equipment end-use. In the final rule that changes the status of certain refrigerants for this end-use and which we are issuing contemporaneously with this action, we have determined that the refrigerant choices for low-temperature stand-alone equipment, for which greater cooling capacity is required, are more limited than for other stand-alone equipment (which we refer to as medium-temperature equipment). In that action, we subdivided the stand-alone equipment end-use. Therefore, in this action we are evaluating low-temperature equipment and medium-temperature equipment as separate end-uses.

ASHRAE 15, and other industry standards, recommendations in the SDS, and other safety precautions common in the refrigeration and air conditioning industry; moreover, those risks are common to many refrigerants, including many of those already listed as acceptable under SNAP for these same end-uses.

EPA finds R–448A acceptable in the end-uses listed above, because the overall environmental and human health risk posed by R–448A is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

3. R–513A

EPA's decision: EPA finds R–513A acceptable as a substitute for use in:

- Centrifugal chillers (new and retrofit equipment)
- Cold storage warehouses (new and retrofit equipment)
- Commercial ice machines (new and retrofit equipment)
- Household refrigerators and freezers (new and retrofit equipment)
- Industrial process air-conditioning (new and retrofit equipment)
- Industrial process refrigeration (new and retrofit equipment)
- Reciprocating, screw and scroll chillers (new and retrofit equipment)
- Refrigerated transport (new and retrofit equipment)
- Retail food refrigeration—low-temperature and medium-temperature [12] stand-alone equipment (new and retrofit equipment)
- Retail food refrigeration—supermarket systems and remote condensing units (new and retrofit equipment)
- Vending machines (new and retrofit equipment)
- Water coolers (new and retrofit equipment)

R–513A, marketed under the trade name Opteon® XP 10, is a weighted blend of 44 percent HFC-134a, which is also known as 1,1,1,2 tetrafluoroethane (CAS Reg. No. 811–97–2); and 56 percent HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1).

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''Opteon® XP 10 (R–513A) SNAP Information Notice.'' EPA performed assessments to examine the health and environmental risks of this substitute. These assessments are available in Docket EPA–HQ–OAR–2003–0118 under the following names:

- ''Risk Screen on Substitutes for Use in Chillers and Industrial Process Air Conditioning Substitute: R–513A''
- ''Risk Screen on Substitutes for Use in Cold Storage Warehouses and Industrial Process Refrigeration Substitute: R–513A''
- ''Risk Screen on Substitutes for Use in Household Refrigerators and Freezers and Water Coolers Substitute: R–513A''
- ''Risk Screen on Substitutes for Use in Refrigerated Transport Substitute: R–513A''
- ''Risk Screen on Substitutes for Use in Retail Food Refrigeration, Vending Machines, and Commercial Ice Machines Substitute: R–513A''

Environmental information: R–513A has an ODP of zero. Its components, HFC-134a and HFO-1234yf, have GWPs of 1,430 and one to four,[13] respectively. If these values are weighted by mass percentage, then R–513A has a GWP of about 630. The components of R–513A are both excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Knowingly venting or releasing this refrigerant blend is limited by the venting prohibition under section 608(c)(2) of the CAA, codified at 40 CFR 82.154(a)(1).

Flammability information: R–513A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of exposure to this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The AIHA has established WEELs of 1,000 ppm and 500 ppm as an 8-hour TWA for HFC-134a and HFO-1234yf, respectively, the components of R–513A. The manufacturer of R–513A recommends an AEL of 653 ppm on an 8-hour TWA for the blend. EPA anticipates that users will be able to meet each of the AIHA WEELs and the manufacturer's AEL, and address potential health risks by following requirements and recommendations in the SDS, in ASHRAE 15, and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in these end-uses: R–513A has an ODP of zero, comparable [14] to or lower than other listed substitutes in these end-uses.

R–513A's GWP of about 630 is comparable to or lower than a number of other substitutes in retail food refrigeration—supermarket systems and remote condensing units, including R–450A, HFC-134a, R–407A, R–407C, and a number of HFC blends, with GWPs ranging from approximately 600 to 2,110. R–513's GWP of about 630 is higher than those of some other acceptable substitutes in new retail food refrigeration—supermarket refrigeration systems and remote condensing units, including CO_2 with a GWP of one.

In retail food refrigeration—low-temperature stand-alone equipment, R–513A's GWP of about 630 is comparable to or lower than a number of other substitutes, including IKON B, R–450A, FRIGC FR–12, HFC-134a, and R–426Awith GWPs ranging from approximately 550 to approximately 1,500. In retail food-refrigeration—medium temperature stand-alone equipment and vending machines, R–513A's GWP of about 630 is higher than that of some acceptable substitutes in this end-use, such as CO_2 with a GWP of one and propane (R–290), isobutane (R–600a), and R–441A with GWPs ranging from three to eight; is comparable to the GWPs of IKON–B and R–450A, which are approximately 550 to 600; and is lower than FRIGC FR–12's GWP of approximately 1,080.[15]

In refrigerated transport, many substitutes listed as acceptable have comparable or higher GWPs, such as R–450A, HFC-134a, R–404A, and other HFC refrigerant blends, with GWPs ranging from approximately 600 to approximately 3,990; acceptable substitutes for refrigerated transport with a lower GWP include CO_2, direct nitrogen expansion, and Stirling cycle, with GWPs in the range of zero to one.

For cold storage warehouses and industrial process refrigeration, many substitutes listed as acceptable have comparable or higher GWPs, such as R–

[12] As provided in the listing decision for R–448A for retail food refrigeration, we are making separate listing decisions for low-temperature stand-alone equipment (*i.e.* equipment designed to maintain internal temperatures at 32 °F (0 °C) or below) and medium-temperature equipment (*i.e.,* stand-alone equipment designed to maintain internal temperatures above 32 °F (0 °C).

[13] Hodnebrog *et al.,* 2013 and Nielsen *et al.,* 2007. *Op. cit.*

[14] This is in contrast to the historically used ODS CFC–12, R–502A, and HCFC–22 with ODPs ranging from 0.055 to 1.0.

[15] Propane (R–290), isobutane (R–600a), and R–441A are acceptable, subject to use conditions, in this end-use. These three substitutes are subject to a use condition restricting charge sizes to 150 g or less and thus may limit their use for equipment that requires larger charge sizes.

450A, HFC-134a, R–404A, and other HFC refrigerant blends, with GWPs ranging from approximately 600 to approximately 3,990; acceptable substitutes for new cold storage warehouses and for industrial process refrigeration with a lower GWP include CO_2 and ammonia with GWPs in the range of zero to one.

For commercial ice machines, most other substitutes listed as acceptable have comparable or higher GWPs, such as R–450A, R–404A and other HFC blends with GWPs ranging from approximately 600 to 3,990. Ammonia vapor compression with a GWP of zero is also an acceptable substitute in this end-use.

In household refrigerators and freezers, many substitutes listed as acceptable have comparable or higher GWPs than R–513A, such as R–450A, R–134a, R–404A and other HFC blends with GWPs ranging from approximately 600 to 3,990. R–513A's GWP of approximately 630 is higher than those of some other acceptable substitutes in this end-use for new equipment, including propane, isobutane, and R–441A [16] (with GWPs ranging from three to eight), and HFC-152a with a GWP of 124.

For centrifugal, reciprocating, screw and scroll chillers, most other substitutes listed as acceptable have comparable or higher GWPs, such as R–450A, R–134a, R–404A and other HFC blends with GWPs ranging from approximately 600 to 3,990. In these end-uses, acceptable substitutes with lower GWPs for new equipment include ammonia absorption and ammonia vapor compression, HFO-1234ze(E), and for centrifugal chillers only, *trans*-1-chloro-3,3,3,-trifluoroprop-1-ene, with GWPs in the range of zero to seven.

For industrial process air conditioning and water coolers, all other substitutes listed as acceptable have comparable or higher GWPs, such as R–450A, R–134a, R–404A and other HFC blends with GWPs ranging from approximately 600 to 3,990.

Flammability risks are low, as discussed above, and are comparable to flammability risks of other available substitutes in the same end-uses. Toxicity risks can be minimized by use consistent with the AIHA WEELs, ASHRAE 15 and other industry standards, recommendations in the SDS, and other safety precautions common in the refrigeration and air conditioning industry; moreover, those risks are common to many refrigerants, including many of those already listed as acceptable under SNAP for these same end-uses.

EPA finds R–513A acceptable in the end-uses listed above, because the overall environmental and human health risk posed by R–513A is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

4. R–449A

EPA's decision: EPA finds R–449A acceptable as a substitute for use in:

- Commercial ice machines (new and retrofit equipment)
- Refrigerated transport (new and retrofit equipment)
- Retail food refrigeration—low-temperature stand-alone equipment (new and retrofit equipment)
- Retail food refrigeration—supermarket systems and remote condensing units (new and retrofit equipment)

R–449A, marketed under the trade name Opteon® XP 40, is a weighted blend of 24.3 percent HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); 24.7 percent HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); 25.7 percent HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and 25.3 percent HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1).

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''Opteon® XP 40 (R–449A) SNAP Information Notice.'' EPA performed assessments to examine the health and environmental risks of this substitute. These assessments are available in Docket EPA–HQ–OAR–2003–0118 under the following names:

- ''Risk Screen on Substitutes for Use in Refrigerated Transport Substitute: R–449A''
- ''Risk Screen on Substitutes for Use in Retail Food Refrigeration and Commercial Ice Machines Substitute: R–449A''

Environmental information: R–449A has an ODP of zero. Its components, HFC-32, HFC-125, HFC-134a, and HFO-1234yf have GWPs of 675; 3,500; 1,430; and one to four,[17] respectively. If these values are weighted by mass percentage, then R–449A has a GWP of about 1,400. The components of R–449A are excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Knowingly venting or releasing this refrigerant blend is limited by the venting prohibition under section 608(c)(2) of the CAA, codified at 40 CFR 82.154(a)(1).

Flammability information: R–449A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of exposure to this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The AIHA has established WEELs of 1,000 ppm as an 8-hr TWA for HFC-32, HFC-125, and HFC-134a; and 500 ppm for HFO-1234yf, the components of R–449A. The manufacturer of R–449A recommends an AEL of 830 ppm on an 8-hour TWA for the blend. EPA anticipates that users will be able to meet each of the AIHA WEELs and the manufacturer's AEL and address potential health risks by following requirements and recommendations in the SDS, in ASHRAE 15, and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in these end-uses: R–449A has an ODP of zero, comparable [18] to or lower than the other substitutes acceptable in these end-uses.

In refrigerated transport, many substitutes listed as acceptable have comparable or higher GWPs than R–449's GWP of about 1,400, such as HFC-134a, R–404A, and other HFC refrigerant blends, with GWPs ranging from 1,430 to approximately 3,990; other substitutes listed as acceptable substitutes for refrigerated transport have a lower GWP including R–450A, CO_2, direct nitrogen expansion, and Stirling cycle, with GWPs ranging from zero to about 600.

For commercial ice machines, many substitutes listed as acceptable have comparable or higher GWPs than R–449's GWP of about 1,400, such as HFC-134a, R–404A and other HFC blends with GWPs ranging from approximately 1,400 to 3,990; other substitutes listed as acceptable substitutes for commercial

[16] Propane (R–290), isobutane (R–600a), and R–441Aare acceptable, subject to use conditions, in this end-use. These three substitutes are subject to a use condition restricting charge sizes to 57 g or less and thus may limit their use for equipment that requires larger charge sizes.

[17] Hodnebrog *et al.,* 2013 and Nielsen *et al.,* 2007. *Op. cit.*

[18] This is in contrast to the historically used ODS CFC–12, R–502A, and HCFC–22 with ODPs ranging from 0.055 to 1.0.

ice machines have a lower GWP including ammonia absorption, ammonia vapor compression, Stirling cycle and R–450A, with GWPs ranging from zero to about 600.

R–449A's GWP of about 1,400 is comparable to or lower than a number of other substitutes listed as acceptable in retail food refrigeration—supermarket systems and remote condensing units, including three of the more commonly used substitutes at this time: HFC-134a, R–407A, and R–407C, with GWPs ranging from 1,430 to approximately 2,110. R–449A's GWP of about 1,400 is higher than the GWP of some other acceptable substitutes in retail food refrigeration—supermarket refrigeration systems and remote condensing units, including CO_2 with a GWP of one and R–450A with a GWP of about 600.

R–449A's GWP of about 1,400 is comparable to the GWP of substitutes listed as acceptable for retail food refrigeration—low-temperature stand-alone equipment, including HFC-134a of 1,430 and a number of HFC blends with GWPs in the range of 1,100 to 1,500 and is higher than those of some other listed substitutes in this end-use, including CO_2 with a GWP of one and propane, isobutane, and R–441A (with GWPs ranging from three to eight).[19]

Flammability risks are low, as discussed above, and are comparable to flammability risks of other available substitutes in the same end-uses. Toxicity risks can be minimized by use consistent with the AIHA WEELs, ASHRAE 15 and other industry standards, recommendations in the SDS, and other safety precautions common in the refrigeration and air conditioning industry; moreover, those risks are common to many refrigerants, including many of those already listed as acceptable under SNAP in these same end-uses.

EPA finds R–449A acceptable in the end-uses listed above, because the overall environmental and human health risk posed by R–449A is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

5. Methoxytridecafluoroheptene Isomers (MPHE)

EPA's decision: EPA finds methoxytridecafluoroheptene isomers acceptable as a substitute for use in new and retrofit equipment in non-mechanical heat transfer.[20]

MPHE, marketed under the trade name Sinera™, is a HFO. It is a mixture of structural and stereo isomers, represented as $C_7F_{13}(OCH_3)$. *Trans*-5-methoxy-perfluoro-3-heptene is the most prevalent isomer in the mixture (approximately 50 percent), and eight isomeric structures have been identified, comprising more than 99% of the material.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for Methoxytridecafluoroheptene isomers (MPHE) Received July 2, 2012.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in Docket EPA–HQ–OAR–2003–0118 under the following name, ''Risk Screen on Substitutes in Non-mechanical Heat Transfer Substitute: Methoxytridecafluoroheptene isomers.''

Environmental information: MPHE has an ODP of zero. The 100-yr GWP of MPHE is 2.5 and it has an atmospheric lifetime of approximately nine days. MPHE is regulated as a VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Knowingly venting or releasing this refrigerant blend is limited by the venting prohibition under section 608(c)(2) of the CAA, codified at 40 CFR 82.154(a)(1).

Flammability information: MPHE is not flammable.

Toxicity and exposure data: Potential health effects of exposure to this substitute include serious eye irritation, skin irritation, and respiratory tract irritation. Ingestion of MPHE may also be harmful. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

EPA anticipates that MPHE will be used in a manner consistent with the recommendations specified in the SDS. The manufacturer recommends an AEL of 500 ppm on an 8-hour TWA. EPA anticipates that users will be able to meet the AEL and address potential health risks by following requirements and recommendations in the SDS and in any other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in this end-use: MPHE has an ODP of zero, comparable [21] to or lower than other acceptable substitutes in this same end-use. Additionally, MPHE's GWP of 2.5 is lower than or comparable to the GWP of other acceptable substitutes in the same end-use, such as C7 Fluoroketone, HFO-1234ze(E), HFC-245fa, and HFC-125 (with GWPs ranging from about one to 3,500). Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the manufacturer's AEL, recommendations in the SDS, and other safety precautions common in the refrigeration and air conditioning industry; moreover, those risks are common to many heat transfer fluids, including many of those already listed as acceptable under SNAP.

EPA finds MPHE acceptable in the end-use listed above, because the overall environmental and human health risk posed by MPHE is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-use.

B. Foam Blowing

1. HFO-1336mzz(Z) (Formacel® 1100)

EPA's decision: EPA finds HFO-1336mzz(Z) acceptable as a substitute for use in rigid polyurethane spray foam (high-pressure, two-part uses only).[22]

HFO-1336mzz(Z) is also known as (Z)-1,1,1,4,4,4-hexafluorobut-2-ene and *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (CAS Reg. No. 692–49–9), and goes by the trade names of FEA–1100 and Formacel® 1100.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for FEA–1100 as a Foam Blowing Agent Received 8/3/11.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes for Spray Foam Substitute: HFO-1336mzz(Z) (Formacel® 1100).''

We have previously listed HFO-1336mzz(Z) as a foam blowing agent in

[19] Propane (R–290), isobutane (R–600a), and R–441A are acceptable, subject to use conditions, in this end-use. These three substitutes are subject to a use condition restricting charge sizes to 150 g or less and thus may limit their use for equipment that requires larger charge sizes.

[20] Acceptable substitutes for organic Rankine cycle have typically been included through listings in the non-mechanical heat transfer end-use. EPA may review organic Rankine cycle applications separately in the future.

[21] In contrast, the historically used ODS HCFC–123, HCFC–22, and CFC–113 have ODPs ranging from 0.01 to 0.8.

[22] Historically, under the SNAP listings, we have not subdivided the rigid polyurethane (PU) spray foam end-use. In the final rule that we are issuing contemporaneously with this action, we have determined that the foam blowing agent choices differ for rigid PU high-pressure two-part spray foam, rigid PU low-pressure two-part spray foam, and rigid PU one-component foam sealants. Therefore, in this action we are evaluating high-pressure two-part spray foam as a separate end-use from rigid PU low-pressure two-part spray foam and rigid PU one-component foam sealants.

a number of other foam blowing end-uses (October 21, 2014, 79 FR 62,863).

Environmental information: HFO-1336mzz(Z) has an ODP of zero. It has a 100-yr GWP of about nine.[23] HFO-1336mzz(Z) is a VOC. The manufacturer has petitioned EPA to exempt HFO-1336mzz(Z) from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)), which addresses the development of SIPs to attain and maintain the NAAQS, based on its claim that the chemical exhibits low photochemical reactivity.

Flammability information: HFO-1336mzz(Z) is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include skin or eye irritation or frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many foam blowing agents. Additionally, as described in the Premanufacture Notice (PMN), exposure to consumers is expected to be minimal since HFO-1336mzz(Z) is not domestically manufactured or used by consumers. EPA issued a Significant New Use Rule (SNUR) on June 5, 2015, to require persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture or process HFO-1336mzz(Z) for consumer use (80 FR 32,003, 32,005).

EPA anticipates that HFO-1336mzz(Z) will be used consistent with the recommendations specified in the SDS. The WEEL committee of the Occupational Alliance for Risk Science (OARS) recommends a WEEL for the workplace of 500 ppm on an 8-hour TWA.[24] EPA anticipates that users will be able to meet the WEEL and address potential health risks by following requirements and recommendations in the SDS and other safety precautions common to the foam blowing industry.

Comparison to other foam blowing agents: HFO-1336mzz(Z) has an ODP of zero, comparable [25] to or lower than other acceptable non-ozone-depleting substitutes for the rigid PU high-pressure, two-part spray foam end-use. HFO-1336mzz(Z)'s GWP of about nine is lower than or comparable to other acceptable substitutes in this end-use, such as HFC-245fa with a GWP of 1,070; commercial blends of HFC-365mfc and HFC-227ea containing 7% to 13% HFC-227ea and the remainder HFC-365mfc, with GWPs ranging from about 900 to 1,100; *trans*-1-chloro-3,3,3-trifluoroprop-1-ene and water, with GWPs of one to seven [26] [27] [28] and zero, respectively. Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the OARS WEEL, recommendations in the SDS, and other safety precautions common in the foam blowing industry; moreover, those risks are common to many foam blowing agents, including many of those already listed as acceptable under SNAP for this end-use.

EPA finds HFO-1336mzz(Z) acceptable in the end-use listed above, because the overall environmental and human health risk posed by HFO-1336mzz(Z) is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-use.

C. Solvent Cleaning

1. Methoxytridecafluoroheptene isomers (MPHE)

EPA's decision: EPA finds methoxytridecafluoroheptene isomers acceptable as a substitute for use in:

- Electronics cleaning
- Metals cleaning
- Precision cleaning

MPHE, marketed under the trade name Sion™, is an HFO. It is a mixture of structural and stereo isomers, represented as $C_7F_{13}(OCH_3)$. *Trans*-5-methoxy-perfluoro-3-heptene is the most prevalent isomer in the mixture (approximately 50 percent), and eight isomeric structures have been identified, comprising more than 99% of the material.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for Methoxytridecafluoroheptene isomers (MPHE) Received July 2, 2012.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in Docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes in Metals Cleaning, Electronics Cleaning, and Precision Cleaning Substitute: Methoxytridecafluoroheptene isomers.''

Environmental information: The environmental information for this substitute is set forth in the ''Environmental information'' section in listing A.5.

Flammability information: MPHE is not flammable.

Toxicity and exposure data: The toxicity information for this substitute is set forth in the ''Toxicity and exposure data'' section in listing I.A.5. EPA anticipates that users will be able to meet the manufacturer's AEL of 500 ppm on an 8-hr TWA and address potential health risks by following requirements and recommendations in the SDS and in any other safety precautions common to the solvent cleaning industry.

Comparison to other substitutes in these end-uses: MPHE has an ODP of zero, comparable [29] to or lower than the ODP of other substitutes in these three end-uses. MPHE's GWP of 2.5 is lower than or comparable to those of other acceptable substitutes in these three end-uses, such as acetone, *trans*-1-chloro-3,3,3-trifluoroprop-1-ene, *trans*-1,2-dichloroethylene, HFE–7100, and HFC-4310meewith GWPs of 0.5, one to seven,[30] less than ten, 297, and 1,640, respectively. Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the manufacturer's AEL, recommendations in the SDS, and other safety precautions common in the solvent cleaning industry; moreover, those risks are common to many solvents, including many of those already listed as acceptable under SNAP for these same end-uses.

EPA finds MPHE acceptable in the end-uses listed above, because the overall environmental and human health risk posed by MPHE is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

[23] Baasandorj, M., Ravishankara, A.R., Burkholder, J.B., Atmospheric Chemistry of (Z)-CF3CH=CHCF3: OH Radical Reaction Rate Coefficient and Global Warming Potential, *Journal of Physical Chemistry A,* 2011, 115, 10,539–10,549, 2011.

[24] The documentation may be viewed at *www.tera.org/OARS/HFO-1336mzz-Z%20WEEL%20FINAL.pdf.*

[25] In contrast, the historically used ODS CFC–11 and HCFC–141b have ODPs ranging from 0.1 to 1.0.

[26] Wang D., Olsen S., and Wuebbles D. Preliminary Report: Analyses of tCFP's Potential Impact on Atmospheric Ozone. Department of Atmospheric Sciences. University of Illinois, Urbana, IL. September 26, 2011; Hodnebrog et al., 2013. *Op. cit.*

[27] Sulbaek Andersen, M.P., Nilsson, E.J.K., Nielsen, O.J., Johnson, M.S., Hurley, M.D., and Wallington, T.J. Atmospheric chemistry of trans-CF3CH=CHCl: Kinetics of the gas-phase reactions with Cl atoms, OH radicals, and O_3'', *Journal of Photochemistry and Photobiology A: Chemistry,* 199, 92–97, 2008.

[28] Wang D., Olsen S., and Wuebbles D. Three-Dimensional Model Evaluation of the Global Warming Potentials for tCFP. Department of Atmospheric Sciences. University of Illinois, Urbana, IL. Draft report, undated.

[29] In contrast, the historically used ODS CFC–113, methyl chloroform, HCFC–225ca, and HCFC–225cb have ODPs ranging from 0.02 to 0.8.

[30] Wang *et al.,* 2011; Sulbaek Andersen *et al.,* 2008; and Wang *et al.,* undated; Hodnebrog *et al.,* 2013. *Op cit.*

D. Aerosols

1. Methoxytridecafluoroheptene isomers (MPHE)

EPA's decision: EPA finds methoxytridecafluoroheptene isomers acceptable as a substitute for use as an aerosol solvent.

MPHE is a HFO. It is a mixture of structural and stereo isomers, represented as $C_7F_{13}(OCH_3)$. *Trans*-5-methoxy-perfluoro-3-heptene is the most prevalent isomer in the mixture (approximately 50 percent), and eight isomeric structures have been identified, comprising more than 99% of the material.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for Methoxytridecafluoroheptene isomers (MPHE) Received July 2, 2012.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in Docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes in Aerosol Solvents Substitute: Methoxytridecafluoroheptene isomers.''

Environmental information: The environmental information for this substitute is set forth in the ''Environmental information'' section in listing I.A.5.

Flammability information: MPHE is not flammable.

Toxicity and exposure data: The toxicity information for this substitute is set forth in the ''Toxicity and exposure data'' section in listing I.A.5.

EPA anticipates that users will be able to meet the manufacturer's AEL of 500 ppm on an 8-hour TWA and address potential health risks by following requirements and recommendations in the SDS and in any other safety precautions common to the aerosol solvent industry.

Comparison to other substitutes in this end-use: MPHE has an ODP of zero, comparable [31] to or lower than other acceptable substitutes in this end-use. MPHE's GWP of 2.5 is lower than or comparable to the GWP of other acceptable substitutes in the same end-use, such as acetone, *trans*-1-chloro-3,3,3-trifluoroprop-1-ene, *trans*-1,2-dichloroethylene, HFE–7100, and HFC-4310mee with GWPs of 0.5, one to seven,[32] less than ten, 297, and 1,640, respectively. Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the manufacturer's AEL, recommendations in the SDS, and other safety precautions common in the aerosol solvent industry; moreover, those risks are common to many aerosol solvents, including many of those already listed as acceptable under SNAP.

EPA finds MPHE acceptable in the end-uses listed above, because the overall environmental and human health risk posed by MPHE is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

E. Adhesives, Coatings and Inks

1. Methoxytridecafluoroheptene isomers (MPHE)

EPA's decision: EPA finds methoxytridecafluoroheptene isomers acceptable as a substitute for use as a carrier solvent in:

- Adhesives
- Coatings

MPHE, marketed under the trade name Suprion™, is an HFO. It is a mixture of structural and stereo isomers, represented as $C_7F_{13}(OCH_3)$. *Trans*-5-methoxy-perfluoro-3-heptene is the most prevalent isomer in the mixture (approximately 50 percent), and eight isomeric structures have been identified, comprising more than 99% of the material.

You may find the redacted submission in Docket item EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for Methoxytridecafluoroheptene isomers (MPHE) Received July 2, 2012.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes in Adhesives and Coatings Substitute: Methoxytridecafluoroheptene isomers.''

Environmental information: The environmental information for this substitute is set forth in the ''Environmental information'' section in listing I.A.5.

Flammability information: MPHE is not flammable.

Toxicity and exposure data: The toxicity information for this substitute is set forth in the ''Toxicity and exposure data'' section in listing I.A.5. EPA anticipates that users will be able to meet the manufacturer's AEL of 500 ppm on an 8-hour TWA and address potential health risks by following requirements and recommendations in the SDS and in any other safety precautions common to the adhesives and coatings industries.

Comparison to other substitutes in these end-uses: MPHE has an ODP of zero, comparable [33] to or lower than other acceptable substitutes in these two end-uses. MPHE's GWP of 2.5 is lower than or comparable to those of other acceptable substitutes in the same end-use, such as acetone, *trans*-1-chloroprop-1-ene, *trans*-1,2-dichloroethylene and HFE–7100 with GWPs of 0.5, one to seven,[34] less than ten, and 297, respectively. Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the manufacturer's AEL, recommendations in the SDS, and other safety precautions common in the adhesives and coatings industries; moreover, those risks are common to many carrier solvents for adhesives and coatings, including many of those already listed as acceptable under SNAP.

EPA finds MPHE acceptable in the end-uses listed above, because the overall environmental and human health risk posed by MPHE is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

II. Section 612 Program

A. Statutory Requirements and Authority for the SNAP Program

Section 612 of the CAA requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I substance (CFC, halon, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbon, and chlorobromomethane) or class II substance (HCFC) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

[31] In contrast, the historically used ODS methyl chloroform, CFC–113, HCFC–141b, HCFC–225ca and HCFC–225cb have ODPs ranging from 0.02 to 0.8.

[32] Wang *et al.,* 2011; Sulbaek Andersen *et al.,* 2008; and Wang *et al.,* undated; Hodnebrog *et al.,* 2013. *Op cit.*

[33] In contrast, the historically used ODS methyl chloroform and HCFC–141b have ODPs respectively of 0.1 and 0.11.

[34] Wang *et al.,* 2011; Sulbaek Andersen *et al.,* 2008; and Wang *et al.,* undated; Hodnebrog *et al.,* 2013. *Op cit.*

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of ''acceptable'' substitutes is found at *www.epa.gov/ozone/snap/lists* and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to 40 CFR part 82 subpart G.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. EPA's Regulations Implementing Section 612

On March 18, 1994, EPA published the initial SNAP rule (59 FR 13,044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors are the following: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

C. How the Regulations for the SNAP Program Work

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide the Agency with notice and the required health and safety information on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative (40 CFR 82.176(a)). While this requirement typically applies to chemical manufacturers as the entity likely to be planning to introduce the substitute into interstate commerce,[35] it may also apply to importers, formulators, equipment manufacturers, and end-users [36] when they are responsible for introducing a substitute into commerce. The 90-day SNAP review process begins once EPA receives the submission and determines that the submission includes complete and adequate data (40 CFR 82.180(a)). The CAA and the SNAP regulations, 40 CFR 82.174(a), prohibit use of a substitute earlier than 90 days after notice has been provided to the agency.

The Agency has identified four possible decision categories for substitute submissions: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)).[37] Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable without use conditions may be used for all applications within the relevant end-uses within the sector and without limits under SNAP on how they may be used. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. Substitutes that are found to be unacceptable may not be used after the date specified in the rulemaking adding such substitute to the list of unacceptable substitutes.[38]

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations (40 CFR 82.174(c)).

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. The Agency requires a user of a narrowed use substitute to demonstrate that no other acceptable substitutes are available for their specific application. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in violation of section 612 of the CAA and EPA's SNAP regulations (40 CFR 82.174(c)).

The section 612 mandate for EPA to prohibit the use of a substitute that may present risk to human health or the environment where a lower risk alternative is available or potentially

[35] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[36] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

[37] The SNAP regulations also include ''pending,'' referring to submissions for which EPA has not reached a determination, under this provision.

[38] As defined at 40 CFR 82.172, ''use'' means any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses. This definition of use encompasses manufacturing process of products both for domestic use and for export. Substitutes manufactured within the United States exclusively for export are subject to SNAP requirements since the definition of use in the rule includes use in the manufacturing process, which occurs within the United States.

available [39] provides EPA with the authority to change the listing status of a particular substitute if such a change is justified by new information or changed circumstance.

As described in this document and elsewhere, including the initial SNAP rule published in the **Federal Register** at 59 FR 13,044 on March 18, 1994, the SNAP program evaluates substitutes within a comparative risk framework. The SNAP program compares new substitutes both to the ozone-depleting substances being phased out under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the CAA, and to other available or potentially available alternatives for the same end-uses. The environmental and health risk factors that the SNAP program considers include ozone depletion potential, flammability, toxicity, occupational and consumer health and safety, as well as contributions to global warming and other environmental factors. Environmental and human health exposures can vary significantly depending on the particular application of a substitute—and over time, information applicable to a substitute can change. This approach does not imply fundamental tradeoffs with respect to different types of risk, either to the environment or to human health. Over the past twenty years, the menu of substitutes has become much broader and a great deal of new information has been developed on many substitutes. Because the overall goal of the SNAP program is to ensure that substitutes listed as acceptable do not pose significantly greater risk to human health and the environment than other available substitutes, the SNAP criteria should be informed by our current overall understanding of environmental and human health impacts and our experience with and current knowledge about available and potentially available substitutes. Over time, the range of substitutes reviewed by SNAP has changed, and, at the same time, scientific approaches have evolved to more accurately assess the potential environmental and human health impacts of these chemicals and alternative technologies. The Agency publishes its SNAP program decisions in the **Federal Register**. EPA uses notice-and-comment rulemaking to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only subject to use conditions or narrowed use limits, or to remove a substitute from either the list of prohibited or acceptable substitutes.

In contrast, EPA publishes ''notices of acceptability'' or ''determinations of acceptability,'' to notify the public of substitutes that are deemed acceptable with no restrictions. As described in the preamble to the rule initially implementing the SNAP program (59 FR 13,044; March 18, 1994), EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by OSHA). The ''further information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''further information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Additional Information About the SNAP Program

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Depletion Web site at: *www.epa.gov/ozone/snap*. For more information on the agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published March 18, 1994 (59 FR 13,044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at: *www.epa.gov/ozone/snap/chron.html*.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 2, 2015.

Sarah Dunham,

Director, Office of Atmospheric Programs.

Appendix A: Summary of Decisions for New Acceptable Substitutes

REFRIGERATION AND AIR CONDITIONING

End-Use	Substitute	Decision	Further information [1]
Vending machines *(new equipment).*	R-450A (Solstice® N-13)	Acceptable	R-450A has a 100-year global warming potential (GWP) of approximately 600. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The American Industrial Hygiene Association (AIHA) has established workplace environmental exposure limits (WEELs) of 1,000 ppm and 800 ppm (8-hr time weighted average (TWA)) for HFC-134a and HFO-1234ze(E), respectively. The manufacturer recommends an acceptable exposure limit (AEL) for the workplace for R-450A of 880 ppm (8-hr TWA). EPA previously listed this refrigerant as acceptable for use in retrofit vending machine equipment.

[39] In addition to acceptable commercially available substitutes, the SNAP program may consider potentially available substitutes. The SNAP program's definition of ''potentially available '' is ''any alternative for which adequate health, safety, and environmental data, as required for the SNAP notification process, exist to make a determination of acceptability, and which the agency reasonably believes to be technically feasible, even if not all testing has yet been completed and the alternative is not yet produced or sold.'' (40 CFR 82.172)

REFRIGERATION AND AIR CONDITIONING—Continued

End-Use	Substitute	Decision	Further information [1]
Commercial ice machines *(new and retrofit equipment)*.	R-448A (Solstice® N-40)	Acceptable	R-448A has a 100-yr GWP of approximately 1,390. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); HFO-1234yf, which is also known as 2,3,3,3-tetrafluoro-prop-l-ene (CAS Reg. No. 754–12–1); and HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 29118–24–9). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; 500 ppm for HFO-1234yf; and 800 ppm for HFO-1234ze(E). The manufacturer recommends an AEL for the workplace for R-448A of 890 ppm (8-hr TWA).
Refrigerated transport *(new and retrofit equipment)*.	R-448A (Solstice® N-40)	Acceptable	R-448A has a 100-yr GWP of approximately 1,390. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2), HFO-1234yf, which is also known as 2,3,3,3-tetrafluoro-prop-l-ene (CAS Reg. No. 754–12–1); and HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 29118–24–9). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; 500 ppm for HFO-1234yf; and 800 ppm for HFO-1234ze(E). The manufacturer recommends an AEL for the workplace for R-448A of 890 ppm (8-hr TWA).
Retail food refrigeration *(new and retrofit supermarket systems and remote condensing units, and new and retrofit low-temperature [3] stand-alone equipment only)*.	R-448A (Solstice® N-40)	Acceptable	R-448A has a 100-yr GWP of approximately 1,387. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); HFO-1234yf, which is also known as 2,3,3,3-tetrafluoro-prop-l-ene (CAS Reg. No. 754–12–1); and HFO-1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 29118–24–9). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; 500 ppm for HFO-1234yf; and 800 ppm for HFO-1234ze(E). The manufacturer recommends an AEL for the workplace for R-448A of 890 ppm (8-hr TWA).
Centrifugal chillers *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year global warming potential (GWP) of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Cold storage warehouses *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Commercial ice machines *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).

REFRIGERATION AND AIR CONDITIONING—Continued

End-Use	Substitute	Decision	Further information [1]
Household refrigerators and freezers *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Industrial process air conditioning *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Industrial process refrigeration *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Reciprocating, screw and scroll chillers *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Refrigerated transport *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Retail food refrigeration *(new and retrofit supermarket systems and remote condensing units, and new and retrofit low-temperature [2] and medium-temperature [3] stand-alone equipment)*..	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Vending machines *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).
Water coolers *(new and retrofit equipment)*.	R-513A (Opteon® XP 10).	Acceptable	R-513A has a 100-year GWP of approximately 630. This substitute is a blend of HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 500 ppm (8-hr TWA) for HFC-134a and HFO-1234yf, respectively. The manufacturer recommends an AEL for the workplace for R-531A of 653 ppm (8-hr TWA).

REFRIGERATION AND AIR CONDITIONING—Continued

End-Use	Substitute	Decision	Further information [1]
Commercial ice machines *(new and retrofit equipment)*.	R-449A (Opteon® XP 40).	Acceptable	R-449A has a 100-year GWP of approximately 1,400. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; and 500 ppm for HFO-1234yf. The manufacturer recommends an AEL for the workplace for R-449A of 830 ppm (8-hr TWA).
Refrigerated transport *(new and retrofit equipment)*.	R-449A (Opteon® XP 40).	Acceptable	R-449A has a 100-year GWP of approximately 1,400. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; and 500 ppm for HFO-1234yf. The manufacturer recommends an AEL for the workplace for R-449A of 830 ppm (8-hr TWA).
Retail food refrigeration *(new and retrofit supermarket systems remote condensing units, and new and retrofit low-temperature [2] standalone equipment only)*.	R-449A (Opteon® XP 40).	Acceptable	R-449A has a 100-year GWP of approximately 1,400. This substitute is a blend of HFC-32, which is also known as difluoromethane (CAS Reg. No. 75–10–5); HFC-125, which is also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); HFC-134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2); and HFO-1234yf, which is also known as 2,3,3,3-tetrafluoroprop-l-ene (CAS Reg. No. 754–12–1). The blend is nonflammable. The AIHA has established WEELs of 1,000 ppm (8-hr TWA) for HFC-32, HFC-125, and HFC-134a; and 500 ppm for HFO-1234yf. The manufacturer recommends an AEL for the workplace for R-449A of 830 ppm (8-hr TWA).
Non-mechanical heat transfer *(new and retrofit equipment)*.	Methoxytridecafluoroheptene isomers (MPHE; Sinera™).	Acceptable	MPHE has a 100-year GWP of approximately 2.5. MPHE is a mixture of structural and stereo isomers, which includes *trans*-5-methoxy-perfluoro-3-heptene and eight isomeric structures. This blend is nonflammable. The manufacturer recommends an AEL of 500 ppm (8-hr TWA) for MPHE.

[1] Observe recommendations in the manufacturer's SDS and guidance for all listed refrigerants.

[2] "Low-temperature" refers to equipment that maintains food or beverages at temperatures at or below 32 °F (0 °C). See appendix U to 40 CFR part 82, subpart G.

[3] "Medium-temperature" refers to equipment that maintains food or beverages at temperatures above 32 °F (0 °C). See appendix U to 40 CFR part 82, subpart G.

FOAM BLOWING

End-use	Substitute	Decision	Further information [1]
Rigid polyurethane spray foam *(high-pressure, two-part uses only)*..	HFO-1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene; *cis*-1,1,1,4,4,4,-hexafluorobut-2-ene; FEA–1100; Formacel® 1100).	Acceptable	HFO-1336mzz(Z) (CAS Reg. No. 692–49–9) has no ozone depletion potential (ODP) and a 100-year GWP of roughly nine. This compound is nonflammable. The WEEL committee of the Occupational Alliance for Risk Science recommends a WEEL for the workplace of 500 ppm on an 8-hour TWA for HFO-1336mzz(Z).
Solvent Cleaning			
Electronics cleaning, metals cleaning, precision cleaning.	Methoxytridecafluoroheptene isomers (MPHE; Sion™).	Acceptable	MPHE has a 100-year GWP of approximately 2.5. MPHE is a mixture of structural and stereo isomers, which includes *trans*-5-methoxy-perfluoro-3-heptene and eight isomeric structures. This blend is nonflammable. The manufacturer recommends an AEL of 500 ppm (8-hr TWA) for MPHE.

FOAM BLOWING—Continued

End-use	Substitute	Decision	Further information [1]
Aerosols			
Solvent	Methoxytridecafluoroheptene isomers (MPHE).	Acceptable	MPHE has a 100-year GWP of approximately 2.5. MPHE is a mixture of structural and stereo isomers, which includes *trans*-5-methoxy-perfluoro-3-heptene and eight isomeric structures. This blend is nonflammable. The manufacturer recommends an AEL of 500 ppm (8-hr TWA) for MPHE.
Adhesives, Coatings, and Inks			
Adhesives, coatings	Methoxytridecafluoroheptene isomers (MPHE; Suprion™).	Acceptable	MPHE has a 100-year GWP of approximately 2.5. MPHE is a mixture of structural and stereo isomers, which includes *trans*-5-methoxy-perfluoro-3-heptene and eight isomeric structures. This blend is nonflammable. The manufacturer recommends an AEL of 500 ppm (8-hr TWA) for MPHE.

[1] Observe recommendations in the manufacturer's SDS and guidance for the listed substitute.

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NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1171

Change of Address

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Final rule; technical amendments.

SUMMARY: The National Endowment for the Humanities (NEH) is amending its Freedom of Information Act (FOIA) regulations to reflect changes to its address as a result of an office move. These amendments are nonsubstantive, editorial in nature, and are intended to improve the accuracy of the regulations of NEH.

DATES: Effective July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Deputy General Counsel, National Endowment for the Humanities, 400 7th Street SW., Room 4060, Washington, DC 20506.

SUPPLEMENTARY INFORMATION: NEH is making technical amendments to its FOIA regulations published at 45 CFR part 1171 to correct its address as a result of an office move. The former street address was: 1100 Pennsylvania Ave. NW., Washington, DC 20506. The new street address is: 400 7th Street SW., Washington, DC 20506. The amendments also correct all room numbers affected by the office move. All other contact information remains the same.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). NEH has determined that notice and public comment are unnecessary in this case because these amendments are nonsubstantive and editorial in nature.

List of Subjects in 45 CFR Part 1171

Administrative practice and procedure, Freedom of Information.

Therefore, 45 CFR 1171 is amended as follows:

PART 1171—PUBLIC ACCESS TO NEH RECORDS UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 1171 continues to read as follows:

Authority: 5 U.S.C. 552, 31 U.S.C. 3717, E.O. 12600.

§ 1171.5 [Amended]

■ 2. Section 1171.5 is amended in paragraphs (c)(1) by removing ''1100 Pennsylvania Ave. NW., Room 529, Washington, DC, 20506'' and adding in its place ''400 7th Street SW., Room 4060, Washington, DC, 20506'', and in paragraph (c)(2) by removing ''1100 Pennsylvania Ave. NW., Room 419, Washington, DC, 20506'' and adding in its place ''400 7th Street SW., Room 2200, Washington, DC 20506''.

§ 1171.10 [Amended]

■ 3. Section 1171.10 is amended in paragraph (a) by removing ''1100 Pennsylvania Ave. NW., Room 503, Washington, DC, 20506'' and adding in its place ''400 7th Street SW., Room 4053, Washington, DC, 20506'', and by removing ''1100 Pennsylvania Ave. NW., Room 419, Washington, DC, 20506'' and adding in its place ''400 7th Street SW., Room 2200, Washington, DC, 20506''.

Dated: July 1, 2015.

Michael McDonald,

General Counsel.

[FR Doc. 2015–16844 Filed 7–15–15; 8:45 am]
BILLING CODE 7536–01–P

Proposed Rules

Federal Register
Vol. 80, No. 136
Thursday, July 16, 2015

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–111; NRC–2015–0124]

Power Reactor In-Core Monitoring

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking (PRM) requesting that the NRC amend its ''Domestic Licensing of Production and Utilization Facilities'' regulations to require all nuclear power plant (NPP) licensees to use in-core monitoring devices at different elevations and radial positions throughout the reactor core. The PRM was submitted by Mr. Mark Edward Leyse (the petitioner) on March 13, 2015, docketed by the NRC on April 24, 2015, and assigned Docket No. PRM–50–111. The NRC is examining the issues raised in this PRM to determine whether they should be considered in rulemaking. The NRC is not requesting public comment on this PRM at this time.

DATES: The NRC received the PRM on March 13, 2015, and docketed it on April 24, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0124 when contacting the NRC about the availability of information for this PRM. You may obtain publicly-available information related to this PRM by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0124. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room 01–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Natreon Jordan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–7410; email: *Natreon.Jordan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Petitioner

On March 13, 2015, Mr. Mark Edward Leyse, a consultant for public interest groups and the author and co-author of papers, filed PRM–50–111 with the Commission (ADAMS Accession No. ML15113B143). In PRM–50–111, Mr. Leyse requests that the NRC amend its ''Domestic Licensing of Production and Utilization Facilities'' regulations to require all NPP licensees to use in-core monitoring devices at different elevations and radial positions throughout the reactor core.

Mr. Leyse previously submitted a similar PRM (PRM–50–105, ADAMS Accession No. ML12065A215) on February 28, 2012. Although only pertaining to pressurized water reactors, this earlier PRM requested that the NRC require all holders of operating licenses for NPPs to operate NPPs with in-core thermocouples at different elevations and radial positions throughout the reactor core to enable NPP operators to accurately measure a large range of in-core temperatures in NPP steady-state and transient conditions. The NRC docketed and noticed Mr. Leyse's earlier PRM, in part based upon the NRC's determination that he had demonstrated sufficient interest in the subject matters raised in PRM–50–105 (77 FR 30435; May 23, 2012). Mr. Leyse's March 13, 2015, PRM provides a more extensive description of himself and his interest in the subject matter of the PRM, as compared with the discussion he provided in PRM–50–105.

II. The Petition

The petitioner requests that the NRC amend part 50 of Title 10 of the *Code of Federal Regulations,* ''Domestic Licensing of Production and Utilization Facilities,'' to require all NPP licensees to use in-core monitoring devices at different elevations and radial positions throughout the reactor core. The petitioner states that in the event of a severe accident, ''in-core temperature-monitoring devices would enable NPP operators to accurately measure in-core temperatures, providing crucial information to help them track the progression of core damage and manage the accident.''

The petitioner asserts that the in-core monitoring devices would ''enable NPP operators to accurately measure a large range of in-core temperatures in steady-state and transient conditions.'' The petitioner further states that, in the event of a severe accident, the in-core monitoring devices would give NPP operators crucial information to ''help them track the progression of core damage and manage the accident.'' The petitioner states also that by improving the monitoring of in-core temperatures, the in-core monitoring devices ''could actually increase the electrical production of NPPs.'' For additional information, see the PRM in ADAMS under Accession No. ML15113B143.

III. Conclusion

The NRC has determined that the PRM meets the threshold sufficiency requirements for a PRM under § 2.802, ''Petition for rulemaking,'' and it has been docketed as PRM–50–111.

The NRC will examine the issues raised in PRM–50–111 to determine whether they should be considered in rulemaking. The NRC is not requesting public comment on PRM–50–111 at this time.

Dated at Rockville, Maryland, this 9th day of July, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–17442 Filed 7–15–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0967; Airspace Docket No. 14–ASO–19]

Proposed Amendment of Class E Airspace; Ponce, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Ponce, PR, as the PONCE VHF Omni-Directional Radio Range Tactical Air Navigation Aid, (VORTAC) has been decommissioned, requiring airspace redesign at Mercedita Airport. This action is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 31, 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–2014–0967; Airspace Docket No. 14–ASO–19, 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 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.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this proposed incorporation by reference material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783.

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:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Mercedita Airport, Ponce, PR.

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–2014–0967; Airspace Docket No. 14–ASO–19) 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–2014–0967; Airspace Docket No. 14–ASO–19.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal

Regulations (14 CFR) part 71 to amend Class E surface area airspace at Mercedita Airport, Ponce, PR. Airspace reconfiguration to within a 4.1-mile radius of the airport is necessary due to the decommissioning of the Ponce VORTAC and cancellation of the VOR approach, and for continued safety and management of IFR operations at the airport.

Class E Airspace Designated as Surface Areas are published in Paragraph 6002 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.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal 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(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, effective September 15, 2014, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO PR E2 Ponce, PR [Amended]

Mercedita Airport, PR
(Lat. 18°00′30″ N., long. 66°33′4″ W.)

Within a 4.1-mile radius of Mercedita Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on July 6, 2015.

Gerald E. Lynch,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–17272 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2015–F–2337]

Alzchem AG; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alzchem AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of guanidinoacetic acid as a substance that spares arginine and serves as a precursor of creatine in diets for broiler chickens and turkeys.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by August 17, 2015.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2292) has been filed by Alzchem AG, Chemiepark Trostberg, Dr.-Albert-Frank-Str. 32, 83308, Trostberg, Germany. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of guanidinoacetic acid as a substance that spares arginine and serves as a precursor of creatine in diets for broiler chickens and turkeys. The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r).

Interested persons may submit either electronic or written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 10, 2015.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2015–17379 Filed 7–15–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0400]

RIN 1625–AA08

Special Local Regulations; Temporary Change for Recurring Marine Event in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement periods of special local regulations for a recurring marine event in the Fifth Coast Guard District. This regulation applies to the ''Ocean City Maryland Offshore Grand Prix'' power boat race, a recurring marine event held on the North Atlantic Ocean near Ocean City, MD, and would be effective from October 3, 2015, to October 4, 2015. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the North Atlantic Ocean near Ocean City, MD during the event.

DATES: Comments and related material must be received by the Coast Guard on or before August 17, 2015.

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 Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@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–2015–0400] 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–2015–0400) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The regulation listing annual marine events within the Fifth Coast Guard District and their regulated dates is 33 CFR 100.501. The Table to § 100.501 identifies marine events by Captain of the Port zone, with the COTP Baltimore zone listed in section ''(b)'' of the Table. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25. The Table to § 100.501, at section (b) event Number ''21'' describes the enforcement dates and regulated location for this marine event. The dates of the event as published are May 2nd and 3rd (Saturday and Sunday) or May 9th and 10th (Saturday and Sunday).

C. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in *33 U.S.C. 1233,* which authorize the Coast Guard to establish and define special local regulations. The Captain of the Port Baltimore is promulgating this regulation for the waters of the North Atlantic Ocean, near Ocean City, MD to protect event participants, spectators and transiting vessels.

D. Discussion of Proposed Rule

Event planners notified the Coast Guard of date changes during 2015 for the ''Ocean City Maryland Offshore Grand Prix'' marine event that is listed at 33 CFR 100.501, Table to § 100.501. The event consists of approximately 40 participating offshore race boats, 22 to 50 feet in length, operating in various classes on a marked course on the waters of the North Atlantic Ocean at Ocean City, MD. This regulation will temporarily change the enforcement

periods for this marine event for 2015 only. The dates for 2015 are October 3, 2015, and October 4, 2015.

The Coast Guard proposes to temporarily suspend the regulation listed at section (b.) line No. 21 in the Table to § 100.501 and insert this temporary regulation at the Table to § 100.501 at section (b.) line No. 24 in order to reflect the correct dates for this year's event. This change is needed to accommodate the change in dates of the Ocean City Maryland Offshore Grand Prix. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation. The regulation will be enforced from 10:30 a.m. to 5:30 p.m. on October 3, 2015 and from 10:30 a.m. to 5:30 p.m. on October 4, 2015. In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners and marine information broadcasts.

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 rule is not significant for the following reasons: (i) The regulated area will only be in effect from 10:30 a.m. to 5:30 p.m. on October 3, 2015 and from 10:30 a.m. to 5:30 p.m. on October 4, 2015; (ii) the regulated area has been narrowly tailored to impose the least impact on general navigation, yet provide the level of safety deemed necessary; and (iii) advance notifications will be made to the maritime community via marine information broadcasts and local notices to mariners, so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or transit through or within, or anchor in, the area where the marine event is being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during a marine event that has been permitted by the Coast Guard Captain of the Port. This proposed rule will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

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**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children 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 proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. 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 and a Categorical Exclusion Determination are 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.

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. In the Table to § 100.501:

■ a. Suspend line No. (b.)21; and

■ b. Add line No. (b.)24.

The addition reads as follows:

§ 100.501 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
*	*	*	*	* * *
(b.) Coast Guard Sector Baltimore—COTP Zone				
*	*	*	*	* * *
24	October 3 and 4, 2015.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the North Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N., longitude 075°03′06″ W.; thence east southeast to latitude 38°25′30″ N., longitude 075°02′12″ W., thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N., longitude 075°03′48″ W.; thence west northwest to the shoreline at latitude 38°19′30″ N., longitude 075°05′00″ W.
*	*	*	*	* * *

Dated: June 23, 2015.

Kevin C. Kiefer,

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

[FR Doc. 2015–17456 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0563]

RIN 1625–AA00

Safety Zone, Indian River Bay; Millsboro, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of Indian River Bay adjacent to Millsboro, Delaware. The safety zone will restrict vessel traffic on Indian River Bay in the vicinity of a fireworks barge on August 22 and September 26, 2015, from 8:45 p.m. until 10:15 p.m. on each day. Should inclement weather require cancellation of the fireworks display on the above scheduled dates, the safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 23 and September 27, 2015. This safety zone is necessary to protect the surrounding public and vessels from the

hazards associated with a fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before July 23, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0563 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 proposed rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215)271–4851, email *Brennan.P.Dougherty@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
COTP Captain of the Port

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (Docket Number USCG–2015–0563), 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–2015–0563) 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–2015–0563) 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 **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. 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

This NPRM represents the first time the Coast Guard is seeking comments on the proposed safety zone at this location.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of this safety zone is to protect mariners and spectators from the hazards associated with the fireworks display, such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

D. Discussion of Proposed Rule

The Captain of the Port, Delaware Bay, proposes to establish a safety zone on specified waters that will encompass all waters of Indian River Bay, within a 200-foot radius of the fireworks barge in approximate position 38–36.58 N., 075–09.00 W., adjacent to Millsboro, Delaware. The safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 22 and September 26, 2015, unless cancelled earlier by the Captain of the Port. Should inclement weather require cancellation of the fireworks display on the above scheduled dates, the safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 23 and September 27, 2015, respectively.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. The Captain of the Port, Delaware Bay, or his representative may be contacted via VHF channel 16 or at 215–271–4807.

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. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: the Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and the size and duration of the zone are relatively limited in scope.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along Indian River Bay, adjacent to Millsboro, Delaware, on August 22 and September 26, 2015, respectively from 8:45 p.m. until 10:15 p.m., unless cancelled earlier by the Captain of the Port.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or his designated representative and the safety zone is limited in size and duration. The Coast Guard will issue maritime advisories widely available to users of Indian River Bay.

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**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children 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 proposed rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the

navigable waterways. This zone will temporarily restrict vessel traffic from anchoring or transiting a portion of Indian River Bay near Millsboro, Delaware, in order to protect the safety of life and property on the waters while a fireworks display is conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0563 to read as follows:

§ 165.T05–0563 Safety Zone, Indian River Bay; Millsboro, DE.

(a) *Regulated area.* The following area is a safety zone: All waters of Indian River Bay within a 200-foot radius of a fireworks barge located approximately at position 38–36.58 N., 075–09.00 W. near Millsboro, Delaware.

(b) *Regulations.* The general safety zone regulations found in subpart C of this part apply to this safety zone created by this section.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or his designated representative.

(2) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(3) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(4) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port; and

(5) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port.

(c) *Definitions.* In this section—

Captain of the Port means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

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

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

(e) *Enforcement period.* This safety zone will be enforced on August 22 and September 26, 2015, from 8:45 p.m. until 10:15 p.m., unless cancelled earlier by the Captain of the Port. Should inclement weather require cancellation of the fireworks display on the above scheduled dates, the safety zone will be enforced between 8:45 p.m. and 10:15 p.m. on August 23 and September 27, 2015, unless cancelled earlier by the Captain of the Port.

Dated: June 29, 2015.

B.A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2015–17482 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0360; FRL–9930–62–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to the Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of revising the definition of volatile organic compounds (VOC). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 17, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0360 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2015–0360, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0360. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the

comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, ''Revision to the Definition of Volatile Organic Compounds,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 7, 2015.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2015–17384 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0113; FRL–9929–82–Region 4]

Approval and Promulgation of Implementation Plans; Georgia; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on January 22, 2015, to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and to allow for the decommissioning of existing Stage II equipment. EPA has preliminarily determined that Georgia's January 22, 2015, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before August 17, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0113, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2015–0113'' Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2015–0113. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's phone number is (404) 562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background for Atlanta's Air Quality Status Related to the 1-Hour Ozone NAAQS

On November 6, 1991, EPA designated and classified the following counties in and around the Atlanta, Georgia, metropolitan area as a serious ozone nonattainment area for the 1-hour ozone NAAQS (hereinafter referred to as the ''Atlanta 1-Hour Ozone Area'' or ''Area''): Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.[1] *See* 56 FR 56694. The nonattainment designation was based on the Atlanta 1-Hour Ozone Area's design value for the 1987–1989 three-year period. The ''serious'' classification triggered various statutory requirements for the Atlanta 1-Hour Ozone Area, including the requirement pursuant to section 182(b)(3) of the CAA for the Area to require all owners and operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles known as ''Stage II.'' [2] EPA redesignated the Atlanta 1-Hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005.[3] [4] *See* 70 FR 34660 (June 15, 2005).

[1] On September 26, 2003 (effective January 1, 2004), the Atlanta 1-Hour Ozone Area was reclassified to ''severe'' for the 1-hour ozone NAAQS because the Area failed to attain the 1-hour ozone NAAQS by its attainment date of November 15, 1999. *See* 68 FR 55469.

[2] Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

[3] On April 30, 2004, EPA designated the following 20 counties in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 1997 8-hour ozone NAAQS: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. *See* 69 FR 23858. Subsequently, EPA reclassified these counties as a moderate ozone nonattainment area on March 6, 2008, because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. *See* 73 FR 12013. Subsequently, the area attained the 1997 8-hour ozone standard, and on December 2, 2013, EPA redesignated the counties to attainment for the 1997 8-hour ozone NAAQS. *See* 78 FR 72040.

[4] On May 21, 2012, EPA published a final rule designating the following 15 counties in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 2008 8-hour ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. *See* 77 FR 30088.

II. Background for Federal Stage II Requirements

Under section 182(b)(3) of the CAA, each state was required to submit a SIP revision to implement Stage II for all ozone nonattainment areas classified as moderate, serious, severe, or extreme, primarily for the control of volatile organic compounds (VOC)—a precursor to ozone formation.[5] However, section 202(a)(6) of the CAA states that the section 182(b)(3) Stage II requirements for moderate ozone nonattainment areas shall not apply after the promulgation of on-board vapor recovery (ORVR) standards.[6] ORVR standards were promulgated by EPA on April 6, 1994. *See* 59 FR 16262 and 40 CFR parts 86 (including sections 86.098–8), 88 and 600. As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas were able to submit SIP revisions, in compliance with section 110(l) of the CAA, to remove Stage II requirements from their SIPs. EPA's policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provide further guidance on removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993, states that ''[w]hen onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or from consideration as a SIP revisions) consistent with its obligations under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirement of the Act.'' [7]

CAA section 202(a)(6) also provides discretionary authority to the EPA Administrator to, by rule, revise or waive the section 182(b)(3) Stage II requirement for serious, severe, and extreme ozone nonattainment areas after the Administrator determines that ORVR is in widespread use throughout the motor vehicle fleet. On May 16, 2012, in a rulemaking entitled ''Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver,'' EPA determined that ORVR technology is in widespread use throughout the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. *See* 77 FR 28772. By that action, EPA waived the requirement for states to implement Stage II gasoline vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as serious and above for the ozone NAAQS. Effective May 16, 2012, states implementing mandatory Stage II programs under section 182(b)(3) of the CAA were allowed to submit SIP revisions to remove this program. *See* 40 CFR 51.126(b).[8] On April 7, 2012, EPA released the guidance entitled ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and

[5] Section 183(b)(3) states that all ozone nonattainment areas classified as moderate or above submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Specifically, the CAA specifies that the Stage II must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an ISBM. Additionally, the CAA specified the deadlines by which certain facilities must comply with the Stage II requirements. For facilities that are not owned or operated by an ISBM, these deadlines, calculated from the time of State adoption of the Stage II requirements, are: (1) 6 Months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) by November 15, 1994, for all other facilities. For ISBM's, section 324(a) of the CAA provides the following three-year phase-in period: (1) 33 Percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect; (2) 66 percent of such facilities by the end of the second year; and (3) 100 percent of such facilities after the third year.

[6] ORVR is a system employed on gasoline-powered highway motor vehicles to capture gasoline vapors displaced from a vehicle fuel tank during refueling events. These systems are required under section 202(a)(6) of the CAA and implementation of these requirements began in the 1998 model year. Currently they are now used on all gasoline-powered passenger cars, light trucks and complete heavy trucks of less than 14,000 pounds GVWR. ORVR systems typically employ a liquid file neck seal to block vapor escape to the atmosphere and otherwise share many components with the vehicles' evaporative emission control system including the onboard diagnostic system sensors.

[7] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to EPA Regional Air Directors, *Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Areas* (March 9, 1993), available at: *http://www.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19930309_seitz_onboard_impact_stage2_.pdf.*

[8] Under CAA section 202(a)(6), EPA found that ORVR systems are in widespread use in the motor vehicle fleet and waived the CAA section 182(b)(3) Stage II vapor recovery requirement for serious and higher ozone nonattainment areas on May 16, 2012 (77 FR 28772). Thus, in its implementation rule for the 2008 ozone NAAQS, EPA removed the section 182(b)(3) Stage II requirement from the list of applicable requirements in 40 CFR 51.1100(o). See 80 FR 12264 (March 6, 2015) for additional information.

Assessing Comparable Measures'' for states to consider in preparing their SIP revisions to remove existing Stage II programs from state implementation plans.[9]

III. Background for Georgia's Stage II Requirements for Atlanta

On November 13, 1992, the State of Georgia submitted a SIP revision to address the Stage II requirements for the Atlanta 1-Hour Ozone Area. EPA approved that SIP revision, containing Georgia's Stage II rule (Georgia Rule 391–3–1–.02(2)(zz)—*Gasoline Dispensing Facilities-Stage II*) in a notice published on February 2, 1996. *See* 61 FR 3819. Georgia's Stage II rule, as currently incorporated into the SIP, requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The rule requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (*i.e.,* 75 percent or more equipment change). The State also established an inspection program consistent with that described in EPA's Stage II guidance and has established procedures for enforcing violations of the Stage II requirements.

IV. Analysis of the State's Submittal

On January 22, 2015, Georgia submitted a SIP revision to EPA with a request to modify its Stage II rule, Georgia Rule 391–3–1–.02(2)(zz)—*Gasoline Dispensing Facilities-Stage II,* in the State's implementation plan. These modifications would remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allow for the decommissioning of existing Stage II equipment. EPA's primary consideration for determining the approvability of Georgia's request is whether this requested action complies with section 110(l) of the CAA.[10]

Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision. EPA's analysis of Georgia's January 22, 2015, SIP revision pursuant to section 110(l) is provided below.

In its January 22, 2015, SIP revision, GA EPD used EPA's guidance entitled ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' to conduct a series of calculations to determine the potential impact of removing the Stage II program on air quality.[11] GA EPD's analysis focused on VOC emissions because, as mentioned above, Stage II requirements affect VOC emissions and because VOCs are a precursor for ozone formation.[12] The results of GA EPD's analysis is provided in the table below.

TABLE—VOC EMISSIONS DIFFERENCE BETWEEN STAGE II VRS IN PLACE AND REMOVED

Year	VOC emissions (tons per day)
2008	N/A
2012	N/A
2013	N/A
2014	+0.92
2015	+0.37
2016	−0.085

In summary, GA EPD compared the VOC emissions with the continued implementation of the Stage II program and to the VOC emissions with only ORVR controls in place. GA EPD's analysis estimated that during the phase-out of Stage II there would be a small increase of 0.92 tpd in 2014, however, the emissions increase would be less (at 0.37 tpd) in 2015. For 2016, GA EPD calculated that there would be an emissions disbenefit of 0.085 tpd due to the incompatibility of Stage II and ORVR systems (*i.e.,* leaving Stage II in place would result in a VOC emissions increase due to its incompatibility with ORVR).[13]

Although GA EPD anticipates a temporary increase of 0.37 tpd in VOC emissions in 2015, the State provided a technical analysis, including sensitivity modeling, to demonstrate that the Atlanta metropolitan area is NO_X-limited with regard to ozone formation. If an area is NO_X-limited, changes to VOC emissions have little effect on ozone formation. In EPA's guidance entitled ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' EPA addresses situations where emissions increase do not interfere with attainment. EPA specifically acknowledges that there may be areas where ozone formation is limited by the availability of NO_X emissions, and that a small (and ever-declining) increase in

[9] This guidance document is available at: *http://www.epa.gov/groundlevelozone/pdfs/20120807guidance.pdf.*

[10] CAA section 193 is not relevant because Georgia's Stage II rule was not included in the SIP before the 1990 CAA amendments.

[11] EPA, Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, EPA–457/B–12–001 (Aug. 7, 2012), available at: *http://www.epa.gov/groundlevelozone/pdfs/20120807guidance.pdf.* This guidance document notes that ''the potential emission control losses from removing Stage II VRS are transitional and relatively small. ORVR-equipped vehicles will continue to phase in to the fleet over the coming years and will exceed 80 percent of all highway gasoline vehicles and 85 percent of all gasoline dispensed during 2015. As the number of these ORVR-equipped vehicles increase, the control attributed to Stage II VRS will decrease even further, and the potential foregone Stage II VOC emission reductions are generally expected to be no more than one percent of the VOC inventory in the area.''

[12] Several counties in and around metropolitan Atlanta are currently designated nonattainment for the 1997 Annual fine particulate matter ($PM_{2.5}$) standard. While VOC is one of the precursors for particulate matter (NAAQS) formation, studies have indicated that, in the southeast, emissions of direct $PM_{2.5}$ and the precursor sulfur oxides are more significant to ambient summertime $PM_{2.5}$ concentrations than emissions of nitrogen oxides and anthropogenic VOC. *See, e.g., Journal of Environmental Engineering—Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States* (June 24, 2009), available at: *http://www.journals.elsevier.com/journal-ofenvironmental-management.* Currently, counties in and around metropolitan Atlanta are not designated nonattainment for any of the other criteria pollutants (*i.e.,* sulfur dioxide, nitrogen dioxide, lead or carbon monoxide) and those pollutants are not affected by the removal of Stage II requirements.

[13] Compatibility problems can result in an increase in emissions from the underground storage tank (UST) vent pipe and other system fugitive emissions related to the refueling of ORVR vehicles with some types of vacuum assist-type Stage II systems. This occurs during refueling an ORVR vehicle when the vacuum assist system draws fresh air into the UST rather than an air vapor mixture from the vehicle fuel tank. Vapor flow from the vehicle fuel tank is blocked by the liquid seal in the fill pipe which forms at a level deeper in the fill pipe than can be reached by the end of the nozzle spout. The fresh air drawn into the UST enhances gasoline evaporation in the UST which increases pressure in the UST. Unless it is lost as a fugitive emission, any tank pressure in excess of the rating of the pressure/vacuum valve is vented to the atmosphere over the course of a day. Due to the increased use of ORVR, a disbenefit will exist until Stage II is removed in the Atlanta Area.

VOC emissions may have little or no effect on future ozone levels.

EPA has reviewed GA EPD's January 22, 2015, SIP revision to remove Stage II requirements for the Area, and is proposing to determine that the associated technical analysis is consistent with EPA's guidance on removing Stage II requirements from a SIP. EPA is also making the preliminary determination that GA EPD's SIP revision is consistent with the CAA and with EPA's regulations related to removal of Stage II requirements from the SIP.

V. Proposed Action

EPA is proposing to approve Georgia's January 22, 2015, SIP revision that changes Georgia's Stage II rule, 391–3–1–.02(2)(zz), to allow for the removal of the Stage II requirement and the orderly decommissioning of Stage II equipment. EPA is proposing this approval because the Agency has made the preliminarily determination that Georgia's January 22, 2015, SIP revision related to the State's Stage II rule is consistent with the CAA and with EPA's regulations and guidance.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 18, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–16076 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket No. CDC–2015–0050]

RIN 0920–AA58

Possession, Use, and Transfer of Select Agents and Toxins; Addition of Certain Influenza Virus Strains to the List of Select Agents and Toxins

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) is proposing to add certain influenza virus strains to the list of HHS select agents and toxins. Specifically, we are proposing to add the influenza viruses that contain the hemagglutinin (HA) from the Goose Guangdong/1/96 lineage (the influenza viruses that contain the hemagglutinin (HA) from the A/Gs/Gd/1/96 lineage), including wild-type viruses, as a non-Tier 1 select agent. We are also proposing to add any influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory as a Tier 1 select agent. We have determined that these influenza viruses have the potential to pose a severe threat to public health and safety.

DATES: Comments should be received on or before September 14, 2015.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN), 0920–AA58 or Docket No. CDC–2015–0050 in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30329, ATTN: RIN 0920–AA58.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket Access: For access to the docket to read background documents or comments received or to download an electronic version of the NPRM, go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road NE., Atlanta, GA 30329. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Select Agents and Toxins to schedule your visit. Our general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30329. Telephone: (404) 718–2000.

SUPPLEMENTARY INFORMATION: The preamble to this notice of proposed rulemaking is organized as follows:

I. Public Participation
II. Background
A. Historical Background for This Proposed Rulemaking
B. Legal Authorities
III. Alternatives Considered
IV. Regulatory Analyses
A. Executive Order 12866 and 13563
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Plain Writing Act of 2010
V. References

I. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, recommendations, and data. We are establishing a docket to provide an opportunity for interested persons to submit comments, research data, and other information that will better inform us about the effect the regulation of these two viruses will have. Comments are invited on any topic related to this rulemaking, but in particular, we welcome comment on the following questions:

(1) Are there any vaccine candidates that include the HA from the A/Gs/Gd/1/96 lineage that should be considered for an exclusion from the regulation?

(2) What are the criteria that could be used for exclusion of attenuated strains which could include vaccine candidates?

(3) What criteria or experimental conditions should be considered in defining transmissibility among mammals via respiratory droplets?

(4) What criteria or experimental conditions should be used to define an appropriate mammalian model of influenza transmission?

(5) What is the impact of designating as a Tier 1 select agent any influenza virus that contains the HA from the A/Gs/Gd/1/96 lineage that was made transmissible among mammals by respiratory droplets in the laboratory?

(6) Is the potential for influenza A H5 viruses that contain the HA from the A/Gs/Gd/1/96 lineage to be a low pathogenic avian influenza (LPAI) (by design or nature) but still pose a severe threat to public health and safety significant enough to regulate as a select agent?

II. Background

A. Historical Background for This Proposed Rulemaking

Since late 2003, the World Health Organization (WHO) has reported over 600 cases of human infection with highly pathogenic avian influenza (HPAI) H5N1 viruses with a mortality rate that exceeds 50 percent in hospitalized patients (Ref 1). Current epidemiologic evidence indicates that, once transmitted into a human host, H5N1 viruses may result in more severe disease in humans than other subtypes of influenza.

One important factor that can account for some of the increased pathogenicity is the hemagglutinin (HA) molecule. Cleavage of the HA molecule by host proteases (enzymes that can break amino acid bonds) enables influenza viruses to productively infect cells (*i.e.,* replicate). For human influenza viruses, replication is generally restricted to the respiratory tract. However, HPAI H5N1 viruses contain a polybasic amino acid sequence in the HA molecule that is not found in human influenza viruses. This feature allows the molecule to be cleaved by a wider variety of proteases throughout the body.

Extrapulmonary dissemination of HPAI H5N1 virus has been documented among some fatal human HPAI H5N1 virus infections. The HA molecule mediates binding of the influenza virus to host cells in the respiratory tract. Human influenza viruses preferentially bind to different receptors than avian influenza viruses (Ref 2). While human influenza virus receptors are more prevalent in the upper respiratory tract, the receptors that bind avian viruses are present in the lower respiratory tract of humans. The ability of H5N1 viruses to bind and infect cells within the lung may contribute to the severity of H5N1 induced viral pneumonia (Ref 3–5). Furthermore, a change from avian- to human-type receptor-binding specificity, as seen with the pandemic strains of 1918 (H1N1), 1957 (H2N2), and 1968 (H3N2), is thought to be a critical step in the adaptation of avian influenza viruses to humans and the ability to transmit efficiently among humans (Ref 6–8). In two independent studies (Ref 9–10), investigators have shown that laboratory modified HPAI H5N1 influenza viruses with certain mutations can be transmitted via the respiratory route between ferrets. Ferrets are widely considered to provide the best animal model for exploring these aspects of influenza virus pathogenicity as they might relate to human infection (Ref 11).

We recognize that all HPAI H5N1 influenza virus HA clades found in humans to date descended from the A/Gs/Gd/1/96 HA lineage (Ref 12). Currently, all HPAI H5 subtype viruses are regulated by the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) whose oversight focuses on the threat to animal health. We conclude that (1) designating as a non-Tier 1 HHS select agent any influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage and (2) designating as a Tier 1 HHS select agent any influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory, will expand the regulatory oversight of this agent to address the potential threat of these viruses to human health. We conclude this expanded oversight is needed because while the USDA required biosafety measures for the HPAI H5 subtype viruses may also be generally beneficial to public health; their regulatory oversight is focused primarily on risks to agricultural animals rather than direct effects on human health.

According to Federal government influenza subject matter experts, it is possible for an influenza virus that contains the HA from the A/Gs/Gd/1/96 lineage to be classified as LPAI, and therefore not be regulated as a select agent by USDA, but still be capable of causing severe disease in humans. Designating these viruses as HHS select agents will ensure that influenza strains with the greatest potential for major direct effects on human health will be regulated with a focus on protection of human health. This approach would include LPAI viruses with the polybasic amino acid sequence removed from the HA molecule that may not pose a severe threat to avian species but could pose a severe threat to public health and safety.

Whether the (1) influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage and (2) influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory should be regulated as a HHS select agent was considered by HHS/CDC's Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government scientists from HHS/CDC, the Biomedical Advanced Research and Development Authority (BARDA) within the Office of the Assistant Secretary for Preparedness and Response (HHS/ASPR) in HHS, the

National Institutes of Health (HHS/NIH), the Food and Drug Administration (HHS/FDA), USDA/APHIS, the USDA/Agricultural Research Service, the USDA/Center for Veterinary Biologics, the Department of Homeland Security, and the Department of Defense. The criteria used by the ISATTAC in its review were the degree of pathogenicity, communicability, ease of dissemination, route of exposure, environmental stability, ease of production, ability to genetically manipulate or alter, long-term health effects, acute morbidity, acute mortality, available treatment, status of host immunity, vulnerability of special populations, and the burden or impact on the health care system. The ISATTAC recommended that (1) the influenza viruses containing an HA from the A/Gs/Gd/1/96 lineage should be regulated as an HHS select agent (non-Tier 1), and (2) the influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory should be regulated as a Tier 1 HHS select agent. In making its recommendations, the ISATTAC considered both the historical data regarding the A/Gs/Gd/1/96 lineage and data from current *in vitro* and *in vivo* animal studies. The virulence of viruses of this lineage, the data showing transmissibility of genetically modified H5N1 viruses among ferrets, together with the fact that the level of immunity in the general population is low, were all considered. In addition, the ISATTAC recommended limiting the Tier 1 status to only those viruses that were made transmissible among mammals by respiratory droplets. Transmission by respiratory droplets would be the most similar route to normal human-to-human transmission, as opposed to transmission by other respiratory routes such as intra nasal exposure which is not a normal route of human infection. In addition, the ISATTAC voiced concern that an influenza pandemic caused by viruses containing an HA from the A/Gs/Gd/1/96 lineage, could potentially overwhelm the health care system.

On July 2, 2010, the President signed Executive Order 13546, ''Optimizing the Security of Biological Select Agents and Toxins in the United States'' that directed the Secretaries of HHS and USDA to designate a subset of the select agents and toxins list (Tier 1) that presents the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence. Executive Order 13546 also established the Federal Experts Security Advisory Panel (FESAP) to advise the HHS and USDA Secretaries on the designation of Tier 1 agents and toxins. In December of 2010, the FESAP provided recommendations on the composition of the HHS and USDA select agent and toxin lists, including a subset of agents and toxins recommended for Tier 1 designation.

In accordance with Executive Order 13546, HHS/CDC published a final rule (77 FR 61084) on October 5, 2012 which designated those select agents and toxins that present the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence as ''Tier 1'' agents; established new security requirements for entities possessing Tier 1 agents, including the requirement to conduct pre-access and ongoing suitability assessments of personnel with access to Tier 1 agents and toxins; and made revisions to the regulations to clarify regulatory language concerning security, training, biosafety, and incident response.

On October 17, 2012, HHS/CDC published a request for information and comment (RFI) (77 FR 63783) to provide an opportunity for interested persons to submit comments, research data, and other information to better inform us about the risk to public health and safety posed by HPAI H5N1 influenza viruses containing the HA from the A/Gs/Gd/1/96 lineage.

We received responses from thirty-one commenters associated with academic, private and commercial institutions and professional societies. The majority of the commenters addressed the specific questions found in the request for information.

Twenty-seven of the thirty-one commenters asserted that influenza viruses of this lineage (1) exhibit high lethality in humans (exceeds 50% mortality rate, (Ref 1), (2) exhibit efficient aerosol transmissibility and retention of virulence in mammals following experimental adaptation to mammals in a laboratory setting, and (3) potentially may acquire efficient aerosol transmissibility in mammals and retention of virulence through natural adaptation to mammals in nature. The commenters concluded that HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage pose a severe threat to public health and safety and warrant regulation as HHS select agents. One commenter stated that listing these viruses as HHS select agents would ''enable the regulatory process to evaluate, and to respond to, impacts on human health as well as impacts on agriculture.''

Twenty commenters also stated that HPAI H5N1 viruses that contain the HA from the A/Gs/Gd/1/96 lineage should not be designated as Tier 1 agents. The commenters believed that select agent biosafety and security requirements currently in place in regards to HPAI are adequate to protect against a release (accidental or intentional) or theft (13). However, some commenters also stated that any laboratory generated influenza viruses that contain the hemagglutinin (HA) from the A/Gs/Gd/1/96 lineage that are mammalian transmissible by the respiratory route should be regulated as a Tier 1 HHS select agent due to the combination of (1) high human virulence (presumed from that of their precursors), (2) potentially high human-to-human transmissibility, (3) nonexistence in the wild, and (4) lack of adequate control measures to contain its spread if released in the environment. The same twenty commenters felt that the mammalian-transmissible H5N1 strains are a unique or nearly unique threat to public health and therefore warrant Tier 1 status.

HHS/CDC also asked if there were other influenza strains containing HA from Goose/Guangdong/1/96 lineage that would pose a severe threat to public health and safety. None of the commenters was aware of any other strains that would pose a severe threat to public health and safety.

HHS/CDC asked if special precautions (*i.e.,* safety and containment measures) should be considered when working with diagnostic specimens suspected of containing HPAI H5N1 influenza viruses containing the HA from the A/Gs/Gd/1/96 lineage (*i.e.,* any precautions versus none at all, precautions beyond those usual for clinical samples and/or laboratory microbes, etc.). The commenters varied on their recommendations. Some commenters recommended that diagnostic work with this virus should be performed in BSL–3 laboratories. Other commenters recommended that diagnostic work be carried out in BSL–2 facility with special precautions (face masks, etc.) or in an enhanced BSL–2 facility, which would include performing all open container work and aerosol-producing procedures in a Class II biological safety cabinet.

HHS/CDC asked if special precautions (*i.e.,* safety and containment measures) should be considered when working with strains of HPAI containing the HA from the A/Gs/Gd/1/96 lineage that have been shown to be transmissible between mammals beyond those

recommended for non-mammalian transmissible strains. The commenters varied on their recommendations. Commenters recommended that work with mammalian aerosol-transmissible H5N1 strains should be performed only using the highest physical containment and operational procedures (*i.e.,* BSL–4 containment and procedures) and only after an open, transparent, and independent process of risk-benefit assessment and risk mitigation. Some commenters recommended that work with diagnostic specimens suspected of containing mammalian-transmissible H5N1 virus should be treated under BSL–3+ or BSL–4 conditions where possible (and consistent with the need for rapid diagnosis), and in any case should be handled only by individuals with training and experience with high-containment pathogens. Some commenters recommended that H5N1 vaccination of those working with transmissible H5N1 viruses should probably be required, but an increase in containment level is not necessary.

HHS/CDC, with advice from the ISATTAC and from public input received in response to the RFI, published in CDC's Morbidity and Mortality Weekly Report (MMWR) (June 28, 2013/62(RR06);1–7) Biosafety Guidelines for Working with Influenza Viruses Containing an HA from the A/goose/Guangdong/1/96 lineage which can be found at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6206a1.htm?s_cid=rr6206a1_w.*

Based on the public comments to the RFI and in consultation with the ISATTAC, we are proposing a tiered approach to the regulation of influenza viruses containing the HA from the A/Gs/Gd/1/96 lineage. Under our proposal, influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage, including wild-type and laboratory-derived viruses, will be regulated as a non-Tier 1 select agent. This designation recognizes the public health threat posed by the high mortality rate, lack of a readily available vaccine, and the absence of immunity in the population. The USDA regulates avian influenza virus, although the USDA regulations exclude any ''low pathogenic strains of avian influenza virus . . . provided that the individual or entity can identify that the agent is within the exclusion category'' (Ref 13). Accordingly, all reported human infections with influenza viruses containing the HA from the A/Gs/Gd/1/96 lineage are considered to be HPAI by the USDA and therefore are regulated as select agents by USDA. However, influenza subject matter experts have indicated that there is a possibility that influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage could be classified as LPAI, as a result of mutation or genetic manipulation and yet cause severe disease in humans. Under the current paradigm, these strains would not be regulated as select agents. Our regulatory strategy would address this potential gap in select agent oversight. We do not anticipate this listing to have a significant impact on the select agent stakeholder community as most entities working with this agent are already registered to work with select agents.

We are also proposing the regulation as a Tier 1 HHS select agent influenza viruses that contain the HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory. Designating these viruses as Tier 1 recognizes the higher public health risk posed by these viruses and establishes security requirements above those currently proscribed by the USDA for HPAI. This strategy also recognizes that HHS considers these types of experiments with these viruses to be of a significant public health concern and is consistent with recent United States Government policy regarding dual use research of concern and gain-of-function research, and the framework for ''Guiding US HHS Funding Decisions about Research Proposals with the Potential for Generating Highly Pathogenic Avian Influenza H5N1 Viruses that are Transmissible among Mammals by Respiratory Droplets'' (February 2013); and therefore warranting increased oversight (Ref 14–16). Designating these agents as HHS select agents also addresses a potential gap in current select agent oversight since laboratory-generated viruses that are capable of causing human disease do not necessarily have to be HPAI.

We recognize that this new regulatory paradigm could have implications on the development of vaccines needed during an influenza outbreak in the human population. We understand the importance of vaccine development and availability. Accordingly, we are seeking comments on how to best accommodate the need of vaccine development while protecting the public health and safety from the accidental or intentional release of these viruses. We are interested in receiving comments on criteria that could be used for the exclusion of vaccine reassortants such as those well-characterized vaccine strains or backbones (*e.g.,* PR8) that have been demonstrated to not pose a severe threat to public health and safety.

B. Legal Authorities

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Response Act) requires the HHS Secretary to establish by regulation a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety. In determining whether to include an agent or toxin on the list, the HHS Secretary considers criteria such as the effect on human health of exposure to an agent or toxin; the degree of contagiousness of the agent and the methods by which the agent or toxin is transferred to humans; the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from an agent or toxin; and the needs of children and other vulnerable populations. The current list of HHS select agents and toxins can be found at 42 CFR 73.3 (HHS select agents and toxins) and 42 CFR 73.4 (Overlap select agents and toxins). The list of HHS and Overlap select agents and toxins is available at: *http://www.selectagents.gov/SelectAgentsandToxinsList.html.*

III. Alternatives Considered

After we published the request for information and comment (RFI) (77 FR 63783) on October 17, 2012, we reviewed all comments received regarding the risk to public health and safety posed by HPAI H5N1 influenza viruses containing the HA from the A/Gs/Gd/1/96 lineage. Even though all HPAI H5 subtype viruses are regulated by USDA/APHIS, whose oversight focuses on the threat to animal health, the majority of commenters believed that HPAI H5N1 influenza viruses containing the HA from the Goose/Guangdong/1/96 lineage pose a severe threat to public health and safety and warrant regulation as HHS select agent. Given the recent research that has identified specific determinants of transmission for H5N1 influenza viruses in ferrets, we conclude that listing influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage as an HHS select agent would allow us to focus on biosafety measures that would mitigate the risk to public health and safety.

In researching the proposed change, we also reviewed how USDA/APHIS designated the avian influenza virus (highly pathogenic) as a non-Tier 1 agent. We conclude that (1) listing influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage as a non-Tier 1 HHS select agent and (2) listing any influenza viruses that contain the

HA from the A/Gs/Gd/1/96 lineage that were made transmissible among mammals by respiratory droplets in a laboratory as a Tier 1 HHS select agent, will ensure that the regulatory oversight of this agent will expand to include the potential threat of these viruses to human health.

III. Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under E.O. 12866 HHS must determine whether a regulatory action is ''significant.'' A ''significant regulatory action'' under E.O. 12866 is defined as (1) an action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (or an economically significant action); (2) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients; or (4) raises novel legal or policy issues.

Based on a literature and database search, the current possessors are academic and government institutions. As such, we conclude that the majority of the viruses that will be regulated by HHS are already regulated by USDA. If it is determined that there are unregistered possessors of the agent as a result of the comments received from this proposed rule, we will include a grace period to allow these individuals to become compliant with the regulations prior to the full implementation. As a result of the search, we conclude that the addition of influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage to the HHS select agent list will not have an annual effect on the economy of $100 million or more, or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. We also believe that this change will not create a serious inconsistency or otherwise interferes with an action taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients; or raises novel legal or policy issues. However, we would be interested in receiving any information from the public on the potential for an economic impact that might result from this proposal.

B. Regulatory Flexibility Act

We are continuing to assess the potential economic effects of this action on small entities, but based on a literature and database search that the current possessors are academic and government institutions, we conclude that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and/or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0920–0576 (expiration November 30, 2015).

Please send written comments on the new information collection contained in this proposed rule or requests for a copy of the data collection to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30329 or send an email to *omb@cdc.gov*.

Based on a literature and database search, the current possessors are academic and government institutions and are already regulated by USDA. Since entities who possess influenza viruses that contain an HA from the A/Gs/Gd/1/96 lineage and are HPAI are already regulated by USDA/APHIS, the proposed rule will require an entity to make an amendment to its registration with the Federal Select Agent Program using relevant portions of APHIS/CDC Form 1 (Application for Registration for Possession, Use, and Transfer of Select Agents and Toxins) to indicate the registration for the viruses regulated by HHS. Estimated time to amend this form is 45 minutes for one select agent. Since this agent is currently regulated by USDA/APHIS, we conclude that there is no increase in the number of respondents.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rulemaking; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

E. Executive Order 13132: Federalism

This proposed rule has been reviewed under E.O. 13132, Federalism. The document does not propose any regulation that would expressly preempt State, local, and Indian Tribe requirements, or that would have any substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.

F. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive branch Departments and Agencies are required to use ''clear Government communication that the public can understand and use.'' E.O. 13563 (Improving Regulation and Regulatory Review) states that ''[our regulatory system] must ensure that regulations are accessible, consistent, written in plain language, and easy to understand.'' HHS has attempted to use plain language in writing this proposed rule and seek comment from the public on our attempt to use plain language in this rulemaking.

V. References

1. WHO, Cumulative number of confirmed human cases for avian influenza A(H5N1) reported to WHO, 2003–2011; *http://www.who.int/influenza/human_animal_interface/H5N1_cumulative_table_archives/en/index.html*.
2. Fukuyama S, Kawaoka Y. The pathogenesis of influenza virus infections: the contributions of virus and host factors. Current Opinions Immunology. 2011 Aug; 23(4):481–6. Epub 2011 Aug 11.
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12. Wan, XF. Lessons from Emergence of A/Goose/Guangdong/1996-Like H5N1 Highly Pathogenic Avian Influenza Viruses and Recent Influenza Surveillance Efforts in Southern China. Zoonoses Public Health. 2012 Sep;59 Suppl 2:32–42. doi: 10.1111/j.1863–2378.2012.01497.x.
13. Title 9: Animals and Animal Products, Part 121—Possession, Use, And Transfer Of Select Agents And Toxins. Available at *http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=b9126e9fba23e3e7933354a1d2630d72&ty=HTML&h=L&n=9y1.0.1.5.58&r=PART*.
14. United States Government Policy for Oversight of Life Sciences Dual Use Research of Concern (March 29, 2012) *http://www.phe.gov/s3/dualuse/Documents/us-policy-durc-032812.pdf*.
15. A Framework for Guiding U.S. Department of Health and Human Services Funding Decisions about Research Proposals with the Potential for Generating Highly Pathogenic Avian Influenza H5N1 Viruses that are Transmissible among Mammals by Respiratory Droplets *http://www.phe.gov/s3/dualuse/Documents/funding-hpai-h5n1.pdf*.
United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (*http://www.phe.gov/s3/dualuse/Documents/oversight-durc.pdf*).

List of Subjects

Biologics, Influenza viruses, Packaging and containers, Penalties, Select agents and toxins, Reporting and recordkeeping requirements, Transportation.

For the reasons stated in the preamble, the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, proposes to amend 42 CFR part 73, as follows:

PART 73 [AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law 107–188, 116 Stat. 637 (42 U.S.C. 262a).

■ 2. Add two entries to the list in paragraph (b) of § 73.3 to read as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(b) * * *

Influenza viruses that contain the hemagglutinin (HA) from the Goose Guangdong/1/96 lineage,

Any laboratory generated Influenza viruses that contain the hemagglutinin (HA) from the A/Goose Guangdong/1/96 lineage that are mammalian transmissible by the respiratory route *

* * * * *

Dated: July 8, 2015.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2015–17435 Filed 7–15–15; 8:45 am]

BILLING CODE 4163–18–P

Notices

Federal Register
Vol. 80, No. 136
Thursday, July 16, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet in Redding, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held from 9:00 a.m. to 3:00 p.m. daily on August 26–27, 2015.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at USDA Service Center, Shasta-Trinity National Forest Headquarters, 3644 Avtech Parkway, Redding, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at USDA Service Center, Shasta-Trinity National Forest Headquarters, 3644 Avtech Parkway, Redding, California. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lesley Yen, Designated Federal Officer, by phone at 530–275–1587 or via email at *lyen@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review proposals for Secure Rural Schools Title II funding, and

2. Vote on proposals to recommend to the Shasta-Trinity National Forest Supervisor for approval.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 25, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lesley Yen, Designated Federal Officer, 14225 Holiday Road, Redding, California 96003; by email to *lyen@fs.fed.us,* or via facsimile to 530–275–1512.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 26, 2015.

David R. Myers,

Shasta-Trinity National Forest Supervisor.

[FR Doc. 2015–17411 Filed 7–15–15; 8:45 am]

BILLING CODE 3411–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: July 22, 2015, 9:30 a.m.–1 p.m. EDT.

PLACE: U.S. Chemical Safety Board, 2175 K St. NW., 4th Floor Conference Room, Washington, DC 20037.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on July 22, 2015, starting at 9:30 a.m. at the CSB's headquarters, located at 2175 K St. NW., 4th Floor Conference Room, Washington, DC 20037. The meeting will focus on the status of several current CSB investigations. The Board will discuss the final report, recommendations, and public comments received on the report of the Caribbean Petroleum incident. The Board may then vote on the Caribbean Petroleum report. The Board will then hear a staff presentation and receive public comments on a recommendation to the BP Global Executive Board of Directors to implement an incident reporting program. In 2012, a CSB staff evaluation of BP's actions taken in response to that recommendation was calendared for discussion in a public setting. The recommendation was issued as part of the investigation report of the BP America Refinery explosion in Texas City, Texas, in March 2005. The Board will also hear staff reports on recommendations related to California's Process Safety Management rules and laboratory safety guidelines from the American Chemical Society. The Board will hear public comments on these recommendations, current investigations, and other matters of concern to the agency in person or via telephone. Please read ''Additional Information'' for phone participation instructions.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least three business days prior to the meeting.

If you are unable to attend the meeting in person, you may participate via phone. Please dial the phone

number five minutes prior to the start of the conference call and provide the confirmation number. The phone number is: 1–877–691–2551 (U.S. Toll Free), or 1–630–691–2747 (U.S. Toll), with confirmation number: 40238148.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to five minutes or less, but commenters may submit written statements for the record.

Contact Person for Further Information

Hillary J. Cohen, Communications Manager, *hillary.cohen@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB Web site at: *www.csb.gov.*

Dated: July 13, 2015.

Rick Engler,

Board Member.

[FR Doc. 2015–17581 Filed 7–14–15; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Second Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 16, 2015, the United States Court of International Trade (''CIT'') issued its final judgment vacating its decision in *Peer Bearing Co.—Changshan* v. *United States,* 853 F. Supp. 2d 1365 (CIT 2013) (''*CPZ II*''), and re-instating the Department of Commerce's (the ''Department'') first redetermination issued on remand (''First Remand Redetermination'') [1] with respect to the Department's final results of the 2006–2007 antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished from the People's Republic of China.[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's amended final results of review [3] and is amending the *Amended Final Results* of review with respect to the margin determined for Peer Bearing Company—Changshan (''CPZ''), an exporter and producer of subject merchandise.

DATES: *Effective Date:* June 26, 2015.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848.

SUPPLEMENTARY INFORMATION:

Subsequent to the publication of the *Final Results,* CPZ filed a complaint with the CIT challenging the methodology used to determine its margin in the *Final Results.*

On January 28, 2011, the CIT issued a remand order to the Department, instructing it, among other things, to: (1) Redetermine the margin for CPZ based on redetermined U.S. prices of CPZ's subject merchandise that are calculated according to a method that complies with law; and (2) review, reconsider, and redetermine the surrogate values for alloy steel wire rod, alloy steel bar, and scrap from the production of cages.[4] On July 1, 2011, the Department issued its First Remand Redetermination. On August 2, 2012, the CIT issued its decision in *CPZ II,*[5] setting aside the Department's First Remand Redetermination as contrary to law; and instructing it to prepare a second remand redetermination to: (1) Determine the U.S. prices for CPZ's subject merchandise according to a lawful method and in accordance with the CIT's current and prior opinion and orders in this case; and, (2) review, reconsider, and redetermine the surrogate values for alloy steel wire rod, alloy steel bar, and scrap from the production of cages in accordance with the CIT's prior opinion and order in this case. The Department issued its draft remand results on September 7, 2012, and its Final Results of Redetermination Pursuant to Court Remand on October 2, 2012 (''Second Remand Redetermination''). On August 30, 2013, the CIT sustained the Department's Second Remand Redetermination (''*CPZ III*'').[6] The Department accordingly amended its *Final Results* effective September 9, 2013.[7]

The Timken Company (''Timken''), an intervening domestic bearing producer, and petitioner in the underlying investigation, appealed the CIT's decision to the CAFC. On September 12, 2014, the CAFC ruled that the Department's application of adverse facts available in its First Remand Redetermination was supported by substantial evidence.[8] As a consequence, it vacated the CIT's decision in *CPZ III* and ruled that on remand, the CIT should reinstate the Department's application of adverse facts available and its calculation of CPZ's margin in its First Remand Redetermination.[9] As noted above, on June 15, 2015, the CIT issued its final judgment vacating its decision in *CPZ II* and re-instating the Department's First Remand Redetermination.[10]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department

[1] On May 23, 2011, the Department issued its Draft Results of Redetermination Pursuant to Court Remand, and on July 1, 2011, it issued its Final Results of Redetermination Pursuant to Remand (July 1, 2011).

[2] *See Peer Bearing Co.—Changshan* v. *United States,* Court No. 09–00052, Slip Op. 15–61 (CIT 2015) (''CIT's Final Order'').

[3] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987 (January 22, 2009) (''*Final Results*''), as amended, *Tapered Roller Bearings from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review,* 78 FR 58996 (September 25, 2013) (''*Amended Final Results*'').

[4] *See Peer Bearing Co.—Changshan* v. *United States,* 752 F. Supp. 2d 1353 (CIT 2011) (''*CPZ I*'').

[5] *See CPZ II.*

[6] *Peer Bearing Co.—Changshan* v. *United States,* Court No. 09–00052, Slip. Op. 13–116 (CIT 2013) (''*CPZ III*'')

[7] *See Amended Final Results.*

[8] *See Peer Bearing Co.—Changshan* v. *United States,* 766 F.3d 1396, 1401 (CAFC 2014).

[9] *Id.,* at 1401.

[10] *See* CIT's Final Order.

must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 16, 2015, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending the *Amended Final Results* with respect to CPZ's weighted-average dumping margin, effective June 26, 2015. The revised dumping margin is as follows:

Exporter	Percent margin
Peer Bearing Company Changshan (''CPZ'')	60.95

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to liquidate entries of subject merchandise based on the revised assessment rates calculated by the Department.

Cash Deposit Requirements

Since the *Final Results,* in September 2008, CPZ was acquired by AB SKF, and the Department determined *via* a successor-in-interest analysis that the post-acquisition, SKF-owned entity, Changshan Peer Bearing was not the successor in interest of CPZ.[11] As a consequence, CPZ no longer exists, and its cash deposit rate does not need to be updated as a result of these second amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 9, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–17486 Filed 7–15–15; 8:45 am]

BILLING CODE

[11] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE038

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of a public work session.

SUMMARY: NMFS has reinitiated consultation under the Endangered Species Act (ESA) on the effects to listed Pacific salmon species from implementation of the Pacific Coast Groundfish Fishery Management Plan. NMFS announces a public work session for interested stakeholders to provide input relative to managing the impacts to salmon from the groundfish fisheries. NMFS is seeking information on the amount and distribution of salmon bycatch, salmon bycatch management in the different sectors of the groundfish fishery, and whether stakeholders anticipate changes in fishing strategies or target species over the next few years that could alter the amount and distribution of salmon bycatch. NMFS and the Pacific Fishery Management Council (Council) will consider the information discussed at the work session in developing and evaluating the proposed action for the ESA consultation.

DATES: The work session will be held as a Webinar on Wednesday July 29, 2015 from 9 a.m. to 2 p.m. Pacific Daylight Time, or until business for the day has been completed. Written comments will also be accepted via email. To be considered in the work session report to the Pacific Fishery Management Council (Council), email comments must be received no later than noon August 7, 2015.

ADDRESSES: Written comments may be submitted via email to *GroundfishBO2015.wcr@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Persons who wish to receive further information about the work session or have questions about this notice should contact Kevin Duffy at *kevin.duffy@noaa.gov* or Becky Renko at *becky.renko@noaa.gov.*

SUPPLEMENTARY INFORMATION:

General

a. *How may I participate in this webinar?* To join the Webinar visit this Internet link: *www.gotomeeting.com/online/webinar/join-webinar* and enter the Webinar ID: 110–773–275. Your name and email address are required. To join the audio, participants can use their computer's microphone and speakers (VoIP) or use their telephone: Toll: +1 (415) 655–0059; Attendee Access Code: 227–478–994. The Audio Pin will be shown after joining the webinar.

System Requirements for participation: For PC-based attendees the system requires Windows® 7, Vista, or XP; for Mac®-based attendees the system requires Mac OS® X 10.5 or newer; for Mobile attendees the system requires iPhone®, iPad®, Android™ phone or Android tablet.

b. How can I get a copy of the webinar materials? The Webinar will be based on documents that are available online in the Council's June 2015 briefing book under agenda item D.3. The relevant briefing book materials include:

- NMFS report 1 on to salmon bycatch in the groundfish fishery
- NMFS report 2, the 2006 supplemental biological opinion,
- NMFS supplemental powerpoint

The Council's June 2015 briefing book document is available on line at *www.pcouncil.org/resources/archives/briefing-books/june-2015-briefing-book/#gfJun2015.*

c. *What if I cannot attend this Webinar*? A video presentation will be available online at *www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html.* Interested persons are welcome to watch the online video presentation and submit written comments by email to *GroundfishBO2015.wcr@noaa.gov* by noon August 7, 2015.

Background

The groundfish fishery is a year-round, multi-species fishery occurring off the coasts of Washington, Oregon, and California. Salmon are encountered as bycatch by vessels fishing for groundfish. NMFS is in the process of evaluating the groundfish fishery's interaction with salmon, including ESA-listed salmon. The purpose of the Webinar is to engage with stakeholders and management entities on information relative to managing impacts to salmon from the groundfish fisheries.

On January 22, 2013, the NMFS West Coast Region's Sustainable Fisheries Division requested reinitiation of ESA section 7 consultation addressing the groundfish fishery's effects on ESA-listed salmon. The request was based on the evolution of the shorebased trawl fishery under the trawl rationalization framework, and new estimates of Chinook and coho salmon catch in the nearshore fixed gear fisheries (open

access and limited entry fisheries) and limited entry sablefish fishery. In October 2014, catch of Chinook in the Pacific whiting fisheries in aggregate exceeded 11,000 Chinook, which is the amount of take anticipated under the existing biological opinion. That exceedance also required reinitiation of consultation. Therefore, the reinitiated consultation will address the effects of all fishing under the Pacific Coast Groundfish Fishery Management Plan on listed salmon species.

NMFS is seeking information on whether stakeholders anticipate changes in the prosecution of the groundfish fishery in the next few years and how those changes may alter the amount and distribution of salmon bycatch and its management in the different sectors. For example, the fishery may change as a result of greater access to rebuilt species and greater flexibility under the individual fishing quota (IFQ) program. These changes may affect the amount and patterns of salmon bycatch. NMFS is also interested in stakeholder input on the types of measures that stakeholders believe could minimize salmon bycatch while allowing flexibility in the groundfish fishery. NMFS intends to consider this information when refining the description of the proposed action under consultation and evaluating the anticipated effects of the fishery on ESA-listed salmonids.

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

Dated: July 13, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–17457 Filed 7–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD982

Addition of Species to the Annexes of the Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region

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

ACTION: Notice; request for public comments.

SUMMARY: During a meeting of the Parties to the Specially Protected Areas and Wildlife (SPAW Protocol), held in Cartagena, Colombia in December 2014, ten species of flora and fauna were added to the Annexes of the SPAW Protocol. The United States voted against these amendments to the Annexes because a failure by the Parties to follow the procedures for adding species to the Annexes prevented the United States from following the domestic procedures that are a prerequisite for acceptance by the United States of such amendments to the SPAW Protocol Annexes. In particular, when granting its advice and consent to ratify the SPAW Protocol, the Senate Foreign Relations Committee expressed its intent that before the Executive Branch decides to accept amendments to the Protocol Annexes, it is to consult with the Senate and solicit public comment through notice in the **Federal Register** (Senate Executive Report 107–8).

The United States has entered a reservation as to the ten newly added species in order to complete an interagency review, to solicit public comment on the addition of those species to the SPAW Protocol Annexes, and to complete consultation with the Senate. The Department of State, U.S. Fish and Wildlife Service, and National Marine Fisheries Service solicit comment on the addition of these ten species to the Annexes, to consider whether or not to withdraw the reservation with respect to some or all of those species.

DATES: Comments must be received by September 14, 2015.

ADDRESSES: You may submit comments on the addition of the ten species to the Annexes of the SPAW Protocol, identified by NOAA–NMFS–2015–0087, by the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0087*.

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

OR

- *Mail:* Submit written comments to Addition of Species to the Annexes of the SPAW Protocol, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910.

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. 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.

FOR FURTHER INFORMATION CONTACT: For further information, contact Angela Somma, NOAA (301–427–8401; *angela.somma@noaa.gov*); and Melida Tajbakhsh, U.S. Fish and Wildlife Service (703–358–1766; *melida_tajbakhsh@fws.gov*). Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, and 7 days a week.

SUPPLEMENTARY INFORMATION: The SPAW Protocol is a protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention or Convention). The Convention also has a Protocol addressing land-based sources of pollution and a Protocol addressing regional cooperation on oil pollution preparedness and response. The SPAW Protocol was adopted in 1990 and entered into force in 2000. The United States ratified the SPAW Protocol in 2003. There are currently 16 State Parties to the SPAW Protocol from throughout the Wider Caribbean Region.

Participants at the December 2014 meeting of the Parties to the SPAW Protocol included representatives from: Bahamas, Barbados, Colombia, Dominican Republic, France, Guyana, the Netherlands, Panama, Saint Lucia, Trinidad and Tobago, and the United States of America. Representatives of several non-governmental organizations also attended as observers.

The U.S. delegation included representatives from the U.S. Department of State; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service; and the U.S. Virgin Islands. Copies of the official ''Report of the Meeting'' (including a complete list of the attendees) and the text of the Convention and SPAW Protocol can be obtained at *http://www.cep.unep.org/meetings/2014/spaw-cop8.*

Convention and Convention Area

The Cartagena Convention is a regional agreement for the protection and development of the marine environment of the wider Caribbean. The Convention was adopted in 1983 and entered into force in 1986. The United States ratified the Convention in 1986. The Convention area includes the marine environment of the Gulf of

Mexico, the Caribbean Sea and the adjacent areas of the Atlantic Ocean south of 30 degrees north latitude and within 200 nautical miles of the Atlantic Coasts of the signatory countries. The United States' responsibility within this Convention area includes: U.S. waters off of Puerto Rico, the Virgin Islands, and peninsular Florida, including the Atlantic coast; the waters off of a number of islands including coastal barrier islands and the Florida Keys; and the Gulf of Mexico waters under U.S. jurisdiction.

The SPAW Protocol authorizes each Party to designate related terrestrial areas over which they have sovereignty and jurisdiction (including watersheds) to be covered by the SPAW Protocol. The United States has not designated any terrestrial areas under the SPAW Protocol and ''does not intend to designate a terrestrial area under the Protocol unless requested to do so by an interested state or territory . . .'' (Senate Executive Report 107–8).

The Annexes and U.S. Obligations Under Each Annex

The SPAW Protocol includes three Annexes listing species that the Parties believe require international cooperation to provide adequate protection. Plant species requiring the highest levels of protection are listed in Annex I, and animal species requiring the highest levels of protection are listed in Annex II. Plants and animals requiring some management, but lesser protections than those afforded to species listed in Annexes I or II, are listed in Annex III.

The Annexes were adopted in 1991. It was envisioned that, once the SPAW Protocol entered into force, species would be added to or deleted from the initial Annexes. However, until the December 2014 meeting of the SPAW Protocol Parties, there had been no changes made to the Annexes.

The SPAW Protocol additionally states that ''a Party may, in the exercise of its sovereignty or sovereign rights, enter a reservation to the listing of a particular species in an annex by notifying the Depositary [Colombia] in writing within 90 days of the vote of the Parties.'' By entering a reservation, the Party is declaring itself to not be bound by the SPAW Protocol's obligations vis-à-vis the particular species.

Annexes I (flora) and II (fauna) are to include endangered and threatened species, subspecies, and their populations as well as rare species. The SPAW Protocol refers to rare species as those ''that are rare because they are usually localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction.''

For fauna listed in Annex II, Parties ''shall ensure total protection and recovery to the species . . . by prohibiting: (i) ''the taking, possession or killing (including, to the extent possible, the incidental taking, possession or killing) or commercial trade in such species, their eggs, parts or products;'' and (ii) ''to the extent possible, the disturbance of such species, particularly during periods of breeding, incubation, estivation or migration, as well as other periods of biological stress.''

Annex III may include species that are endangered or threatened, or species that have endangered or threatened populations, or species that are essential to the maintenance of fragile and vulnerable communities and require some protection to ensure the survival and/or function of the community as a significant part of the ecosystem. 56 FR 12026, 12028 (March 21, 1991). The SPAW Protocol states that ''Each Party shall adopt appropriate measures to ensure the protection and recovery of the species of flora and fauna listed in Annex III and may regulate the use of such species in order to ensure and maintain their populations at the highest possible levels.'' Therefore, some regulated harvest may be permitted for species on Annex III. The protective provisions of this Annex are not intended to be more restrictive than the provisions included in Annexes I and II.

The United States ratified the SPAW Protocol, including Annexes, subject to certain reservations, including the following with respect to Article 11(1): ''The United States does not consider itself bound by Article 11(1) of the [SPAW] Protocol to the extent that United States law permits the limited taking of flora and fauna listed in Annexes I and II [ ] which is incidental, or [ ] for the purpose of public display, scientific research, photography for educational or commercial purposes, or rescue and rehabilitation.''

The United States has not designated any terrestrial area under the SPAW Protocol. The United States explained at the time the SPAW Protocol was ratified that the obligations under the SPAW Protocol do not apply in the United States with respect to terrestrial species: ''The United States does not plan to designate terrestrial area under the Protocol since no state or territory has identified a need or desire to designate terrestrial area. . . .'' (Senate Treaty Document 103–5). In addition, ''Several terrestrial species, *e.g.* bats (*Tadarida brasiliensis* and *Brachyphylla cavernarum*) and falcons (*Falco peregrinus*), are listed in the Annexes. The listing of these species, however, is not intended to describe the relevant terrestrial scope of the Protocol. As the United States has not designated any terrestrial area, the Protocol obligations will not apply with respect to such species.'' *Id.*

Summary of Annexes

Annex I contains a total of 57 plant species. At the time of U.S. ratification of the SPAW Protocol, all plant species on Annex I were either: (1) Listed under the U.S. Endangered Species Act; (2) endemic to Florida and protected under Florida law; (3) occur only on Federal land and are fully protected where they occur; (4) are not native to the United States, and are listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where primarily commercial trade would be prohibited; or (5) are not native to, nor believed to be commercially imported into the United States. 56 FR 12026, 12028 (March 21, 1991). There have been no additions to Annex I since the adoption of the SPAW Protocol.

Annex II includes all sea turtles and all marine mammals in the region. Before the December 2014 meetings, Annex II contained one hundred nine (109) other species. Most of these animal species are either: (1) Listed under the U.S. Endangered Species Act or the Marine Mammal Protection Act; (2) are not native to the United States and are listed in Appendix I of CITES; or (3) are offered complete protection by domestic legislation in all range States (whereby the Lacey Act, among other things, prohibits commercial trade in specimens taken, possessed, transported or sold in violation of foreign law); or (4) are endemic to foreign countries and are not commercially imported into the United States. Six new species were added to Annex II by the SPAW Parties in December 2014. *Id.* Prior to the December 2014 meeting, Annex III included 40 species of plants and 30 species of animals in addition to species of corals, mangroves, and sea-grasses that occur in the region. Four new species of birds and plants were added to Annex III by the SPAW Parties in December 2015.

Composition of the Annexes

The plant and animal species present on each Annex can be found here: *http://www.car-spaw-rac.org/?Annexes-of-the-SPAW-Protocol,83.*

Species Added to the SPAW Annexes in December 2014

Annex II

Species	Common name
CORALS	
Acropora cervicornis	Staghorn coral.
Acropora palmata	Elkhorn coral.
Orbicella (Montastraea) annularis.	Boulderstar coral.
Orbicella (Montastraea) faveolata.	Mountain star coral.
BIRDS	
Catharus bicknelli	Bicknell's Thrush.
Pterodroma hasitata	Black-capped Petrel.

Annex III

Species	Common name
BIRDS	
Patagioenas (Columba) leucocephala.	White-crowned pigeon.
PLANTS	
Guaiacum sanctum	Lignum vitae, Holywood.
Ekmanianthe longifora	Roble Real.
Bombacopsis emarginata	Seibon de Arroyo.

Pending the results of an interagency review and this public comment period and internal and external consultations, including with the Senate, the United States has entered a reservation as to each of these newly added species.

Circumstances of Addition of Species to SPAW Annexes and U.S. Reservation

Article 11(4) of the SPAW Protocol details the requirements for amending the Annexes and states, in part, that a Party may submit a nomination to add a species to an Annex; that the nomination must be accompanied by supporting documentation; and that the SPAW Scientific, Technical and Advisory Committee (STAC) shall review the nomination. At the December 2014 meeting of the SPAW Parties, the Parties decided by majority vote to add these ten species to the SPAW Annexes even though no Party had formally submitted a nomination and no supporting documentation had been made available to Parties. The decision left no time for a full scientific review, a public comment period in the United States, or consultation with the Senate. The United States voted against the decision. Nevertheless, the decision was adopted and the Annexes were amended.

The United States has entered a reservation as to these ten species pending (1) the results of interagency consideration of the added species and the obligations associated with the addition of these species to the Annexes; (2) the solicitation of public comment on the added species; and (3) consultation with the Senate.

Species Under the Jurisdiction of the National Marine Fisheries Service

Four of the ten species added to the Annexes at the December 2014 Cartagena meeting fall under the jurisdiction of the National Marine Fisheries Service (NMFS). As presented earlier in this Notice, four coral species, staghorn coral, *Acropora cervicornis;* elkhorn coral, *Acropora palmata;* boulderstar coral *Orbicella (Montastraea) annularis;* and mountain star coral, *Orbicella (Montastraea) faveolata,* were added to Annex II. All four of these species are listed as threatened species under the U.S. Endangered Species Act (ESA). Staghorn (*A. cervicornis*) and elkhorn coral (*A. palmata*) were listed under the ESA in 2006. Boulderstar (*O. annularis*) and mountain star (*O. faveolata*) coral were listed under the ESA in 2014.

The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.,* (ESA) provides substantial protections for endangered and threatened species. An endangered species is in danger of extinction throughout all or a significant portion of its range (ESA section 3(6), 16 U.S.C. 1532(6)). A threatened species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (ESA section 3(20), 16 U.S.C. 1532(20)). The statute prohibits certain acts for endangered species of fish or wildlife, including import, export, and ''take'' of endangered species unless an exemption applies (ESA section 9(a)(1), 16 U.S.C. 1538(a)(1)). ''Take'' is defined broadly to include harassment, harm, pursuit, hunt, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct (ESA section 3(19), 16 U.S.C. 1532(19)). Violation of these prohibitions can result in criminal as well as civil penalties (ESA section 11, 16 U.S.C. 1540).

Congress allows the Secretary of Commerce or Interior to issue regulations deemed necessary and advisable to provide for the conservation of threatened species (ESA section 4(d), 16 U.S.C. 1533(d)). In such regulations, the Secretary of Commerce or Interior may, but is not obligated, to apply the prohibitions in section 9(a)(1). The ESA prohibits any activities with respect to threatened species in violation of any regulation promulgated under section 4(d). Congress' legal regime for threatened species provides NMFS the discretion to prohibit or regulate activities of concern, while avoiding the use of limited resources to regulate activities that do not cause problems for conservation of the species.

In 2008, NMFS promulgated protective regulations for staghorn and elkhorn coral (73 FR 64264, October 29, 2008). When NMFS issued the regulations, it determined that import and export of these species was already adequately regulated by CITES. NMFS also exempted certain research and restoration activities from the take prohibitions and the need to receive a permit for such activities from NMFS under Section 10 of the ESA.

As explained earlier in this Notice, the addition of a marine species to one of the SPAW Annexes requires the United States to implement protections under Article 11(1) f the SPAW Protocol. If the United States withdraws the reservation to the listing of the four coral species in Annex II, NMFS may need to amend these exemptions to the ESA take prohibitions. Pursuant to the reservation taken by the United States at the time of ratification of the SPAW Protocol, scientific research and restoration activities could continue. However, NMFS may have to authorize such research through individual permits rather than regulations, in order to satisfy reporting requirements. The process of issuing individual permits may slow research and restoration activities, and may result in the redirection of resources from on the ground recovery activities to permitting activities.

In addition, NMFS would no longer be able to allow any commercial trade in these species, even though such trade may be permitted under CITES.

In September 2014, NMFS listed boulder star and mountain star corals as threatened species under the ESA but has not yet enacted protective regulations that impose any of the prohibitions of take that apply to endangered species. NMFS has initiated a process to determine what, if any, take prohibitions should be applied, but that process will take some time and may ultimately allow activities that would be prohibited by the SPAW Protocol. On January 13, 2105, (80 FR 1616) NMFS published an Advanced Notice of Proposed Rulemaking, seeking the public's input into which, if any, of the take prohibitions should be applied to boulder star and mountain star corals. NMFS is carefully examining the public

input it received regarding which of the take prohibitions should be applied.

Species Under the Jurisdiction of the U.S. Fish and Wildlife Service

Six of the ten species added to the Annexes at the December 2014 Cartagena meeting fall under the jurisdiction of the U.S. Fish and Wildlife Service (FWS). As explained earlier in this Notice, two bird species, Zorzal/Tordo de Bicknell (''Bicknell's thrush''), *Catharus bicknelli;* and Petrel de Coronilla negra (''Black-capped petrel''), *Pterodroma hasitata* were added to Annex II. One bird and three plant species, White-crowned pigeon, *Patagioenas (Columba) leucocephala;* Lignum vitae, Holywood, *Guaiacum sanctum;* Roble Real, *Ekmanianthe longifora;* and Seibon de Arroyo, *Bombacopsis emarginata* were added to Annex III. FWS is recommending that the reservations for the six species that traditionally fall within FWS jurisdiction be withdrawn.

If reservations are withdrawn regarding the addition of the species under FWS jurisdiction to the SPAW Annexes, FWS believes that existing federal legislation provides sufficient legal authority to implement United States obligations under the SPAW Protocol with respect to these newly added species.

One bird species, the Black-capped petrel, is a marine species and the obligations of the SPAW Protocol will apply in the United States with respect to this species if the reservation regarding its addition to SPAW Annex II is withdrawn. As explained earlier in this Notice, the addition of a marine species to one of the SPAW Annexes requires the United States to implement protections under Article 11(1) of the SPAW Protocol. The Black-capped petrel is included in the list of migratory birds protected under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.* (MBTA)). The MBTA's protections include prohibitions on taking, possession, killing, and commercial trade. While the MBTA does allow the Secretary of the Interior to authorize hunting of migratory birds, hunting of Black-capped petrel is not authorized. FWS believes that the MBTA provides sufficient authority and provides the protection necessary to meet the United States obligations that would arise upon withdrawing the United States' reservation to the addition of the Black-capped petrel to SPAW Annex II.

Five of the species under the jurisdiction of the FWS, two species of birds (Bicknell's thrush and White-crowned pigeon) and all three species of plants (Lignum vitae, Roble Real, and Seibon de Arroyo), are terrestrial species. As explained earlier in this Notice, the United States has not designated any terrestrial area under the SPAW Protocol and the obligations under the SPAW Protocol do not apply in the United States with respect to terrestrial species. Accordingly, no obligations under the SPAW Protocol would apply to these five terrestrial species if the United States' reservations are withdrawn regarding the addition of these species to the SPAW Annexes.

Comments Solicited

The Agencies solicit comments regarding: (1) The extent to which existing U.S. laws and regulations offer protections for these ten species; and (2) information that informs the United States' consideration of whether or not to withdraw the reservation with respect to some or all of these ten species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 10, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–17408 Filed 7–15–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office for Coastal Management announces its intent to evaluate the performance of the Puerto Rico Coastal Zone Management Program.

Coastal Zone Management Program evaluations are conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The CZMA requires continuing review of the performance of states and territories with respect to coastal program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state or territory has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. When the evaluation is completed, the NOAA Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date, local time, and location of the second public meeting.

DATES: A Puerto Rico Coastal Zone Management Program public meeting will be held on Wednesday, September 2, 2015 at 5 p.m. local time at the Environmental Agencies Building, PR–8838 Km. 6.3, El Cinco, Rio Piedras, San Juan, Puerto Rico.

ADDRESSES: Copies of the most recent performance report, as well as the Office for Coastal Management evaluation notification letter to the territory, are available upon request. Written comments from interested parties are encouraged and a comment period is now open. Comments will be accepted until September 11, 2015. Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, NOAA Office for Coastal Management, 1305 East-West Highway, 11th Floor, N/OCM1, Room 11212, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, NOAA Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Room 11212, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov.*

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: July 9, 2015.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–17412 Filed 7–15–15; 8:45 am]

BILLING CODE 3510–08–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995

(''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before August 17, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0009. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0009, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to: Hannah Ropp, Surveillance Analyst, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

Comments may be also be submitted, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

- The Agency's Web site, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hannah Ropp, Surveillance Analyst, Division of Market Oversight; phone: (202) 418–5228; fax: (202) 418–5507; email: *hropp@cftc.gov;* and refer to OMB Control No. 3038–0009.

SUPPLEMENTARY INFORMATION: This is a request for an extension of a previously approved collection—Extension.

Title: Large Trader Reports (OMB Control No. 3038–0009). This is a request for extension of a currently approved information collection.

Abstract: The reporting rules covered by OMB control number 3038–0009 (''the Collection'') are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs. The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations.

Previously, all reporting rules contained in parts 15 through 19 and 21 of the Commission's regulations were covered by the Collection; however, a recent rulemaking action relocated several recordkeeping and reporting burdens from this collection to a new collection, OMB Control Number 3038–0103. Specifically, that rulemaking appropriated the information collection burdens associated with Commission regulations §§ 17.01, 18.04, and 18.05. Accordingly, this renewal will update the Collection's current burden estimates and officially remove the duplicative burdens from the Collection.

The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (''Act''). Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits. Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options. Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and registrants (including futures commission merchants, introducing brokers, floor brokers, or floor traders), and requires each registrant to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere. Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or derivatives transaction execution facilities equal or exceed Commission-set levels.

Burden Statement: The respondent burden for this collection is estimated to be 0.26 hours per response, on average. These estimates include the time to locate the information related to the exemptions and to file necessary exemption paperwork.

Respondents/Affected Entities: Large Traders, Clearing Members, Contract Markets, and other entities affected by Commission regulations §§ 16.00 and 17.00 as well as parts 19 and 21.

Estimated number of respondents: 453.

Estimated total annual burden on respondents: 18,348 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: July 13, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–17428 Filed 7–15–15; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Amendments to Military Rule of Evidence 803(10)

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Publication of Amendment to Military Rule of Evidence 803(10), Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: On December 1, 2013, Federal Rule of Evidence 803(10) was amended to add a notification requirement prior to the offering of a certification proving the absence of a public record. In

accordance with Military Rule of Evidence 1102(a), unless action to the contrary is taken by the President, amendments to the Federal Rules of Evidence amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments. Therefore, on June 1, 2015, since no action to the contrary was taken by the President, Military Rule of Evidence 803(10) was amended by operation of law.

DATES: The amendment to Military Rule of Evidence 803(10) is effective as of June 1, 2015.

FOR FURTHER INFORMATION CONTACT: Capt. Harlye S. Carlton, USMC, (703) 963–9299 or *harlye.carlton@usmc.mil.* The JSC Web site is located at: *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION:

Annex

Military Rule of Evidence 803(10) was amended as follows:

Military Rule of Evidence 803(10)

(10) *Absence of a Public Record.* Testimony—or a certification under Rule 902—that a diligent search failed to disclose a public record or statement if:

(A) The testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice—unless the court sets a different time for the notice or the objection.

Dated: July 13, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–17429 Filed 7–15–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0093]

Agency Information Collection Activities; Comment Request; Guaranty Agencies Security Self-Assessment and Attestation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995 (44 U.S.C. Chapter 3507(j)), ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: Approval by the OMB has been requested by July 20, 2015. A regular clearance process is also hereby being initiated. Interested persons are invited to submit comments on or before September 14, 2015.

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–2015–ICCD–0093 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

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: Guaranty Agencies Security Self-assessment and Attestation.

OMB Control Number: 1845—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 28.

Total Estimated Number of Annual Burden Hours: 8,848.

Abstract: The E-Government Act (Pub. L. 107–347) passed by the 107th Congress and signed into law by the President in December 2002 recognized the importance of information security to the economic and national security interests of the United States. Title III of the E-Government Act, entitled the Federal Information Security Management Act (FISMA) requires each federal agency to develop, document, and implement an agency-wide program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. FISMA, along with the Paperwork Reduction Act of 1995 and the Information Technology Management Reform Act of 1996 (Clinger-Cohen Act), explicitly emphasizes a risk-based policy for cost-effective security.

FSA is initiating a formal assessment program of the Guaranty Agencies that will ensure the continued confidentiality and integrity of data entrusted to FSA by students and families. The assessment will identify security deficiencies based on the Federal standards described in the National Institute of Standards and Technology (NIST) publications. The comprehensive self-assessment links all questions with a NIST control. This collection of information impacts 28 independently owned Guaranty Agencies (GAs) dispersed throughout the U.S. Each agency is under signed agreement with the Department of Education to service Federal Family Education Loans that have been turned over from the lending institutions to the GAs for the purpose of student loan collections.

Additional Information: This is a request for an emergency clearance to enable Federal Student Aid (FSA) to ensure that all data collected and managed by Guaranty Agencies (GAs) in support federal student financial aid programs is secure. FSA is initiating a formal assessment program for ensuring the GAs have security protocols in place to protect the confidentiality and integrity of data entrusted to FSA by students and families. This assessment is designed to identify security deficiencies based on the federal standards described in the National Institute of Standards and Technology publications.

Dated: July 13, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer (OCPO), Office of Management.

[FR Doc. 2015–17415 Filed 7–15–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to the List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: The Department of Energy (''Department'' or ''DOE'') periodically publishes revisions to the list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (''EEOICPA'' or ''Act''). This Notice amends the list of covered facilities by correcting the location information for Dow Chemical Company in California, and removing the designation of the Ashland Oil site in Tonawanda, New York; the Middlesex Municipal Landfill in Middlesex, New Jersey; the Seaway Industrial Park in Tonawanda, New York; the Shpack Landfill in Norton, Massachusetts; and the Woburn Landfill in Woburn, Massachusetts as atomic weapons employer (''AWE'') facilities.

DATES: Effective July 16, 2015.

ADDRESSES: The Department welcomes comments on this Notice. Comments should be addressed to: Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (AU–10), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Patricia R. Worthington, Ph.D., Director, Office of Health and Safety (AU–10), (301) 903–5926.

SUPPLEMENTARY INFORMATION: This Notice amends the list of covered facilities by correcting the location information for Dow Chemical Company in California, and removing the designation of the Ashland Oil site in Tonawanda, New York; the Middlesex Municipal Landfill in Middlesex, New Jersey; Seaway Industrial Park in Tonawanda, New York; the Shpack Landfill in Norton, Massachusetts; and the Woburn Landfill in Woburn, Massachusetts as AWE facilities. Previous lists or revisions were published by DOE on February 11, 2013 (78 FR 9678), February 6, 2012 (77 FR 5781); May 26, 2011 (76 FR 30695); August 3, 2010 (75 FR 45608); April 9, 2009 (74 FR 16191); June 28, 2007 (72 FR 35448); November 30, 2005 (70 FR 71815); August 23, 2004 (69 FR 51825); July 21, 2003 (68 FR 43095); December 27, 2002 (67 FR 79068); June 11, 2001 (66 FR 31218); and January 17, 2001 (66 FR 4003).

Purpose

EEOICPA establishes a program to provide compensation to certain employees who develop illnesses as a result of their employment with DOE and its predecessor Agencies, as well as employees of certain of its contractors, subcontractors, beryllium vendors and AWEs. Section 7384l(4) of EEOICPA defines an AWE as ''an entity, other than the United States, that—(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an [AWE] for purposes of the compensation program.'' Section 7384l(5) defines an AWE facility as ''a facility, owned by an [AWE], that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.''

It has recently come to the attention of the Department that the location at which the Dow Chemical Company in California performed activities of an AWE for purposes of EEOICPA was in Pittsburg, California, *not* Walnut Creek, California, as previously indicated in the **Federal Register**.

In addition, the Ashland Oil site in Tonawanda, New York; the Middlesex Municipal Landfill in Middlesex, New Jersey; Seaway Industrial Park in Tonawanda, New York; the Shpack Landfill in Norton, Massachusetts; and the Woburn Landfill in Woburn, Massachusetts, were designated as AWE facilities in the Department's previous lists even though they did not meet the statutory definition of AWE facilities. Records related to these five locations indicate that these facilities were not owned by an AWE and do not meet the definition of AWE facilities because, as disposal or landfill sites, they did not ''process'' or ''produce,'' for use by the United States, material that emitted radiation and was used in the production of an atomic weapon. Therefore, the designation of these five locations as AWE facilities was erroneous.

This Notice formally makes the changes to the listing of covered facilities as indicated below:

- The site location for Dow Chemical Company is changed from Walnut Creek, California, to Pittsburg, California.
- The Ashland Oil site in Tonawanda, New York, in no longer designated as an AWE facility.
- The Middlesex Municipal Landfill in Middlesex, New Jersey, is no longer designated as an AWE facility. This action has no effect on the separate status of this worksite as a DOE facility in 1984 and 1986 when environmental remediation services were conducted by Bechtel National Inc., pursuant to a contract with DOE.
- Seaway Industrial Park in Tonawanda, New York, is no longer designated as an AWE facility.
- The Shpack Landfill in Norton, Massachusetts, is no longer designated as an AWE facility.
- The Woburn Landfill in Woburn, Massachusetts, is no longer designated as an AWE facility.

Issued in Washington, DC, on July 9, 2015.

Matthew B. Moury,

Associate Under Secretary for Environment, Health, Safety and Security.

[FR Doc. 2015–17443 Filed 7–15–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension With Changes

AGENCY: U.S. Energy Information Administration, Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Energy Information Administration (EIA) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995.

The information collection requests a three-year extension of its Quarterly Electricity Imports and Exports Report, OMB Control Number 1905–0208. The proposed collection is a census of companies that (1) import or export electricity, (2) operate electric systems to cause the flow of electricity, or (3) own transmission facilities that make possible the flow of electricity across U.S. international borders. The volume of physical electricity imports and exports is reported as transaction volumes, implemented and actual interchange, and metered flow. Transaction volumes are reported with their associated transaction characteristics and payments or receipts. The collection supports the U.S. Department of Energy's regulation of cross border transmission/distribution facilities and electricity exports.

DATES: Comments regarding this proposed information collection must be received on or before August 17, 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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer,Office of Information and Regulatory Affairs, Office of Management and Budget,New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to William Booth by fax at (202) 287–1960, or by email at *William.booth@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William Booth at *William.booth@eia.gov.* The draft form and instructions are available at *http://www.eia.gov/survey/changes/electricity/.*

SUPPLEMENTARY INFORMATION:

This information collection request contains:

(1) *OMB No.* 1905–0208;

(2) *Information Collection Request Title:* Quarterly Electricity Imports and Exports Report;

(3) *Type of Request:* Revision of a currently approved collection;

(4) *Purpose:* Form EIA–111 collects U.S. electricity import and export data. The data are used to get an accurate measure of the flow of electricity into and out of the United States. The import and export data are reported by U.S. purchasers, sellers and transmitters of electricity, including persons authorized by Order to export electric energy from the United States to foreign countries, persons authorized by Presidential Permit to construct, operate, maintain, or connect electric power transmission lines that cross the U.S. international border, and U.S. Balancing Authorities that are directly interconnected with foreign Balancing Authorities. Such entities are to report monthly data on aggregate flows of electric energy received and delivered across the border, the cost associated with the transactions, metered flows over transfer facilities and actual and implemented interchange on a quarterly reporting cycle. The data collected on this form may appear in various EIA publications;

(4a) *Proposed Changes to Information Collection:* The data element ''Transfer Facility's Presidential Permit numbers'' is changed to ''Transmission Provider/Transfer Facility(ies)'' in the sections ''Imports into the U.S. from Canada or Mexico,'' ''Exports from the U.S. to Canada or Mexico.'' and ''Implemented Interchange.'' A new section for reporting ''Metered Flow on Transfer Facilities'' is added to collect monthly metered cross border flow over Presidential Permit holders and other transfer facilities;

(5) *Annual Estimated Number of Respondents:* 176;

(6) *Annual Estimated Number of Total Responses:* 704;

(7) *Annual Estimated Number of Burden Hours:* 1056;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $76,000 (1,056 burden hours times $71.97 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on July 10, 2015.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2015–17444 Filed 7–15–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–29–003]

PJM Interconnection, LLC; Notice of Filing

Take notice that on July 9, 2015, PJM Interconnection, L.L.C. submitted revisions to the its Open Access Transmission Tariff and Amended and Restated Operating Agreement, pursuant to the Federal Energy Regulatory Commission's June 9, 2015 Order.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 July 20, 2015.

Dated: July 10, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17438 Filed 7–15–15; 8:45 am]

BILLING CODE 6717–01–P

[1] *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,208 (2015) (June 9 Order).

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:

Docket Numbers: RP15–1062–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) rate filing per 154.204: Inactive Points to be effective 7/18/2015.
Filed Date: 6/17/15.
Accession Number: 20150617–5221.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: RP15–1063–000.
Applicants: Black Hills Shoshone Pipeline, LLC
Description: Compliance filing per 154.203: Black Hills Shoshone Pipeline LLC Baseline Tariff Filing to be effective 7/1/2015.
Filed Date: 6/17/15.
Accession Number: 20150617–5269.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: RP15–1064–000.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing per 154.203: Honeoye Storage Corp, Pipeline Map Compliance Filing to be effective 8/1/2015.
Filed Date: 6/18/15.
Accession Number: 20150618–5050.
Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: RP15–1065–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (Encana 37663–105) to be effective 6/18/2015.
Filed Date: 6/18/15.
Accession Number: 20150618–5079.
Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: CP15–519.
Applicants: TC Offshore LLC.
Description: Abbreviated Application to Abandon Part 157 Service Rate Schedule X–64 of TC Offshore LLC under CP15–519.
Filed Date: 6/18/15.
Accession Number: 20150618–5131.
Comments Due: 5 p.m. ET 7/9/15.

Docket Numbers: RP15–1066–000.
Applicants: Bobcat Gas Storage.
Description: § 4(d) rate filing per 154.204: Bobcat 2015 Cleanup Filing to be effective 7/20/2015.
Filed Date: 6/19/15.
Accession Number: 20150619–5056.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: RP15–1067–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) rate filing per 154.204: Egan 2015 Cleanup Filing to be effective 7/20/2015.
Filed Date: 6/19/15.
Accession Number: 20150619–5057.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: RP15–1068–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) rate filing per 154.204: ETNG 2015 Negotiated Rate Cleanup Filing to be effective.
Filed Date: 6/19/15.
Accession Number: 20150619–5058.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: RP15–1069–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: § 4(d) rate filing per 154.204: SGSC 2015 Negotiated Rates Cleanup Filing to be effective 7/20/2015.
Filed Date: 6/19/15.
Accession Number: 20150619–5059.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: RP15–1070–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) rate filing per 154.204: NAESB Revisions to be effective 7/20/2015.
Filed Date: 6/19/15.
Accession Number: 20150619–5064.
Comments Due: 5 p.m. ET 7/1/15

Docket Numbers: RP15–1071–000.
Applicants: High Point Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: Off-System Capacity Filing to be effective 7/23/2015.
Filed Date: 6/22/15.
Accession Number: 20150622–5077.
Comments Due: 5 p.m. ET 7/6/15.

Docket Numbers: RP15–1072–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) rate filing per 154.204: BG Energy Merchants' Negotiated Rate to be effective 6/23/2015.
Filed Date: 6/22/15.
Accession Number: 20150622–5135.
Comments Due: 5 p.m. ET 7/6/15.

Docket Numbers: RP15–1073–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) rate filing per 154.204: 2015 Revised Non-conforming Negotiated SA of Basin Electric to be effective 6/1/2015.
Filed Date: 6/22/15.
Accession Number: 20150622–5175.
Comments Due: 5 p.m. ET 7/6/15.

Docket Numbers: RP15–584–000.
Applicants: Rockies Express Pipeline LLC.
Description: Compliance filing per 154.501: Refund Report RP15–584 to be effective N/A0.
Filed Date: 6/22/15.
Accession Number: 20150622–5183.
Comments Due: 5 p.m. ET 7/6/15.

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.

Filings in Existing Proceedings

Docket Numbers: RP15–905–001.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance filing per 154.203: Compliance to RP15–905–000. to be effective 6/1/2015.
Filed Date: 6/18/15.
Accession Number: 20150618–5034.
Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: RP15–905–001.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance filing per 154.203: Compliance to RP15–905–000. to be effective 6/1/2015.
Filed Date: 6/18/15.
Accession Number: 20150618–5034.
Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: RP15–276–001.
Applicants: MoGas Pipeline LLC.
Description: Compliance filing per 154.203: MoGas Pipeline LLC Compliance Filing to be effective 7/1/2015.
Filed Date: 6/19/15.
Accession Number: 20150619–5098.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: RP15–23–007.
Applicants: Transwestern Pipeline Company, LLC.
Description: Compliance filing per 154.203: RP15–23 Rate Case Settlement Agreement to be effective N/A.
Filed Date: 6/22/15.
Accession Number: 20150622–5000.
Comments Due: 5 p.m. ET 7/6/15.

Docket Numbers: RP15–956–002.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing per 154.203: Compliance Filing in RP15–596–000., *et al.* to be effective 5/1/2015.
Filed Date: 6/23/15.
Accession Number: 20150623–5029.
Comments Due: 5 p.m. ET 7/6/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: June 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17440 Filed 7–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM15–20–000]

Five-Year Review of the Oil Pipeline Index; Notice Regarding Conference

On June 30, 2015, the Commission issued a notice of inquiry (NOI) in the above-captioned proceeding initiating its five-year review of the oil pipeline index. The Commission stated that it planned to hold a conference on July 30, 2015, regarding the issues raised by the NOI.[1]

The conference will be held on July 30, 2015, from 2:00 p.m. to 3:30 p.m. (EST), at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The conference will be led by Commission Staff and may be attended by one or more Commissioners.

The purpose of the conference is to gain an understanding of the positions of the parties in advance of the filed comments in this proceeding. At the conference, interested persons will be permitted to give brief presentations regarding the index level proposed in the notice of inquiry and any alternative methodologies for calculating the index level. Each presenter will be allowed up to 15 minutes as time permits based on the number of presentations.

The technical conference will not be transcribed. However, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with Internet access who wants to listen to the conference can do so my navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference in the Calendar. The Calendar will contain a link to the webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via a phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Those interested in providing presentations are asked to submit a brief request to speak in this docket on or before July 15, 2015, by completing the form available at: (*https://www.ferc.gov/whats-new/registration/07-30-15-RM-15-20-000-speaker-form.asp*). Once the speaking requests have been submitted, a further notice will be issued with the speaking schedule for the conference.

This conference is open to the public. Pre-registration for attending is not required, but is recommended. Registrations can be made at: (*https://www.ferc.gov/whats-new/registration/07-30-15-form.asp*).

Commission conferences are accessible under section 208 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For further information about these conferences, please contact: Sarah McKinley, Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Dated: July 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17423 Filed 7–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–523–000]

American Midstream (Midla), LLC; Notice of Application

Take notice that on June 29, 2015, American Midstream (Midla), LLC (Midla) filed an application with the Federal Energy Regulatory Commission pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authority to construct its Natchez Pipeline, consisting of approximately 51.97 miles of 12-inch-diameter pipeline and approximately 0.5 miles of 4-inch-diameter lateral pipeline from interconnections with Tennessee Gas Pipeline Company, L.L.C. and Columbia Gulf Transmission, LLC in the Winnsboro, Louisiana area, through Franklin, Catahoula, and Concordia Parishes, Louisiana, under the Mississippi River, and into Adams County, Mississippi to the Natchez, Mississippi area. The Natchez Pipeline will provide up to 48,300 Dekatherms per day at an estimated cost of $66.2 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to Dennis J. Kelly, Senior Counsel for Midla, 1400 16th Street, Suite 300, Denver, CO 80202, by phone at (720) 457–6076 or by email at *dkelly@AmericanMidstream.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance

[1] *Five-Year Review of the Oil Pipeline Index,* 151 FERC ¶ 61,278 (2015).

[2] The webcast will continue to be available on the Calendar of Events on the Commission's Web site at *www.ferc.gov* for three months after the conference.

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 seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on July 31, 2015

Dated: July 10, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17441 Filed 7–15–15; 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: EC15–153–000.

Applicants: PowerOne Corporation, ResCom Energy LLC.

Description: Supplement to June 2, 2015 Application under Section 203 of ResCom Energy LLC, *et al.*

Filed Date: 7/9/15.

Accession Number: 20150709–5300.

Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: EC15–165–000.

Applicants: Samchully Power & Utilities 1 LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Samchully Power & Utilities 1 LLC.

Filed Date: 7/10/15.

Accession Number: 20150710–5103.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: EC15–166–000.

Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, Bishop Hill Interconnection LLC, Buckeye Wind Energy LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC, Wolverine Creek Goshen Interconnection, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Beech Ridge Energy LLC, *et. al.*

Filed Date: 7/10/15.

Accession Number: 20150710–5105.

Comments Due: 5 p.m. ET 7/31/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1371–001*; ER13–1371–002*.

Applicants: GP Big Island, LLC.

Description: Supplement to the June 23, 2015 and July 1, 2015 GP Big Island, LLC tariff filings.

Filed Date: 7/10/15.

Accession Number: 20150710–5107.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–528–002.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: OATT Order No. 676–H Revised Second Compliance Filing to be effective 5/15/2015.

Filed Date: 7/10/15.

Accession Number: 20150710–5136.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2146–000.

Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated, Pennsylvania Electric Company, Trans-Allegheny Interstate Line Company, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Metropolitan Edison Company.

Description: Section 205(d) Rate Filing: American Transmission Systems Inc., *et al.* Filing of New Service Agreements to be effective 9/7/2015.

Filed Date: 7/9/15.

Accession Number: 20150709–5196.

Comments Due: 5 p.m. ET 7/30/15.

Docket Numbers: ER15–2148–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original Service Agreement No. 4189 (Queue Z2–012) to be effective 6/10/2015.

Filed Date: 7/10/15.

Accession Number: 20150710–5041.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2149–000.

Applicants: Century Marketer LLC.

Description: Baseline eTariff Filing: MBRA Tariff to be effective 9/24/2015.

Filed Date: 7/10/15.

Accession Number: 20150710–5084.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2150–000.

Applicants: PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.

Description: Section 205(d) Rate Filing: PPL Electric submits Coordination Agreement No. 1015 with Borough of Catawissa to be effective 1/1/2014.

Filed Date: 7/10/15.

Accession Number: 20150710–5085.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2151–000.

Applicants: PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.

Description: Section 205(d) Rate Filing: PPL submits Coordination Agreement No. 1027 with Borough of Watsontown to be effective 1/1/2014.

Filed Date: 7/10/15.

Accession Number: 20150710–5086.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2152–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: Niagara Mohawk filing of an amended CRA between NMPC and RG&E to be effective 5/29/2015.

Filed Date: 7/10/15.

Accession Number: 20150710–5088.

Comments Due: 5 p.m. ET 7/31/15.

Docket Numbers: ER15–2153–000.

Applicants: AEP Generation Resources Inc.

Description: Section 205(d) Rate Filing: Ohio Power Supply Agreement Cancellation to be effective 6/1/2015.

Filed Date: 7/10/15.

Accession Number: 20150710–5123.

Comments Due: 5 p.m. ET 7/31/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–37–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Supplement to June 22, 2015 Application under Section 204 of Michigan Electric Transmission Company, LLC.

Filed Date: 7/9/15.

Accession Number: 20150709–5302.

Comments Due: 5 p.m. ET 7/20/15.

Docket Numbers: ES15–38–000.

Applicants: MDU Resources Group, Inc.

Description: Application of MDU Resources Group, Inc. for authorization is issue short-term securities in the form of promissory notes and/or commercial paper.

Filed Date: 7/9/15.

Accession Number: 20150709–5303.

Comments Due: 5 p.m. ET 7/30/15.

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: July 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–17422 Filed 7–15–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14677–000]

Clark Canyon Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 21, 2015, Clark Canyon Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Clark Canyon Dam Hydroelectric Project (Clark Canyon Dam Project or project) to be located at the U.S. Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River, near Dillon, Beaverhead County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing Clark Canyon Dam and would consist of the following: (1) A new 360-foot-long, 8-foot-diameter steel penstock within the existing concrete conduit, ending in a trifurcation; (2) two new 35-foot-long, 8-foot-diameter penstocks extending from the trifurcation to the powerhouse, transitioning to 6-foot-diameter before entering the powerhouse; (3) a new 10-foot-long, 8-foot-diameter steel penstock leaving the trifurcation and ending in a 7-foot-diameter cone value and reducer to control discharge into the existing outlet stilling basin; (4) a new 62.5-foot-long, 41-foot-wide reinforced concrete powerhouse containing two vertical Francis-type turbine/generator units rated for 2.35 megawatts each; (5) two new 17-foot-long, 15-foot-diameter tailrace channels connecting the pump/turbine draft tubes with the existing spillway stilling basin; (6) a new 1,100-foot-long, 4.16-kilovolt (kV) buried transmission line from the power house to the substation; (7) a new substation containing step-up transformers and switchgear; (8) a new 7.9-mile-long, 69-kV transmission line extending from the project substation to the Peterson Flat substation (the point of interconnection); and (9) appurtenant facilities. The estimated annual generation of the Clark Canyon Dam Project would be 15.4 gigawatt-hours.

Applicant Contact: Mr. David Boyter, NW Engineering Services, P.C., 1680 Woodruff Park, Idaho Falls, Idaho 83401; phone: (208) 932–2720.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14677–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14677) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 10, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–17439 Filed 7–15–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9930–09–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of West Virginia's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective August 17, 2015 for the State of West Virginia's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On August 19, 2010, the West Virginia Department of Health and Human Resources (WV DHHR) submitted an amended application titled ''Drinking Water Program Electronic Data Receiving System'' for revision of its EPA-authorized Part 142 program under title 40 CFR. EPA reviewed WV DHHR's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve West Virginia's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

WV DHHR was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of West Virginia's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of West Virginia's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–17452 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–09–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Florida's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government

will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. Once an authorized program has EPA's approval to accept electronic documents under certain programs, CROMERR § 3.1000(a)(4) requires that the program keep EPA apprised of any changes to laws, policies, or the electronic document receiving systems that have the potential to affect the program's compliance with CROMERR § 3.2000.

On February 22, 2011, the Florida Department of Environmental Protection (FDEP) submitted an amended application titled ''Electronic Reporting System'' for revisions/modifications of its EPA-authorized programs under title 40 CFR to allow new electronic reporting. EPA reviewed FDEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Florida's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 71, and 122, is being published in the **Federal Register**:

Part 71—Federal Operating Permit Programs;

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System; and

Part 239—Requirements for State Permit Program Determination of Adequacy.

FDEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–17449 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–11–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Vermont's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. Once an authorized program has EPA's approval to accept electronic documents under certain programs, CROMERR § 3.1000(a)(4) requires that the program keep EPA apprised of any changes to laws, policies, or the electronic document receiving systems that have the potential to affect the program's compliance with CROMERR § 3.2000.

On December 5, 2011, the Vermont Department of Environmental Conservation (VT DEC) submitted an amended application titled ''Online Report Submittal System'' for revisions/modifications of its EPA-authorized programs under title 40 CFR to allow new electronic reporting. EPA reviewed VT DEC's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Vermont's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122, 280, and 281, is being published in the **Federal Register**: Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System; and Part 282—Approved Underground Storage Tank Programs.

VT DEC was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–17451 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–59–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Mississippi's request to revise/modify its EPA Administered Permit Programs: The National Pollutant Discharge Elimination System EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective July 16, 2015.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 14, 2010, the Mississippi Department of Environmental Quality (MDEQ) submitted an application titled ''Hazardous Waste Biennial Reporting System'' and ''Regulatory Services Portal'' for revision/modification of its EPA-authorized Part 123 program under title 40 CFR. EPA reviewed MDEQ's request to revise/modify its EPA-authorized Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision/modification set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Mississippi's request to revise/modify its Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program to allow electronic reporting under 40 CFR part 122 is being published in the **Federal Register**.

MDEQ was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015–17450 Filed 7–15–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Federal Deposit Insurance Corporation.

Dated: July 13, 2015.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10515	Premier Bank	Denver	CO	7/10/2015

[FR Doc. 2015–17434 Filed 7–15–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 31, 2015.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Armstrong 2011 Family Trust, Nelba Armstrong, trustee, Emory; Texas; J. Russell Armstrong 2011 GST Trust, John Russell Armstrong, Jr., trustee, both of Commerce, Texas; J. Russell Armstong Trust, John Russell Armstrong, Jr., and Lannette Armstrong Beaver, co-trustees, all of Commerce, Texas; Lannette A. Beaver 2011 GST Trust, Nancy Lannette Armstrong Beaver, trustee, both of Emory, Texas; N. Lannette Armstrong Beaver Trust, John Russell Armstrong, Jr., and Lannette Armstrong Beaver, co-trustees, all of Emory, Texas; John Russell Armstrong, Jr. and Lee Armstrong, both of Commerce, Texas; Matthew Russell*

Armstrong, Baton Rouge, Louisiana; Lannette Armstrong Beaver, Emory, Texas; Rachel Lee Armstrong, Los Angeles, California; Steve Beaver, Emory, Texas; Ryan Embry Beaver, Nashville, Tennessee; Cody Russell Beaver, Emory, Texas; Brin Ashley Parnell, Waco, Texas; collectively acting as a group in concert, to retain voting shares of Emory Bancshares, Inc., and thereby indirectly retain voting shares of The First National Bank of Emory, both in Emory, Texas.

Board of Governors of the Federal Reserve System, July 13, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–17419 Filed 7–15–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Home BancShares, Inc.,* Conway, Arkansas; to merge with Florida Business BancGroup, Inc., and thereby indirectly acquire Bay Cities Bank, both in Tampa, Florida.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *JSA Family Limited Partnership,* Jacksonville, Texas *and Jane Austin Chapman Limited Partnership, L.P.,* Frankston, Texas; each to acquire up to 16 and 15 percent respectively, of the voting shares of Austin Bancorp, Inc., and thereby indirectly acquire voting shares of Austin Bank, Texas National Association, both in Jacksonville, Texas.

2. *Kimble County Bancshares, Inc.,* Junction, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Junction, Texas.

3. *The 2013 Monte Hulse Family Irrevocable Trust I,* Waco, Texas; to acquire up to 30 percent of the voting shares of FCT Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Central Texas, both in Waco, Texas.

Board of Governors of the Federal Reserve System, July 13, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–17420 Filed 7–15–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 1 p.m. on Monday, July 20, 2015.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on July 17, 2015. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered

Discussion Agenda

1. Final Rule to Establish Risk-Based Capital Surcharges for Systemically Important Bank Holding Companies.

2. Final Order Applying Enhanced Prudential Standards to General Electric Capital Corporation under Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Notes: 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made

available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

For more information please contact: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: July 13, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–17505 Filed 7–14–15; 11:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2015–0508]

Waterway Suitability Assessment for Liquefied Natural Gas Facility; Nikiski, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard, at Sector Anchorage, announces receipt of a Letter of Intent (LOI) and Waterway Suitability Assessment (WSA) for a proposed project to construct a Marine Terminal as part of a Liquefaction Facility in Nikiski, Alaska, to export liquefied natural gas (LNG). The LOI and WSA were submitted by ExxonMobil Alaska LNG LLC on behalf of the Alaska LNG Project, the participants in which are Alaska Gasline Development Corporation, BP Alaska LNG LLC, ConocoPhillips Alaska LNG Company, ExxonMobil Alaska LNG LLC, and TransCanada Alaska Midstream LP. The Coast Guard is notifying the public of this action to solicit public comments on the proposed construction of the Marine Terminal.

DATES: Comments and related material must be received by the Coast Guard on or before October 14, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2015–0508 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, 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 notice of availability, call or email LT Eugene Chung, Sector Anchorage Prevention, Coast Guard; telephone 907–428–4189, email *Eugene.Chung@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

The Coast Guard encourages public participation. We request that you submit comments and related materials in response to this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this notice, USCG–2015–0508, and provide a reason for each suggestion or recommendation. You may submit your comments and related 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–2015–0508) in the ''SEARCH'' box and click ''SEARCH.'' Then click on ''Submit a Comment'' on the line associated with this notice.

2. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov,* type the docket number (USCG–2015–0508) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

The Coast Guard does not plan to hold a public meeting; 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 one would aid this evaluation, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Discussion

Under 33 CFR 127.007, an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or Liquefied Hazardous Gas (LHG), where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a

proposed facility or modification to an existing facility, must submit an LOI to the Captain of the Port of the zone in which the facility is or will be located. Under 33 CFR 127.009, after receiving an LOI, the Captain of the Port issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the proposed construction of a Marine Terminal as part of a Liquefaction Facility at Nikiski, Alaska, for production of liquefied natural gas for export, as submitted by ExxonMobil Alaska LNG LLC on behalf of the Alaska LNG Project, the participants in which are Alaska Gasline Development Corporation, BP Alaska LNG LLC, ConocoPhillips Alaska LNG Company, ExxonMobil Alaska LNG LLC, and TransCanada Alaska Midstream LP. Input from the public may be useful to the COTP with respect to developing the LOR. The Coast Guard requests comments to help assess the suitability of the associated waterway for increased LNG marine traffic as it relates to navigation, safety, and security.

On January 24, 2011, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) 01–2011, Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities. NVIC 01–2011 provides guidance for owners and operators seeking approval to construct and operate LNG facilities. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating the project included in the LOI and WSA submitted by ExxonMobil Alaska LNG LLC. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

This notice is issued under authority of 33 U.S.C. 1223–1225, Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.007 and 127.009.

Dated: June 25, 2015.

Paul Mehler III,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 2015–17461 Filed 7–15–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5728–N–02]

Federal Housing Administration (FHA): Small Building Risk Sharing Initiative Final Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Final Notice announces HUD's implementation of an Initiative under the Risk Sharing Program (the ''Initiative''), authorized by Section 542(b) of the Housing and Community Development Act of 1992, to facilitate the financing of small multifamily properties. Through this Final Notice, HUD invites applications for the Initiative described in this Notice from high capacity Community Development Finance Institutions (CDFIs), other non-profit lenders, and public and quasi-public agencies (collectively referred to as Mission Based Lenders), and private, for-profit lenders approved as FHA Multifamily Accelerated Processing (MAP) lenders (referred to as Private Lenders), to participate in HUD's Risk Sharing Program as Qualified Participating Entities (QPEs).

DATES: *Effective Date of Initiative:* July 16, 2015.

Application Date for Mission Based Lenders: Applications will be completed in a two-stage process: Pre-Qualification and Final Application. Pre-Qualification Applications from Mission Based Lenders will be accepted starting on the effective date of this Notice. If the Pre-Qualification Application is approved by HUD the applicant will have 90 days from receipt of HUD's approval to complete its FHA Lender application online and deliver a Final Application to HUD.

Application Date for Private Lenders: Applications will be completed in a two-stage process: Pre-Qualification and Final Application. Pre-Qualification Applications from Private Lenders will be accepted starting six (6) months from the effective date of this Notice. If the Pre-Qualification Application is approved by HUD the applicant will have 90 days from receipt of HUD's approval to deliver a complete Final Application to HUD. (Note Private Lenders must be FHA MAP Lenders in good standing in order to apply; therefore separate FHA Lender applications are not required.)

ADDRESSES: Interested parties are invited to submit applications including information outlined below, within the time frames described above.

FOR FURTHER INFORMATION CONTACT: Diana Talios, Office of Multifamily Housing Programs, Office of Production, Department of Housing and Urban Development, 451 7th Street SW., Room 6148, Washington, DC 20410; email address *Diana.J.Talios@HUD.gov* and telephone number (202) 402–7125 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Purpose

Under the Initiative, applicants qualified as QPEs will rely on a 50 percent risk sharing arrangement with HUD to underwrite, originate, and service loans that (1) are secured with properties of 5 or more rental dwelling units, and (2) do not exceed the amount of $3,000,000, or, in the case of projects located in ''High Cost Areas'' annually designated by HUD, (most recently in Mortgagee Letter 2014–14 [1]), the amount of $5,000,000.

B. Proposed Statutory Changes

HUD intends to pursue statutory changes to Section 542(b) of the Housing and Community Development Act of 1992 that would, through loans originated by lenders that have demonstrated experience in affordable housing lending, remove affordability restrictions currently required under Section 542(b). The change is intended to reduce the burden on owners who access this capital in order to provide affordable housing in their communities. The language would also authorize Ginnie Mae to securitize loans on small buildings made under Section 542(b), which could significantly enhance the impact and utility of the Initiative. If granted this authority by the Congress, HUD would invite applicants that participate under the authority of this Final Notice to modify their agreements to take advantage of such new authority. Until such statutory changes are made, lenders participating in this Initiative may have access to low-cost long-term financing through the Federal Financing Bank (FFB). The FFB Risk Sharing Initiative announced June 26, 2014, now provides capital for multifamily loans insured under Section 542(c) of the Risk Sharing Program. HUD and the Treasury Department are currently formalizing an agreement to expand this capital source to lenders

[1] See *http://portal.hud.gov/hudportal/documents/huddoc?id=14-14ml.pdf.*

participating in the Small Buildings Initiative. Additional application criteria and program standards may be required by HUD and the Treasury Department in order to qualify for FFB financing under this Initiative.

C. Initiative Description

Lenders approved to participate in the Initiative will be authorized to originate, underwrite, and service loans for HUD multifamily mortgage insurance for project acquisition, refinancing, rehabilitation (up to and including substantial rehabilitation) and/or equity take outs, but excluding new construction. The amount of the equity take-out, or ''cash out'', cannot exceed the scope of work that is paid for by the Risk Sharing loan proceeds. Further, the rehabilitation must address all of the capital needs in the Capital Needs Assessment (CNA) and satisfy the reserve requirements for the life of the loan. The cornerstone of the Risk Sharing Program is that the lender shares the insurance risk with FHA. Since lenders will cover 50 percent of the risk of loss under this Initiative, FHA offers participants significantly more flexibility with respect to underwriting terms, and ongoing compliance than is found in Risk Sharing Program elements with higher risk allocations to FHA, and in other FHA Multifamily insurance programs.

Upon presentation of appropriate project information and certifications, HUD will endorse such loans for full mortgage insurance. QPEs will be responsible for the full range of loan management, servicing, and property disposition activities.

Through a Risk Sharing Agreement (RSA) QPEs will contract to assume 50 percent of the risk on each loan they underwrite. In turn, upon a default, HUD will commit to pay an initial claim amount based on 100 percent of the unpaid principal balance of an insured mortgage note plus interest at the mortgage note rate from the date of default to the date of an initial claim payment upon default of the loan and filing of a claim. The loss, if any, will be determined at a later date and HUD and the QPE will share such loss in accordance with the fifty-fifty share of risk assumed by each under the RSA.

D. Contents

This document contains information on applicant eligibility, application requirements, application process, the timeframe for decisions on applications, and other program features and requirements.

II. Background

HUD's 2012 Rental Housing Finance Survey (RHFS) data indicates there are approximately 495,574 small (5–49 units) multifamily rental properties in the United States, constituting more than a quarter of rental units across the nation (2012 Rental Housing Finance Survey). Small multifamily properties tend to be older, located in low-income neighborhoods, and to have lower median rents and higher shares of affordable units than larger multifamily rental properties. The 2012 RHFS also suggests that 87 percent of the owners of this stock are individuals, households and estates, compared to 8 percent of larger properties with 50 or more units. Similarly, according to the RHFS, just 52 percent of small multifamily properties are mortgaged compared to 87 percent of the larger multifamily properties.

Worst case housing needs are defined as renters with very low incomes (below half the median in their area) who do not receive government housing assistance and who either paid more than half their monthly income for rent, lived in severely substandard conditions, or both. Worst case housing needs were 7.7 million in 2013, down from a historic high of 8.5 million in 2011, ending a sustained period of large increases. This represents a 9 percent decline since 2011 yet remains 9 percent greater than in 2009 and 49 percent greater than 2003. Worst case needs affect very low-income renters across racial and ethnic groups, and all types of households.[2]

Long-term fixed rate mortgages made through this Initiative will be especially valuable because smaller properties tend to command modest rents and owners are often unable to raise rents to cover upward interest rate adjustments without causing vacancies. Additionally, the ''mom and pop'' ownership of this inventory faces more constraints in accessing financing in recent years due to increasingly high credit standards and diminished lending, following a significant loss of many community and regional banks in the wake of the 2008 recession.

HUD has chosen to include both Mission Based Lenders (defined to include CDFIs, other nonprofits and quasi-public and public agency lenders) as well as for-profit, private lenders (Private Lenders). Mission Based Lenders will be eligible for the first application round, beginning on the effective date of this Final Notice, while Private Lenders may apply 6 months later. Although the Initial Notice allowed for the admission of consortia or joint ventures comprised of Private Lenders under the control of a Mission Based Lender, HUD determined this would complicate program operations and introduce unnecessary complexity into the program. However, a newly formed organization could be created. The new entity will have to meet all the requirements of this Final Notice including qualifying as an approved FHA non-supervised mortgagee.

The Initiative implemented by this Final Notice is intended to encourage eligible Mission Based and Private Lenders to move into this market or to serve it more fully with an additional source of capital. One common problem facing non-depository CDFIs and other Mission Based Lenders is access to long-term capital, which may limit their ability to provide housing finance to their communities. These organizations can qualify as QPEs by demonstrating that they meet minimum criteria including designation as non-profit entities or as public or quasi-public benefit corporations under the laws of their States of formation, and exemption from Federal income taxation pursuant to the Internal Revenue Code of 1986. These Mission Based Lenders, as well as Private Lenders, must demonstrate that they meet various financial standards, and that a minimum amount of their recent loan activity has been dedicated to the financing of affordable housing.

III. Authority

Section 542(b) of the Housing and Community Development Act of 1992, as amended by Section 307 of the Multifamily Housing Property Disposition Reform Act of 1994, authorizes HUD to enter into RSAs with QPEs. QPE is broadly defined in Section 542(b) to allow HUD to enter into agreements with a range of lenders. Following full consideration of the comments submitted in response to the Initial Notice, HUD is hereby issuing this Final Notice to provide details of the implementation of the Initiative along with descriptions of changes made to the Initiative in response to public comment and/or further consideration of HUD as to how the Initiative should be structured or implemented.

IV. Key Changes Made to Initial Notice

HUD announced a request for comments through a notice published in the **Federal Register** on November 4, 2013, at 78 FR 66043, which solicited public comment for a period of 60 days. The November 4, 2013, notice is referred to as the ''Initial Notice.''

[2] See *http://www.huduser.org/portal/Publications/pdf/WorstCase2015_summary.pdf.*

The following highlights key changes made to the Initial Notice. HUD received 41 public comments from approximately 28 different sources of interest. Respondents included CDFIs and FHA/MAP lenders, but the most prominent respondent group was comprised of nonprofit organizations, mainly membership organizations engaged in affordable housing preservation activities. All public comments may be viewed in their entirety online under docket number FR–5728–N–01 at *http://www.regulations.gov/#!docketDetail;D=HUD-2013-0102.* Also posted on HUD's Multifamily Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/progsec542b* is a summary of the public comments and HUD's responses to the comments received to the Initial Notice.

A. General Comments

Virtually all commenters recognized a pervasive need for programs to deliver capital to small scale lenders, and to promote the preservation of unassisted, affordable, small rental buildings, and they were largely supportive of the Initiative concept and program purposes as described by HUD in the Initial Notice. Some specifically supported the use of HUD's Risk Sharing Program for this purpose as well. Comments made with respect to inclusion of coop housing were consistently positive. Virtually all of the commenters that mentioned HUD's parallel legislative efforts to enhance the program (described in Section I.B. of this Final Notice) were supportive of them.

Although largely supportive of the Initiative, commenters recommended modifications to virtually all elements of the design of the proposed Initiative. Their recommendations addressed the types of lenders and consortia allowed to participate, the standards with which participating lenders should be selected, and the borrowers' ongoing financial and reporting requirements. Even the most fundamental parameters of the Risk Sharing Program drew comments. These included the affordability requirements, loan standards, loan application requirements, and various federal review requirements such as environmental reviews, etc. In some cases recommendations were contradictory, for example some recommended more restrictive affordability requirements while others recommended less restrictive requirements. This section summarizes the key changes made by HUD to the Initial Notice. Complete application requirements and program details can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/progsec542b.*

Specific Changes are highlighted below.

1. *Lender Eligibility:* Expansion of lender eligibility to invite FHA MAP lenders to participate. Their participation will be deferred by 6 months from the initiation of the program, so that CDFIs and other nonprofit, public, or quasi-public organizations can start first and provide HUD with an opportunity to fine tune the program before having to manage larger numbers of participants.

2. *Applicant/Lender Qualification Requirements*

a. Demonstrable experience in affordable housing finance: Applicants are required to provide recent experience in lending for the production and/or preservation of ''affordable housing'' which for this purpose meets the minimum requirements of the Risk Sharing Program. During the past 2 years, no less than 20 percent or 20 of the applicant's multifamily housing loans originated, must have been made for affordable housing as their primary purpose. The Initial Notice required 33 percent of the applicant's loans over the past 2 years or 33 percent of dollars loaned to be dedicated to affordable housing purposes.

b. Financial Capacity: Minimum financial capacity requirements were added since the Initial Notice. Applicants must either have a 20 percent net asset ratio and a minimum net worth of $7.5 million, or a CAMELS composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) [3] or equivalent nationally recognized rating system, and a minimum net worth of $7.5 million. No additional reserves are required so long as this standard is maintained. If the QPE can no longer meet this standard, a dedicated reserve must be established in a financial institution acceptable to HUD.

c. Lender Staff Experience: The Initial Notice required lender's staff to demonstrate 3 years of originating FHA insured loans. This requirement was changed to permit alternative multifamily housing finance experience so long as it is substantial and fully described in the application.

d. Lender's Net Income: Applicants will demonstrate financial solvency by disclosing annual income, as well as expenses and net income for each of the past 5 calendar years, and provide a computation of positive net income from the best 3 of those 5 years.

e. Lender Staff Capacity: Applicants must demonstrate experience with multifamily housing mortgage servicing, and asset management, provide written procedures for work-outs, and describe management responsibilities.

f. Certification of Compliance with Fair Housing and Civil Rights Requirements: An applicant must certify that it is the not subject of a suit filed by the Department of Justice or has an outstanding finding of noncompliance with a civil rights statute.

3. *Eligible Projects and Loan Size Limits:* Projects must consist of 5 or more rental dwelling units (including cooperative dwelling units) on one site. Scattered sites can be considered so long as each site has a minimum of 5 units, and can demonstrate it is one marketable and manageable real estate asset. Loan amounts have been increased from $3 million to $5 million in certain high cost areas. Areas will be designated in HUD's ''Annual Base City High Cost Areas'' Mortgagee Letter. In the Initial Notice, eligible projects consisted of either 5–49 units, or if the project consisted of more than 49 units, the loan amount could not exceed $3,000,000.

4. *Building Owner Requirements:* Audited financial statement requirements may be waived by the QPE when it can be justified by the nature of the project and that the borrower has sufficient capacity to successfully manage the property.

5. *Loan Terms:* Loan terms are changed to allow for balloon payments at the end of year 15 or thereafter, with an amortization term of no more than 30 years. Alternatively, loans may fully amortize over a term of up to 40 years.

V. HUD's Decisions on Applications

HUD will act on Pre-Qualification submissions based on the criteria provided in the Application Requirements posted on the Web at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/progsec542b,* within approximately 30 days of the date HUD deems the application to be complete, either by denying the request or by inviting the applicant to submit a Final Application. HUD will act on Final Applications within approximately 60 days from the date of receipt of the Final Application. This will include notifying applicants determined to be eligible as QPEs, and delivering a RSA. It is important to note that Mission Based Lenders must be approved as FHA Non-supervised Mortgagees in advance of their approval as a QPE. An FHA Lender

[3] See *http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/bsp-2.PDF.*

Approval Application, Form 92001–A, can be downloaded from HUD's Web site at: *http://portal.hud.gov/hudportal/documents/huddoc?id=92001-a.pdf.*

VI. Evaluation of the Initiative

One of the principal purposes of the Initiative is to determine whether, by providing Federal credit enhancement for refinancing and rehabilitation of small multifamily housing, the Initiative is successful in increasing the flow of credit to small multifamily properties. HUD will, therefore, undertake an evaluation of the Initiative to determine the success of the Initiative and will expect participation by selected lenders.

VII. Findings and Certifications

A. Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0500 and 2502–0541. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

B. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 4517th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at this HUD Headquarters Building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (not a toll free number).

Dated: June 30, 2015.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2015–17464 Filed 7–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5173–N–05]

Affirmatively Furthering Fair Housing Assessment Tool: Solicitation of Comment—30-Day Notice Under Paperwork Reduction Act of 1995

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment, for a period of 30 days, consistent with the Paperwork Reduction Act of 1995 (PRA), on the Assessment Tool that would be provided by HUD for use by program participants in completing their assessment of fair housing as required by HUD's Affirmatively Furthering Fair Housing (AFFH) rule. The purpose of the assessment of fair housing (AFH) is to aid HUD program participants in carrying out their statutory duty to affirmatively further fair housing. The Assessment Tool is designed to guide HUD program participants in undertaking a more thorough evaluation of fair housing issues in their respective jurisdictions, and setting goals to overcome issues that are barriers, among other things, to fair housing choice and opportunity. As stated in HUD's September 26, 2014, notice, this Assessment Tool is designed primarily for entitlement jurisdictions and for entitlement jurisdictions partnering with public housing agencies to use in submitting an AFH. The ''primary'' design is also for local governments and consortia required to submit consolidated plans under HUD's Consolidated Plan regulations. Although in the September 26, 2014, notice, HUD previously stated this assessment tool would not be used for regional collaborations, HUD believes that, given the changes made to this assessment tool based on comments received, this assessment tool can also be used for regional collaborations.

The Assessment Tool published on September 26, 2014 provided a 60-day comment period, which commenced the notice and comment process required by the PRA. This 30-day notice completes the public comment process required by the PRA. With the issuance of this notice, and following consideration of public comments received in response to this notice, HUD will seek approval of the Assessment Tool from the Office of Management and Budget (OMB) and assignment of an OMB control number. In accordance with the PRA, the Assessment Tool will undergo this public comment process every 3 years to retain OMB approval.

With this 30-day notice, HUD is publishing two formats of the same assessment tool, each with the same content but slightly different organization. Specifically, the placement of the contributing factor analysis is the only difference between the two formats of the assessment tool. HUD is seeking comments on which format would be the most effective and efficient for program participants to use in conducting the required analysis of contributing factors and related fair housing issues.

DATES: *Comment Due Date:* August 17, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for

public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410–0500; telephone number 202–708–1793 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 19, 2013, at 78 FR 43710, HUD published, for public comment, a proposed rule entitled ''Affirmatively Furthering Fair Housing'' (AFFH). The July 19, 2013, AFFH rule proposed a new approach that would enable program participants to more fully incorporate fair housing considerations into their existing planning processes and assist them in complying with their duty to affirmatively further fair housing as required by the Fair Housing Act (Title VIII of the Civil Rights Act) and other authorities. The new process, the Assessment of Fair Housing (AFH), builds upon and refines the prior fair housing planning process, called the analysis of impediments (AI). As part of the new AFH process HUD advised that it would issue an ''Assessment Tool'' for use by program participants in completing and submitting their AFHs. The Assessment Tool, which includes instructions and nationally-uniform data provided by HUD, consists of a series of questions designed to help program participants identify, among other things, areas of racially and ethnically concentrated areas of poverty, patterns of integration and segregation, disparities in access to opportunity, and disproportionate housing needs.

At the time of publication of the July 19, 2013, AFFH proposed rule, HUD also posted and sought public comment on a draft ''Data Documentation'' paper online at *www.huduser.org/portal/affht_pt.html* (under the heading Data Methodology). HUD requested public comments on the categories, sources, and format of data that would be provided by HUD to program participants to assist them in completing their AFH, and many program participants responded with comments on the Data Documentation paper.

The Assessment Tool that HUD issued for public comment on September 26, 2014 (79 FR 57949) (Initial Assessment Tool), and found at *www.huduser.org/portal/affht_pt.html* was, as HUD noted in the Summary of this notice, primarily designed for use by entitlement jurisdictions and by entitlement jurisdictions and PHAs that are jointly submitting an AFH. As further noted in the Summary, the Assessment Tool, which was the subject of the September 26, 2014, notice and this notice, is also designed for use by local governments and consortia required to submit consolidated plans under HUD's Consolidated Plan regulations, codified in 24 CFR part 91, specifically subparts C and E, which pertain to local governments and consortia.[1] In this notice, HUD uses the term ''entitlement jurisdictions'' to refer to all jurisdictions for which this tool is primarily designed.

In the September 26, 2014, notice HUD also advised that the Initial Assessment Tool was not the tool that would be used by the following program participants: PHAs that would not be making a joint submission; States; and Insular Areas. While the Initial Assessment Tool was tailored primarily for entitlement jurisdictions and joint submissions by entitlement jurisdictions and PHAs, HUD invited comments by all types of program participants, as it, ''present[ed] the basic structure of the Assessment Tool to be used by all program participants, and is illustrative of the questions that will be asked of all program participants.''

HUD followed the September 26, 2014, publication with a notice published on January 15, 2015, at 80 FR 2062, which solicited public comment on a staggered submission deadline for AFHs to be submitted for specific types of program participants. In the January 2015 notice, HUD advised that it was considering providing certain HUD program participants—States, Insular Areas, qualified PHAs,[2] and jurisdictions receiving a small Community Development Block Grant (CDBG) grant with the option of submitting their first AFH at a date later than would otherwise be required for other program participants. In addition to proposing a staggered submission deadline, HUD had previously announced that it would be developing separate assessment tools for certain types of program participants, including States and insular areas, PHAs and program participants submitting AFHs in a regional collaboration.

II. The 60-Day Notice and Initial Assessment Tool

In developing the assessment tool, HUD had four key objectives in mind. First, the assessment tool must ask questions that would be sufficient to enable program participants to perform a meaningful assessment of key fair housing issues and contributing factors [3] and set meaningful fair housing goals and priorities. Second, the assessment tool must clearly convey the analysis of fair housing issues and contributing factors that program participants must undertake in order for an AFH to be accepted by HUD. Third, the assessment tool must be designed so program participants would be able to use it to prepare an AFH that would be accepted by HUD without unnecessary burden. Fourth, the assessment tool must facilitate HUD's review of the AFHs submitted by program participants, since the Affirmatively Furthering Fair Housing rule requires HUD to determine within a certain period of time whether to accept or not accept each AFH or revised AFH submitted to HUD.

With these objectives in mind, HUD issued the Initial Assessment Tool for public comment for a period of 60 days. The 60-day notice then provided a detailed description of the five main sections of the Assessment Tool: Section I—Cover Sheet and Certification; Section II—Executive Summary; Section III—Community Participation Process; Section IV—Analysis; and Section V—Fair Housing Goals and Priorities.

In the 60-day notice, in addition to soliciting comment on the Initial Assessment Tool overall, HUD specifically solicited comments on the following topics:

[1] In HUD's AFFH proposed rule published on July 19, 2013, at 78 FR 43710, HUD noted that a consortium participating in HUD's HOME Investment Partnerships program (HOME program), and which term (consortium) is defined 24 CFR 91.5, must submit an AFH. HUD stated that a HOME consortium is considered a single unit of general local government (see 78 FR at 43731).

[2] Section 2702 of title II of the Housing and Economic Recovery Act (HERA) defined ''qualified PHAs'' as PHAs that have fewer than 550 units, including public housing and section 8 vouchers.

[3] The term ''fair housing determinants'' was changed to ''fair housing contributing factors'' in the AFFH final rule. This notice therefore uses the term ''fair housing contributing factors.''

1. The description of local data and local knowledge;
2. The clarity of the options for including information about the community participation in the AFH;
3. The adequacy of the list of determinants (now contributing factors) in order to produce a meaningful AFH;
4. Aspects of the Publicly Supported Housing (PSH) subsection, specifically: (a) The type of program participant required to include project-level data in tabular format for various categories of PSH; (b) the formatting of the tables; (c) the most effective ways of providing assessment of project-level data in an Assessment Tool used by States;
5. Whether HUD inadvertently failed to consider fair housing issues relating to individuals with disabilities by considering Disability and Access issues separately;
6. The sufficiency and clarity of the Initial Assessment Tool for addressing additional fair housing issues and inability to answer questions due to a lack of data and whether HUD should include instructions on how to address these issues;
7. The content of the tool, the clarity of the questions, and areas of information that are included in the tool, but that are unnecessary to conduct a meaningful AFH, and areas that HUD may have overlooked that should be included in the Initial Assessment Tool;
8. Whether the Initial Assessment Tool can be used by program participants independently, without the need to rely on outside contractors to conduct an AFH;
9. Any additional instructions that would be helpful;
10. The costs associated with gathering and analyzing data necessary for conducting an AFH;
11. Whether program participants anticipate using federal funds to complete an AFH;
12. What strategies program participants can use to reduce the cost and burden of completing an AFH and how to reduce costs of obtaining local data and local knowledge;
13. How do program participants envision joint participation in completing the AFH;
14. Whether the proposed collection of information is necessary for the proper performance of the agency and whether it will have practical utility;
15. The accuracy of the agency's estimate of the burden of collecting the information;
16. Ways to enhance the quality, utility, and clarity of the information to be collected; and
17. Ways to minimize the burden of the collection on those who are required to respond.

III. Public Comments on the 60-Day Notice

By the close of the comment period on November 25, 2015, HUD received 198 public comments. Commenters included PHAs, CDBG grantees, including States and local governments, advocacy groups, nonprofit organizations, and various individuals. All public comments received in response to the 60-day notice can be found at: *http://www.regulations.gov/#!documentDetail;D=HUD-2014-0080-0001.* HUD appreciates the time and effort of all the public commenters in preparing their comments. The information was helpful and valuable.

This section provides a summary of the most significant issues raised by commenters and HUD's responses, including where HUD made changes to the Assessment Tool.

Overview of Significant Issues Raised

The majority of comments offered positive and constructive recommendations for improving the Assessment Tool. Many commenters provided suggestions for expanding certain portions of the assessment tool and for improving the questions and analysis required. Many comments also raised concerns about the assessment tool's burden, the timing of introducing a new analysis mechanism, the reliability of the data to be provided, and its content and the impact on specific types of program participants, including small entities, States, and others. The areas of concern identified by the majority of commenters are discussed below.

Burden

Many commenters stated that the Initial Assessment Tool imposes a significant burden on program participants in several ways. They stated that the amount of time and resources required to complete the Initial Assessment Tool itself is unduly burdensome, especially in light of the amount of local data and local knowledge that program participants must use. Commenters also stated that the community participation process could be very burdensome, especially for jurisdictions such as an entire State. Commenters stated that the additional time and resources required to conduct the type of community participation contemplated would be unduly burdensome. Commenters further stated that the amount of information, both HUD-provided data supplemented by local data and local knowledge, and the number of questions, makes the Initial Assessment Tool unreasonably complex and would likely result in the additional burden of having to hire a consultant in order to complete the AFH.

Commenters also stated that the Initial Assessment Tool would be overly and unnecessarily burdensome on States. While commenters stated that they understood there would be a separate assessment tool for States, they nevertheless expressed concern with having to analyze data that entitlement jurisdictions in their respective States may have already analyzed in preparing their own AFHs. The commenters stated that States should not have to engage in duplicative, redundant analyses.

Other commenter stated that they thought the Initial Assessment Tool would clarify the ''region'' to be analyzed by program participants because the rule did not provide sufficient specificity.

Timing

Several commenters stated that the release of the Initial Assessment Tool is premature. They stated that the AFFH rule should be finalized, the development of the other types of assessment tools to be used should be completed, and that HUD should wait to complete development of the Assessment Tool based on the recent disparate impact case and the upcoming Supreme Court case, which was heard in early 2015 and decided June 25, 2015. The Supreme Court ruled that the Fair Housing Act prohibits discrimination caused by policies or practices that have an unjustified disparate impact because of race, color, religion, sex, familial status, national origin, or disability. *Texas Dep't of Hous. & Cmty Affairs* v. *Inclusive Cmtys* Project, No. 13–1371, 2015 U.S. LEXIS 4249 (June 25, 2015). In that decision, the Supreme Court also acknowledged ''the Fair Housing Act's continuing role in moving the Nation toward a more integrated society.'' *Id.* at *42.

Data

Commenters stated that the Initial Assessment Tool requires too much local data and local knowledge. Other commenters took issue with the data provided by HUD, stating that, in the past, HUD data has been inaccurate and out of date. Commenters stated that the HUD-provided data is unwieldy and difficult to understand. Several commenters specifically referred to the efficacy of using dot density maps and the requirement that the analysis be conducted by neighborhood when the data is at the Census tract level.

Commenters stated that, assuming the HUD-provided data is reliable, the data is most useful at the regional level, but

will be inefficient for use by States. Other commenters requested that the HUD-provided data include datasets of local information that are already available to HUD, so that program participants need not expend additional resources to gather such data.

Content of the Assessment Tool

Several commenters stated that the Initial Assessment Tool is too subjective, stating that the Initial Assessment Tool makes an inappropriate leap from correlation to causation. The commenters stated that there may be alternative causes for the demographic makeup of a certain jurisdiction. Commenters requested that HUD eliminate any questions in the Initial Assessment Tool requiring an essay-type of response, which, the commenters stated, only adds to the subjective nature of the analysis. These commenters stated that they believe the Initial Assessment Tool will not achieve its stated objective because it promotes the creation of policy based on incomplete, and often subjective, information.

Commenters stated that they found the Initial Assessment Tool to be incomplete. These commenters stated that HUD should be asking different questions than those posed in the Initial Assessment Tool, or should add questions to account for situations that HUD may have overlooked. For example, several commenters expressed appreciation for the separate section in the Initial Assessment Tool dedicated to Disability and Access Issues. However, other commenters stated that disability should be a topic that is discussed throughout the Initial Assessment Tool and not confined to one section.

Other commenters stated that HUD does not adequately take into account the issues of housing opportunity and equity affecting women, especially in terms of domestic and sexual violence issues, and lesbian, gay, bisexual, transgender (LGBT) individuals and families. Commenters stated that while there is a lack of data on LGBT individuals and families at the national level, the next version of the assessment tool could provide a mechanism to begin gathering such data. Commenters also made recommendations about items that should be added to the list of contributing factors and suggested edits to the existing language in the Initial Assessment Tool.

Several commenters raised concerns about the Dissimilarity Index. The commenters stated that the next version of the assessment tool should use multiple measures of segregation, because, according to the commenters, the Dissimilarity Index alone is insufficient to fully understand residential segregation patterns in a community and region. The commenters recommended that HUD include additional measures of segregation besides only providing the Dissimilarity Index.

Many commenters stated that the lack of a section on ''Action Steps'' to be taken by program participants weakens the overall purpose of the AFH, and inclusion of such a section would aid in enforcement.

Other commenters stated that the Initial Assessment Tool lacked sufficient guidance for program participants. The commenters requested that HUD define certain terms, add clearer instructions, provide hands-on, in-person training for completing the tool, and develop a helpline at HUD to aid program participants in navigating the complexities of the tool and the data provided.

Small Entities, Joint Participation, and Local Control Issues

Commenters that are or that represent small PHAs and small jurisdictions stated that the Initial Assessment Tool would not be useful for them, and would impose a significant burden. These commenters stated that one way to deal with this burden would be for HUD to encourage, or even require, program participants to complete the AFH jointly in order to reduce the costs of the community participation process and the actual analysis conducted in the Initial Assessment Tool. In contrast, other commenters who stated they would be willing to participate in jointly submitting an AFH raised concerns about doing so and signing a joint certification. The commenters requested that HUD modify the certification language because the commenters stated that they cannot attest to the veracity of the information provided by other program participants.

In a similar vein, commenters, mostly States and local governments, expressed concern that the AFH will result in a loss of local control and will interfere with local decision-making. States and local governments, and PHAs all submitted comments relating to their respective scopes of authority with respect to assessing fair housing choice. These commenters stated that the Assessment Tool appears to be asking program participants to conduct an analysis and take actions beyond the scope of their authority in order to implement plans to effect change with respect to fair housing. The commenters stated that they lack control over other entities and, consequently, cannot be expected to implement plans relating to fair housing.

III. This 30-Day Notice and Revised Assessment Tool

A. Changes to the Assessment Tool

General Approach to Content

In response to public comment HUD has made several changes to the Initial Assessment Tool, which HUD believes address many of the burden and content concerns expressed by the commenters. These changes have resulted in a revised Assessment Tool (Revised Assessment Tool) that is shorter in length, contains fewer questions, and clarifies many of the questions that were in the previous version, and reduces the need for some duplicative analysis. The Revised Assessment Tool also includes detailed instructions to further assist program participants in answering the questions in the AFH and guide them on how to use the HUD-provided data. It also includes an Appendix providing further detail on each of the Contributing Factors referenced in the tool.

HUD is also providing a link for program participants and the public to the Geospatial Mapping Tool (Data Tool), which contains interactive maps and exportable tables. The Data Tool also attempts to provide greater clarity in response to commenters' concerns about the area of analysis, and provides data for the region based on the program participant's Core-Based Statistical Area (CBSA). The Data Tool will also be posted online at: *http://www.huduser.org/portal/affht_pt.html.*

The Data Tool contains the same data as that which was released on September 26, 2014, with some minor changes. Now, the data is accessible through an interactive application on a Web-based interface. Additionally, Table 14 now includes two transit-related indices.

HUD anticipates further changes to the Data Tool prior to its final release for use by program participants. Some of those anticipated changes include:

- Consolidating several redundant tables;
- Modifications to improve the visual presentation of the maps (*i.e.,* contrast and sizes of dots and icons on maps);
- Improved Data Tool functionality to allow the user to better access data on: (1) Locations and demographics of publicly supported housing developments, including census tracts; and (2) the ability to export maps and tables by the program participant for use during the community participation process and as part of the AFH submission to HUD. The export

functionality would apply to both maps and tables. It would not only provide access to the data, but also allow users to filter and sort demographic data for both developments and census tracts by common characteristics. The functionality would be similar to that in HUD's CPD Maps tool. This is intended to reduce burden in using the HUD-provided data to answer the required questions in the Assessment Tool while providing the data that will enable program participants to conduct analyses required to identify key fair housing issues;

- Addition of maps to match updates in the Opportunity Indices;
- Additional datasets to correspond with the analysis in the Assessment Tool;
- Minor changes in terminology to match with the AFH Tool and final rule; and
- Minor changes in descriptions of the data provided (*i.e.,* ''top 5'' becoming ''5 most populous'').

The Revised Assessment Tool includes substantial revisions to the questions that were in the Initial Assessment Tool. HUD has reduced the total number of questions in the analysis section while improving the clarity and utility of the analysis that is required. The Initial Assessment Tool would have required contributing factors to be identified twice, once separately and again in answering the specific questions. The Revised Assessment Tool only requires that contributing factors be identified once. The contributing factors analysis has also been revised by removing the previous requirement to list all contributing factors and then rate their degree of significance. In the Revised Assessment Tool, program participants are required to identify those contributing factors that significantly impact specific fair housing issues, and for the purposes of setting goals prioritize them, giving the highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact compliance with fair housing or civil rights law.

In the Revised Assessment Tool, program participants are asked to provide one overarching narrative to justify the prioritization of contributing factors, rather than a separate explanation for each factor and that factor's level of significance as presented in the Initial Assessment Tool. In addition, the requirement to prioritize goals that was in the Initial Assessment Tool is removed in the Revised Assessment Tool. HUD expects that these changes will reduce burden while still providing the needed information and analysis regarding contributing factors. So long as program participants' goals address significant contributing factors and related fair housing issues, and can be reasonably expected to affirmatively further fair housing, participants' goals can vary.

In the Initial Assessment Tool, separate questions that asked about different protected classes have been combined in the Revised Assessment Tool into one question about all protected classes for which data are provided (for example, race, national origin, and limited English proficiency (LEP)). With this change, program participants can now formulate one answer taking into account all of the data at one time, rather than provide two or three separate answers.

In the Revised Assessment Tool, the wording of certain questions in the analysis section was improved to remove unnecessary complexity and hone the analysis to have the greatest impact. Several questions were reworded to avoid any interpretation that HUD was asking program participants to prepare an ''inventory'' or long list of projects or developments. Other questions were revised because some program participants might construe them to include unintended requests for unduly complex analyses. HUD found that other questions were worded too broadly and left program participants with uncertainty as to the information needed. These questions were narrowed in scope. Throughout the Assessment, HUD made an effort to clarify questions so program participants would understand the question being asked and the analysis sought.

In response to commenters concerns that the requirement to obtain and use local data was too burdensome, the AFFH Final Rule clarifies that ''local data'' refer to ''metrics, statistics, and other quantified information, that are subject to a determination of statistical validity by HUD, relevant to the program participant's geographic areas of analysis,'' and are data ''that can be found through a reasonable amount of searching, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool.'' This clarification is based on the definition of local data included in the final rule, and referenced in the instructions, as data that is already available and easily accessible by the program participant, or data that can be made available at little or no cost. Local knowledge is also defined in the AFFH final rule as information to be provided by the program participant that relates to the participant's geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool. The instructions in the Revised Assessment Tool elaborate on ''information'' as including laws and policies, common neighborhood or area names and borders, information about the housing market and housing stock. Program participants are also required to consider additional information obtained through the community participation and consultation process that is required by the rule.

Additional comments were received on the Initial Assessment Tool requesting further instructions and guidance for program participants. Accordingly, instructions have been added to the Revised Assessment Tool. These instructions provide additional explanations on the use of local data and knowledge in addition to the HUD-provided data. The instructions link each question to the specific maps and data tables that are relevant to that question, along with additional considerations or examples that program participants should keep in mind when answering. These instructions add clarity and guidelines for effective use of the assessment tool. Additionally, HUD is providing an additional appendix in the Revised Assessment Tool, Appendix C, which contains short explanations of each contributing factor contained in the Revised Assessment Tool.

The inclusion of instructions also allows HUD to remove blocks of references to maps and tables that were included in various places in the Initial Assessment Tool, and instead provides a list and short description of the data that will be available on the Data Tool in Appendix A (maps) and Appendix B (tables) of the Revised Assessment Tool. These references, while helpful, in some cases provided less guidance and had the effect of breaking up the flow of questions, with the result that the questions were difficult to comprehend and follow. By removing these references and including instructions HUD believes the Revised Assessment Tool is clearer and easier to understand and complete.

In response to the Initial Assessment Tool, commenters requested more clarity regarding joint submissions. The instructions in the Revised Assessment Tool specify that, when submitting jointly, each program participant is responsible for identifying contributing factors and setting goals within its jurisdiction; however, program

participants submitting jointly are permitted to set joint goals where appropriate. The Initial Assessment Tool did not include this instruction.

Cover Sheet

HUD is committed to assisting program participants in completing their assessment tool in a manner that will allow them to make progress in affirmatively furthering fair housing. While the Initial Assessment Tool provided, at part I item 12, for ''Departmental acceptance or rejection,'' the Revised Assessment Tool refers, at item 11, to ''Departmental acceptance or non-acceptance.'' This change signifies that rather than ending the submission and review of the AFH, non-acceptance will result in a process in which HUD works with the program participant by explaining the reasons for non-acceptance and provides the program participant with an opportunity to submit a revised AFH to address those concerns.

Executive Summary

The Initial Assessment Tool only contained a heading of ''Executive Summary,'' but did not include any further guidance for program participants on what to include in the Executive Summary. The Revised Assessment Tool explains and clarifies the information that program participants should include in the Executive Summary.

Assessment of Past Goals and Actions

The Initial Assessment Tool sought information, at the very end of the analysis, on past goals and actions, asking ''how has the experience . . . with past goals influenced the selection of current goals?'' HUD proposes to place this information at the beginning of the assessment rather than at the end, so that the assessment of current goals can be informed by past experience. Accordingly, the Revised Assessment Tool moves the assessment of past goals and actions to Section IV, immediately prior to the analysis.

Analysis

Segregation/Integration

The Revised Assessment Tool simplifies this topic, which in the Initial Assessment Tool included segregation, integration, and racially and ethnically concentrated areas of poverty (R/ECAPS) under one heading. However, since segregated neighborhoods may be R/ECAPs, but are not always R/ECAPS, the same analysis may not apply equally to segregation/integration and R/ECAPS. In order to facilitate the analysis in these cases, in the Revised Assessment Tool, R/ECAPS is moved to its own separate subsection, and the questions are narrowed in scope to reflect this change.

Also, in the context of segregation/integration, the Initial Assessment Tool considered the Dissimilarity Index a topic area, B.1, but did not provide sufficient guidance as to how this topic was to be addressed. The Dissimilarity Index is a method of analyzing the degree of segregation or integration in a particular geographic area and serves as an analytical tool rather than being a distinct topic within the analysis. The instructions in the Revised Assessment Tool describe, in detail, how it should be appropriately used in conducting the analysis.

In addition, the Revised Assessment Tool removed B.2., the separate Geographic Analysis subtopic, because a geography-based analysis is already required in the analysis of segregation/integration and R/ECAPS (and, indeed, throughout the assessment tool), and a separate topic on geography is redundant in this context.

R/ECAPs

As previously discussed in this notice, HUD has created a separate subsection for R/ECAPs, instead of having the analysis be combined with the Segregation/Integration analysis. The Revised Assessment Tool contains questions specifically about R/ECAPs and the questions have been narrowed in scope from the Initial Assessment Tool.

Disparities in Access to Opportunity

In the Revised Assessment Tool, this topic is changed from the topic entitled ''Disparities in Access to Community Assets and Exposure to Adverse Community Factors'' in the Initial Assessment Tool to ''Disparities in Access to Opportunity.'' Instead of two separate topics on disparities in access to community assets and exposure to adverse community factors, the Revised Assessment Tool combines the questions under these topics under a single heading. HUD has also consolidated and streamlined questions, including those on access to jobs, access to transportation, and exposure to poverty and environmental health hazards.

Disproportionate Housing Needs

In the Revised Assessment Tool, HUD has consolidated certain questions in this section to eliminate duplication.

Publicly Supported Housing[4] Analysis

In the Revised Assessment Tool, HUD makes several revisions to this subtopic. Under ''Publicly Supported Housing Location and Occupancy,'' question ii, which in the Initial Assessment Tool was on ''the racial composition of occupants in publicly supported housing in R/ECAPs,'' is broadened in the Revised Assessment Tool to ''publicly supported housing demographics.'' This revision recognizes that segregation in housing can involve protected characteristics other than race.

Also under this subtopic, question iii, iv, and v in the Initial Assessment Tool asked the same question about race or ethnicity of residents of public housing, other HUD multifamily developments, and project-based Section 8 housing, and Low-Income Housing Tax Credit (LIHTC) housing. The Revised Assessment Tool streamlines these questions into a single question to be answered with respect to each of the four categories of housing. Additionally the question itself is streamlined by removing a sentence about segregation that would be redundant of an earlier question under the same topic, and the wording of the subtopic has been simplified to be more understandable. HUD also determined that several questions relating to policies for various housing programs were more appropriately considered in the Contributing Factors analysis.

The Revised Assessment Tool also includes properties converted under the Rental Assistance Demonstration (RAD) in new question (1)(b)(iv)(A).

The Revised Assessment Tool also contains an analysis within the publicly supported housing section of disparities in access to opportunities for residents of publicly supported housing.

Disability and Access Analysis

The Revised Assessment Tool removes an instruction that was

[4] The term ''publicly supported housing'' refers to housing assisted with funding through federal, state, or local agencies or programs as well as housing that is financed or administered by or through any such agencies or programs. HUD is currently providing data on five specific categories of housing: Public Housing; Project-Based Section 8; other HUD multifamily housing (including Section 202—Supportive Housing for the Elderly, Section 811—Supportive Housing for Persons with Disabilities, and other multifamily assisted properties); Low Income Housing Tax Credit (LIHTC) housing; and Housing Choice Vouchers (HCV). Other publicly supported housing relevant to the analysis includes housing funded through state and local programs, other federal agencies, such as USDA and VA, or other HUD-funded housing not captured in the five categories listed above.

included in the Initial Assessment Tool that read:

> There are limited sources of nationally consistent data on the extent to which individuals with different types of disabilities are able to access housing and community assets. To complete this section, program participants should solicit input from individuals with disabilities and disability advocates, who often have the most relevant information on these topics.

This instruction was included in the Initial Assessment Tool to help explain why HUD was placing Disability and Access Issues in a separate section of the AFH analysis. However, HUD recognizes that this instruction in the Initial Assessment Tool may have been confusing to some public commenters and may have suggested that extra efforts to obtain local data and local knowledge would be required to complete the Disability and Access Issues section of the assessment tool. To eliminate the potential confusion that this instruction may have caused, the instruction in the Revised Assessment Tool identifies specific questions for which HUD provides data as well as those questions for which HUD does not have data. There is no requirement in the Disability and Access Issues section for program participants to make an extra effort to obtain specific local data. Instead, as required in all sections of the Assessment Tool, program participants are only required to obtain and use local data that can be found through a reasonable amount of search and are readily available at little or no cost.

The Disability and Access Analysis section has been streamlined in the Revised Assessment Tool. A question on ''the principal challenges faced by persons with disabilities in the Jurisdiction and Region'' has been removed, as that question is answered by the discussion of the disparities in access to opportunity and the contributing factors within the same section. Additionally, the list of opportunity indicators (in the context of disparities in access to opportunity) is streamlined in the Revised Assessment Tool.

In the list of ''Disability and Access Issues Contributing Factors,'' a new item on ''State or local laws, policies, or practices that discourage individuals with disabilities from being placed in or living in apartments, family homes, and other integrated settings'' is added in the Revised Assessment Tool. This addition recognizes that there can be laws, policies, or practices affecting persons with disabilities other than land use and zoning laws, especially in the context of the Supreme Court's decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999).[5]

Fair Housing Enforcement, Outreach Capacity, and Resources Analysis

This section, which was titled ''Fair Housing Compliance and Infrastructure'' in the Initial Assessment Tool, has been abbreviated through the elimination of a question and the questions associated with the contributing factors, and has been renamed in the Revised Assessment Tool.

Contributing Factors

As noted in the Summary above, HUD is providing two formats of the Revised Assessment Tool for public comment. The two formats do not differ in content or analysis required by the assessment tool, but do differ with respect to where the analysis of contributing factors occurs.

Option A of the Revised Assessment Tool provides a categorized list of the most common contributing factors relating to all fair housing issues (but it is not an exhaustive list of all possible contributing factors) in one location following the analysis sections of Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs. The same categorized list of contributing factors also follows each of the following sections: Publicly Supported Housing Analysis; Disability and Access Analysis; and Fair Housing Enforcement, Outreach Capacity, and Resources Analysis. In identifying contributing factors, program participants are instructed to note which fair housing issue(s) (Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) the selected contributing factor impacts. Program participants must also include any other contributing factors impacting fair housing issues in their jurisdiction or region that are not included in the provided lists.

Option B of the Revised Assessment Tool contains more discrete lists of the most common contributing factors (but each list is not an exhaustive list of all possible contributing factors) after each section of analysis: Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, Disproportionate Housing Needs, Publicly Supported Housing Analysis, Disability and Access Analysis, and Fair Housing Enforcement, Outreach Capacity, and Resources Analysis. For the last three sections of analysis, program participants are instructed to note which fair housing issue(s) (Segregation/Integration, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) the selected contributing factor impacts. It is unnecessary to do this step for the first four sections of Option B because of the placement of the more discrete contributing factor lists after each of those sections. Program participants are also required to include any other contributing factors impacting fair housing issues in their jurisdiction or region that are not included in the provided lists.

Both formats of the Revised Assessment Tool also contain short explanations of all the listed contributing factors in Appendix C. These explanations provide program participants with additional guidance about each contributing factor, which may enable program participants to make more informed selections of contributing factors when conducting their analyses.

Fair Housing Goals and Priorities

The Initial Assessment Tool contained a table that seemed confusing, as well as subjective questions that related to the selection and prioritization of contributing factors (then called determinants) and goals. The Revised Assessment Tool provides program participants with additional guidance on how to prioritize contributing factors, creating a more objective framework for analysis. Additionally, the requirement that goals also be prioritized has been removed. The Revised Assessment Tool provides a new table for program participants to use when setting goals. The table is designed to make it easier for program participants to set goals as required by the AFFH final rule.

IV. Findings and Certifications

Paperwork Reduction Act

With HUD's decision to prepare program participant-specific assessment tools, the information collection burden addressed in this notice is limited to this assessment tool that has been designed for entitlement jurisdictions and the possibility of program participants seeking to collaborate regionally on an AFH. The public reporting is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

[5] HUD's Statement on the Role of Housing in Accomplishing the Goals of *Olmstead* can be found at *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.*

As HUD is furnishing a significant amount of data directly to the program participants, the burden in completing the Assessment Tool is reduced. Where HUD is not providing data, as noted earlier in this preamble, program participants are to consider and in some cases utilize local data and local knowledge that is available or can be found at little or no cost. This refers to data already publicly available and reasonably easy to access. This does not refer to obscure data that may not be known or easily found, that requires an independent data or information collection effort such as a local survey or that requires extensive analytical expertise or staff effort, for instance, in manipulating data sets or developing a complex methodology for analyzing complex data that may be available. With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.

In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH, whether in the Section V (Analysis) or Section III (Community Participation Process) of the AFH, with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.

It is also important to note that the estimate of burden, in terms of staff hours and costs, is not an estimate of net new costs. That is, the cost of conducting the existing AI that was a legal obligation prior to the AFFH final rule, and which is now replaced by the AFH, is not deducted from the new estimate. Costs for conducting the AI for entitlement jurisdictions varied substantially and often involved costs for hiring consultants and outside parties to conduct the AI. HUD is making substantial effort and investment, by providing the data and mapping tool and ongoing technical assistance to improve the entire AFH process as compared to the previous, often cumbersome AI process.

Changes in Estimate From the 60-Day PRA Notice

Compared to previous hour/burden estimate in the 60-day notice, several key changes, as discussed above, were made in an effort to reduce the burden of the analysis required in the assessment. Changes in the methodology for the estimate of total burden compared to the estimate in the 60-day notice are discussed here below.

In addition, HUD is revising the estimate of how many program participants will employ this version of the Assessment Tool, by lowering the estimate of the number of PHAs that will likely engage in joint collaboration with block grant entitlement jurisdictions from one-half of all PHAs to approximately one-third of all PHAs. Many PHAs will however continue to engage in joint participation for the completion of the AFH, for instance by partnering with a State entity, particularly in the case of small PHAs who are located outside the geographic area of an entitlement jurisdiction.

In addition to the changes discussed, HUD has also increased its estimate of the burden involved in completing an AFH using this Assessment Tool. While the Revised Assessment Tool has been streamlined compared to the Initial Assessment Tool, many public comments were received during the 60-day public comment period stating that the 200-hour per program participant estimate as too low. Accordingly, HUD has increased this to 240 hours per entitlement jurisdiction submitting an AFH. However, it is not likely that all entities participating together will all incur the full cost as they would if they were submitting an AFH separately. Thus, the hour estimate for PHA partners using this Assessment Tool is estimated at 120 hours, which would include fixed costs (*e.g.* staff training, conducting community participation, setting PHA goals) but includes reduced costs for performing the entirety of the assessment itself. It is also foreseeable that many entities will choose to divide responsibilities differently based on their local characteristics and that the split of hours used for the overall estimate may vary in many cases.

Costs in the First Year

Approximately 25 entitlement jurisdictions will be required to submit an AFH in the summer and fall of 2016. In recognition of the need to mitigate any new burden associated with this effort, the AFFH final rule provides for staggered submission of AFHs. Staggered submission delays the application of the AFFH final rule for certain program participants, such as States, Insular Areas, and PHAs that opt to submit their own AFH without an entitlement jurisdiction partner. In addition, because of the Consolidated Plan cycle, a relatively small group of program participants will submit an AFH within the first year following the effective date of the AFFH final rule, but the majority of program participants will be submitting their AFH in later years. For program participants that will submit an AFH in later years, HUD anticipates taking additional steps to reduce regulatory burden, which may include dissemination of best practices obtained from the first round of AFH submissions.

Assuming approximately the same number of PHAs choose to partner with entitlement jurisdictions in the first round of AFH submissions (joint AFH), the burden estimate for completing an AFH would increase somewhat, to take into account some additional effort for community participation and goal setting. However, the cost of conducting the analysis would be shared. For instance, PHAs could conduct the portion of the assessment related to publicly supported housing, with the entitlement jurisdiction conducting the bulk of the remainder of the analysis. There would be some costs for the two types of program participants to coordinate and communicate with each other, but in general total costs are expected to be less than if each program participant chose to complete their own separate AFH.

Using the estimated hours of the effort required by type of program participant, and assuming approximately 25 entitlement jurisdictions will partner with 25 PHAs to submit joint AFHs, the first year's burden would be approximately 9,000 total hours (6,000 for 25 entitlement jurisdictions and 3,000 for 25 PHAs). This estimate is included within the total estimated burden.

HUD has committed to provide technical assistance to program participants in completing their AFHs, and HUD anticipates targeted technical assistance for the relatively small number of program participants that would be required to submit an AFH in the first year following the effective date of the AFFH final rule. Such targeted technical assistance is anticipated to mitigate burden due to the change in the AFH from the AI model which relied heavily on the Fair Housing Planning Guide that was last issued in the 1990s.

Small Entities

HUD has adopted several important changes to reduce burden for small entities in particular. HUD's AFFH final rule includes a delay in the submission date for small entitlement jurisdictions, defined as jurisdictions receiving $500,000 or less in Fiscal Year (FY) 2015 CDBG funds, and small PHAs that are qualified PHAs (with respect to size are defined as PHAs with fewer than 550 units, including public housing and section 8 vouchers).

The costs for entitlement jurisdictions receiving a small CDBG grant are included in the total burden estimate for this notice, even though they have a later AFH submission date and their costs will arise in later years. The burden estimate also allows that some qualified PHAs may choose to participate with entitlement jurisdictions that will use this Assessment Tool, which is the subject of this notice. However, because many such PHAs are located outside of metropolitan areas, HUD anticipates that these PHAs will choose, instead, to partner with a State. All program participants that are required to submit an AFH under the AFFH final rule are encouraged to partner with other entities to submit a joint AFH, or regional AFH.

Also, as stated above, the estimated burden per program participant is an average within a wider range of actual costs. Smaller program participants will have much less total burden both in terms of staff hours and costs.

Encouraging Coordination

All HUD program participants are greatly encouraged to issue joint AFHs and to consider regional cooperation. More coordination in the initial years between entitlement jurisdictions and PHAs will reduce total costs for both types of program participants in later years. In addition, combining and coordinating some elements of the Consolidated Plan and the PHA Plan will reduce total costs for both types of program participants. Completing an AFH in earlier years will also help reduce costs later, for instance by incorporating the completed analysis into later planning documents, such as the PHA plan, will help to better inform planning and goal setting decisions ahead of time.

The Revised Assessment Tool is available at *http://www.huduser.org/portal/affht_pt.html.* Information on the estimated public reporting burdens is provided in the following table.

REPORTING AND RECORDKEEPING BURDEN

	Number of respondents *	Number of responses per respondent	Frequency of response **	Estimated average time for requirement (in hours) ***	Estimated burden (in hours)
CFR Section Reference: § 5.154(d) (Assessment of Fair Housing).	2,508 total entities (1,194 Entitlement Jurisdictions and approximately 1,314 PHAs) *.	1	Once every five years (or three years in the case of 3-Year Consolidated Plans) **.	.....	.....
Entitlement Jurisdiction	1,194	.....	.....	*** 240	286,560
PHAs	1,314 *	.....	.....	**** 120	157,680
Total Burden	2,508	* 1,194	.....	.....	444,240

* This template is primarily designed for entitlement jurisdictions, of which there are approximately 1,194, and PHAs seeking to join with entitlement jurisdictions on a jointly submitted AFH. There are 3,942 PHAs and HUD estimates that approximately 1/3 of PHAs may seek to join with an entitlement jurisdiction and submit a joint AFH. The Total Number of responses is listed as 1,194 based on the number of entitlement jurisdictions that will submit AFHs using this Assessment Tool. The total hours and burden are based on the total estimated number of both types of program participants and the "estimated average time" listed for type of program participant.

** The timing of submission depends upon whether an entitlement jurisdiction submits its consolidated plan every 3 years or every 5 years.

*** As noted in the explanatory text, this is an average within a range, with some AFH requiring either more or less time and effort based on jurisdiction size and complexity. The 240 hour estimate is an increase from the previous 200 hour estimate in the 60-Day PRA Notice, published on September 26, 2014. The increased time estimate takes into account public comments on the 60-Day Notice. For some joint participants, the division of hours may be higher or lower based on the program participant's areas of expertise, program operations or through mutual agreement.

**** PHAs participating in joint submissions using the Assessment Tool under this notice are assumed to have some fixed costs, including staff training, conducting community participation costs, but reduced costs for conducting the analysis in the assessment itself.

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses;

(5) Whether Option A or Option B of the Revised Assessment Tool would be the most effective and efficient way of conducting the analysis with respect to the selection of contributing factors. If one option is preferred over the other, please state the reasons for the preference;

(6) While the Revised Assessment Tool was designed to set minimum AFH requirements as well as providing a straightforward process for HUD to review the AFH, how might program participants use the template to conduct broader collaborations including more comprehensive cross-sector collaborations? How could the Revised Assessment Tool provide greater flexibility for participants to collaborate and expand upon the framework HUD has set in the Revised Assessment Tool? How could the Revised Assessment Tool allow program participants to incorporate better or additional data, alternative mapping tools, or other data presentations; and

(7) Whether additional changes to the Revised Assessment Tool would better

facilitate regional collaboration among program participants.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by August 17, 2015 to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–05).

Dated: July 13, 2015.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2015–17463 Filed 7–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5874–N–02]

HUD Administrative Fee Formula—Extension of Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice: Extension of public comment period.

SUMMARY: On June 26, 2015, HUD published a notice in the **Federal Register** entitled ''HUD Administrative Fee Formula–Solicitation of Comment,'' inviting public comment through July 27, 2015. This document announces that HUD is extending the public comment period, for an additional 15-day period, to August 11, 2015.

DATES: *Comment Due Date:* For the notice published on June 26, 2015 (80 FR 36832), the comment due date is extended to August 11, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time, weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service, toll free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Todd Richardson, Associate Deputy Assistant Secretary for Policy Development, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8106, Washington, DC 20410; telephone number 202–402–5706 (this is not a toll-free number). Persons with hearing or speech impairments may access this number by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On June 26, 2015 (80 FR 36832), HUD published a notice in the **Federal Register** that invited public comment on the variables identified by the Housing Choice Voucher Program Administrative Fee Study as impacting administrative fee costs, how HUD might use these study findings to develop a new administrative fee formula, and any other issues that may arise with the development and implementation of a new administrative fee formula.

In the June 26, 2015 notice, HUD established a comment due date of July 27, 2015. In response to recent requests for additional time to submit comments, HUD believes an extension of the deadline would provide the time needed for interested parties to submit comments. Therefore, HUD is announcing through this notice an extended comment period, for an additional 15-day period, to August 11, 2015.

Dated: July 13, 2015.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2015–17462 Filed 7–15–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2015–N112]; [FXES11130600000–156–FF06E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Salt Creek Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft recovery plan for the Salt Creek Tiger Beetle. This species is federally listed as endangered under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 14, 2015.

ADDRESSES: Copies of the draft recovery plan are available on request from the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 9325 South Alda Road, Wood River, Nebraska 68883; telephone 308–382–6468. Submit comments on the draft recovery plan to the Project Leader at this same address. An electronic copy of the draft recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html.*

FOR FURTHER INFORMATION CONTACT: Eliza Hines, Project Leader, at the above address, or telephone 308–382–6468.

SUPPLEMENTARY INFORMATION: The Service announces the availability of a

draft recovery plan for the Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*). This subspecies is federally listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act). The Service solicits review and comment from the public on this draft plan.

Background

Restoring an endangered or threatened animal or plant to the point where it is again a viable, secure member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the Act; and provide estimates of the time and cost for implementing the needed recovery measures.

The Act requires recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. This is the first draft recovery plan for the Salt Creek tiger beetle. The Service will consider all information received during a public comment period, including peer review, when preparing a final recovery plan. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

The Salt Creek tiger beetle was listed as a federal endangered subspecies on November 7, 2005 (70 FR 58335, October 6, 2005). This subspecies is currently limited to Lancaster County, Nebraska. Critical habitat was established in 2010 and revised in 2013 and 2014. Our recovery strategy is to establish metapopulations in multiple recovery areas. Accomplishing this strategy requires acquisition of land or conservation easements, focused habitat restoration and management projects, and reintroductions.

Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments received by the date specified above in **DATES** will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Project Leader (see **ADDRESSES**). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the address under **ADDRESSES**. All public comment information provided to the Service becomes part of the official public record. If public comments are requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of public comments.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 29, 2015.

Matt Hogan,

Deputy Regional Director.

[FR Doc. 2015–17409 Filed 7–15–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 79849]

Public Land Order No. 7837; Extension of Public Land Order No. 7174; Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 7174 for an additional 20-year period, which would otherwise expire on November 27, 2015. This extension is necessary for continued protection of the investment of Federal funds and recreational values of the United States Forest Service Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South within the Black Hills National Forest, South Dakota.

DATES: *Effective date:* November 28, 2015.

FOR FURTHER INFORMATION CONTACT: Valerie Hunt, U.S. Forest Service, Region 2, 740 Simms Street, Golden, Colorado 80401, 303–275–5071, *vbhunt@fs.fed.us,* or Cynthia Eide, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5094, *ceide@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue protection of the investment of Federal funds and the recreational values of the Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South recreation areas abutting the Pactola Reservoir located in the Black Hills National Forest, Pennington County, South Dakota.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 7174 (60 FR 58521 (1995)), which withdrew 35 acres of Federal mineral estate from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the United States Forest Service Pactola Visitor Information Center, Pactola Marina North, and Pactola Marina South, is hereby extended for an additional 20-year period. This withdrawal will expire on November 27, 2035, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: July 3, 2015.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2015–17478 Filed 7–15–15; 8:45 am]

BILLING CODE 3410–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X.LLID9570000.L14400000.BJ0000.241A.X.4500081115]

Idaho; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387

South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are: The plat representing the dependent resurvey of portions of the west and north boundaries, and the subdivision of section 6, T. 49 N., R. 2 W., Boise Meridian, Idaho, Group Number 1371, was accepted May 6, 2015.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 1 and the metes-and-bounds surveys of Tracts 37 and 38, T. 49 N., R. 3 W., Boise Meridian, Idaho, Group Number 1371, was accepted May 6, 2015.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 31, T. 50 N., R. 2 W., Boise Meridian, Idaho, Group Number 1371, was accepted May 6, 2015.

The supplemental plat in sec. 22, T. 13 N., R. 38 E., Boise Meridian, Idaho, Group Number 1311, was prepared to show amended distances was accepted June 18, 2015. The plat constituting the entire survey record of the dependent resurvey of portions of Mineral Survey Number 1483 and subdivision of section 23, and a metes-and-bounds survey in section 23, T. 6 N., R. 5 E., Boise Meridian, Idaho, Group Number 1413, was accepted June 19, 2015.

These surveys were executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivision of section 22, and a metes-and-bounds survey in former lot 1, T. 33 N., R. 3 E., Boise Meridian, Idaho, Group Number 1436 was accepted May 14, 2015.

The plat representing the dependent resurvey of portions of the Boise Meridian (east boundary) and subdivisional lines, and the subdivision of sections 11, 14, 24, and 26, T. 36 N., R. 1 W., of the Boise Meridian, Idaho, Group Number 1412, was accepted June 18, 2015.

The plat representing the dependent resurvey of portions of the subdivisional lines and subdivision of section 26, and further subdivision of section 26, and the metes-and-bounds survey of the north line of Indian allotment 80E in original lot 7 of section 26, T. 36 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1408, was accepted June 24, 2015.

This survey was executed at the request of the U.S. Fish and Wildlife Service to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines and subdivision of sections 25 and 26, T. 7 N., R. 35 E., of the Boise Meridian, Idaho, Group Number 1405, was accepted April 21, 2015.

This survey was executed at the request of the United States Air Force, Mountain Home Air Force Base to meet their administrative needs. The lands surveyed are: The supplemental plat was prepared to show new lots 1 through 7 in sec. 10, T. 4 S., R. 5 E., Boise Meridian, Idaho, Group Number 1440, was accepted June 29, 2015.

This survey was executed at the request of the U.S.D.A. Forest Service to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the adjusted 1901 meanders of the left bank of the Buffalo River in section 27, and the subdivision of section 27, and a metes-and-bounds survey in section 27, T. 13 N., R. 43 E., of the Boise Meridian, Idaho, Group Number 1421, was accepted June 30, 2015.

Jeff A. Lee,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2015–17410 Filed 7–15–15; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–960]

Certain Toner Supply Containers and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 12, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Canon Inc. of Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner supply containers and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,909,094 (''the '094 patent'') and U.S. Patent No. 9,046,820 (''the '820 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docketing Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 9, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner supply containers and components thereof by reason of infringement of one or more of claims 1, 7–9, 11, 16–18, 29, and 38 of the '094 patent and claims 1, 7–9, and 16 of the '820 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Canon Inc., 30–2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146–8501, Japan

Canon U.S.A., Inc., One Canon Park, Melville, NY 11747

Canon Virginia, Inc., 12000 Canon Boulevard, Newport News, VA 23606

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

General Plastic Industrial Co., Ltd., 50 Tzu-Chiang Road, Wu-Chi Town, Taichung County, Taiwan

Color Imaging, Inc., 4350 Peachtree Industrial Blvd., Suite 100, Norcross, GA 30071

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 10, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–17370 Filed 7–15–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–554]

Generalized System of Preferences: Possible Modifications, 2014 Review

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and opportunity to furnish information.

SUMMARY: Following receipt of a request on June 30, 2015, from the United States Trade Representative (USTR), the U.S. International Trade Commission (Commission) instituted investigation No. 332–554, *Generalized System of Preferences: Possible Modifications, 2014 Review,* for the purpose of providing such advice and information.

DATES: July 30, 2015: Deadline for filing all written submissions.

August 28, 2015: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Cynthia B. Foreso, Project Leader, Office of Industries (202–205–3348 or *cynthia.foreso@usitc.gov*) or Sabina Neumann, Deputy Project Leader, Office of Industries (202–205–3000 or *sabina.neumann@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Advice concerning waiver of competitive need limitations. In his letter the USTR requested, under authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), and in accordance with section 503(d)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2463(d)(1)(A)), that the Commission provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limitations specified in section 503(c)(2)(A) of the Trade Act of 1974 for two articles from Thailand: HTS 2008.19.15 (Coconuts, otherwise prepared or preserved, nesoi) and HTS 7408.29.10 (Copper alloys (o/than brass, cupro-nickel or nickel-silver), wire, coated or plated with metal).

Pursuant to section 332(g) and in accordance with section 503(c)(2)(E) of the 1974 Act the USTR also requested that the Commission provide its advice with respect to whether like or directly competitive products were being produced in the United States on January 1, 1995. The USTR also requested that the Commission provide its advice as to the probable economic effect on total U.S. imports, as well as on consumers, of the requested waivers.

Data relating to certain cotton articles. Pursuant to section 332(g) of the Tariff Act of 1930, the USTR requested that the Commission provide data on U.S. production, imports, exports, and consumption for the period 2012–2014 for the following articles: HTS 5201.00.18 (Cotton, not carded or combed, having a staple length under 28.575 mm (1⅛ inches), n/harsh or rough, nesoi), HTS 5201.00.28 (Cotton not carded or combed, harsh or rough, staple length of 29.36875 mm or more but under 34.925 mm & white in color, nesoi), HTS 5201.00.38 (Cotton, not carded or combed, staple length of 28.575 mm or more but under 34.925 mm, nesoi), HTS 5202.99.30 (Cotton card strips made from cotton waste having staple length under 30.1625 mm & lap, sliver & roving waste, nesoi), and HTS 5203.00.30 (Cotton fibers, carded or combed, of cotton fiber processed, but not spun, nesoi). The USTR requested that the Commission, to the extent practicable, provide the requested data separately and individually for each U.S. Harmonized

Tariff Schedule subheading subject to this request.

The USTR noted that his office had previously notified the Commission that these five cotton articles were being considered for designation as eligible articles under the GSP program for least-developed beneficiary developing countries only, and that the Commission had provided its advice in May 2012 (in its report on investigation No. 332–529) as to the probable economic effect of the elimination of U.S. import duties on those articles for least-developed beneficiary developing countries under the GSP program.

Time for reporting, possible classification of report. As requested by USTR, the Commission will provide its advice by August 28, 2015. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice will be classified as ''confidential,'' and that USTR considers the Commission's report to be an inter-agency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege.

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., July 30, 2015. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include in the report it sends to the President and the USTR some or all of the confidential business information it receives in this investigation. The USTR has asked that the Commission make available a public version of its report shortly after it sends its report to the President and the USTR, with any classified or privileged information deleted. Any confidential business information received in this investigation and used in the preparation of the report will not be published in the public version of the report in such a manner as would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: The Commission intends to publish summaries of the positions of interested persons. Persons wishing to have a summary of their position included in the report should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will identify the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: July 13, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–17418 Filed 7–15–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

177th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 177th meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on August 18–20, 2015.

The three-day meeting will take place at the Liaison Capitol Hill Hotel at 415 New Jersey Avenue NW., Washington, DC. The meeting will run from 9 a.m. to approximately 5:30 p.m. on August 18–19, with a one hour break for lunch each day, and from 8:30 a.m. to approximately 12 p.m. on May 29. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the morning of May 29 (subject to change).

The Advisory Council will study the following issues: (1) Model Notices and Disclosures for Pension Risk Transfers and (2) Model Notices and Plan Sponsor Education on Lifetime Plan Participation. Descriptions of these issues are available on the Advisory Council page of the EBSA Web site, at *www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.* Witnesses may testify on one or both issues on either August 18 or19. The third day of the meeting will be devoted to drafting reports on both issues.

Organizations or members of the public wishing to submit a written statement may do so by submitting 40 copies on or before August 11, 2015 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in word processing or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before August 11 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room, along with witness statements. 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. Written statements submitted by invited witnesses will be posted on the Advisory Council page of the EBSA Web site, without change, and can be retrieved by most Internet search engines.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an

extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 11.

Signed at Washington, DC.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2015–17424 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance (TAA) for workers by (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *June 1, 2015 through June 26, 2015.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Office of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,876, Sensor Switch, Wallingford, Connecticut. March 11, 2014.

85,902, Surgical Specialties of Puerto Rico, Inc., Aguadilla, Puerto Rico. March 25, 2014.

85,916, St. Louis Post-Dispatch, LLC., Saint Louis, Missouri. March 30, 2014.

85,955, Prestolite Electric Incorporated, Plymouth, Michigan. April 21, 2014.

85,962, Murata Power Solutions Inc., Mansfield, Massachusetts. April 24, 2014.

85,967, Haemonetics Corporation, Braintree, Massachusetts. June 6, 2015.

85,967A, Leased Workers from Kelly Services and Co Work Staffing, Braintree, Massachusetts. April 27, 2014.

85,970, Alcoa, Lafayette, Indiana. April 28, 2014.

85,972, Nut Processors Inc., El Paso, Texas. April 29, 2014.

85,979, American Standard, Nevada, Missouri. May 1, 2014.

85,980, Essex Group, Inc., (EGI), Kendallville, Indiana. May 4, 2014.

85,984, Micro Contacts, Inc., Hicksville, New York. April 10, 2015.

85,987, Dresser-Rand Company, Wellsville, New York. May 4, 2014.

85,987A, Dresser-Rand Company, Olean, New York. May 4, 2014.

86,006, Norris Rods, Inc., Tulsa, Oklahoma. May 8, 2014.

86,012, Gildan Apparel USA, Clarence, New York. May 11, 2014.
86,014, Newell Window Furnishings, Inc., Producing Levelor-Kirsch Brands, Ogden, Utah. May 14, 2014.
86,019, Exide Technologies, Manchester, Iowa. May 18, 2014.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

85,945, International Business Machine (IBM), Hopewell Junction, New York.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,719, Mastercraft Specialties Inc., Red Lion, Pennsylvania.
85,925, Bimbo Bakeries USA, Inc., Fullerton, California.
85,949, Asset Acceptance, LLC., Warren, Michigan.
85,966, Sirius Computer Solutions, Inc., San Antonio, Texas.
85,992, Verizon, Cary, North Carolina.
86,003, CompuCom, Bentonville, Arkansas.
86,003, CompuCom, Bentonville, Arkansas.
86,015, Bandai America Inc., Cypress, California.
86,018, Intel Corporation, Rio Rancho.
86,033, Dex Media, Bethlehem, Pennsylvania.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,973, CenturyLink, Wake Forest, North Carolina.
85,974, CenturyLink, Leesburg, Florida.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,953, Hewlett Packard, Omaha, Nebraska.
85,958, Meritor Heavy Vehicle Systems, LLC., Heath, Ohio.
86,054, Sonoco, New Albany, Indiana.

I hereby certify that the aforementioned determinations were issued during the period of *June 1, 2015 through June 26, 2015.* These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 7th day of July 2015.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–17430 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,697]

ATI Specialty Alloys and Components Albany Operations, 34th Avenue, a Subsidiary of Alleghany Technologies Incorporated, Including Workers Whose Wages Are Reported Under Oregon Metallurgical and TDY Industries and Including On-Site Leased Workers From Kelly Services, LBCC, Cadd Connections, Evergreen Engineering, Jibe Consulting, and Oregon Industrial Albany, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 11, 2015, applicable to workers of ATI Specialty Alloys and Components, Albany Operations, 34th Avenue, including on-site leased workers from Kelly Services, LBCC, Cadd Connections, Evergreen Engineering, Jibe Consulting, and Oregon Industrial, Albany, Oregon. The Department's Notice of Determination was published in the **Federal Register** on April 13, 2015 (80 FR 19394).

At the request of a State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in in activities related to the production of titanium ingot and mill products.

New information shows that workers separated from employment at ATI have their wages reported through a separate federal employer identification number (FEIN) under the name of Oregon Metallurgical and TDY Industries.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of titanium ingot and mill products. Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–85,697 is hereby issued as follows:

All workers of ATI Specialty Alloys and Components, Albany Operations, 34th Avenue, including on-site leased workers from Kelly Services, LBCC, Cadd Connections, Evergreen Engineering, Jibe Consulting, and Oregon Industrial, Albany, Oregon, including workers whose wages are reported under Oregon Metallurgical and TDY Industries, who became totally or partially from employment on or after July 4, 2014, through March 11, 2017, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 9th day of June, 2015.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–17425 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Lower Living Standard Income Level (LLSIL) Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration (ETA) published in the **Federal Register** on Friday, March 27, 2015, an announcement of the 2015 Lower Living Income Level (LLSIL) (Vol. 80, No. 59/Friday, March 27, 2015, PP 16452, 16454, 16455 see *http://www.gpo.gov/fdsys/pkg/FR-2015-03-27/pdf/2015-07031.pdf.* The announcement had the incorrect income levels for the South Metro area and the West Metro and non-metro areas. Below are the corrections to those areas. This is retroactive to March 27, 2015.

CORRECTIONS TO TABLE 1 (A FAMILY OF FOUR)

Region	2015 Adjusted LLSIL	70 Percent LLSIL
South:		
Metro	35,625	24,937
West:		
Metro	40,362	28,253
Non-Metro	39,552	27,687

Family size	1	2	3	4	5	6
South: Metro	8,982	14,717	20,199	24,937	29,432	34,422
West: Metro	10,172	16,669	22,887	28,253	33,340	38,995
West: Non-Metro	9,969	16,338	22,431	27,687	32,676	38,216

Family size	1	2	3	4	5	6
South: Metro	12,831	21,024	28,856	35,625	42,046	49,175
West: Metro	14,531	23,814	32,696	40,362	47,628	55,707
West: Non-Metro	14,241	23,339	32,044	39,552	46,680	54,594

DATES: This Notice is effective March 27, 2015.

For Further Information or Questions on LLSIL: Please contact Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C–4526, Washington, DC 20210; Telephone: 202–693–2870; Fax: 202–693–3015 (these are not toll-free numbers); Email address: *wright.samuel.e@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via Text Telephone (TTY/TDD) by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

Portia Wu,

Assistant Secretary for Employment and Training.

[FR Doc. 2015–17432 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Form ETA–9165, Employer-Provided Survey Attestations To Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey (OMB Control Number 1205–0516), Extension.

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department or DOL), 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)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data on the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey* (OMB Control Number 1205–0516), which expires on October 31, 2015. A copy of the proposed information collection request can be obtained free of charge by contacting the office listed below in the addressee section of this notice.

The form is used by employers in DOL's H–2B temporary non-agricultural employment-based program to collect information that demonstrates compliance with the new standards applicable to employer-provided surveys in the H–2B program and to assist the Department in reviewing those surveys.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 14, 2015.

ADDRESSES: Submit written comments to Brian Pasternak, National Director of Temporary Programs, Office of Foreign Labor Certification, Room C–4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3010 (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: 202–693–2768. Email: *ETA.OFLC.Forms@dol.gov* subject line: ETA–9165. A copy of the proposed information collection request (ICR) can be obtained free of charge by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection (IC) is required by sections 101(a)(15)(H)(ii)(b) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(c)), and implementing regulations at 20 CFR 655.10 and 8 CFR 214.2(h). Before an employer may petition for any temporary unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The H–2B program enables employers to bring nonimmigrant foreign workers to the

U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H–2B program, the INA and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) temporarily for the purpose of performing certain unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers available to perform such labor. (8 CFR 214.2(h)(6)(i)(A), (iii)(A).)

Prior to submitting labor certification applications to the Secretary of Labor, employers must obtain a prevailing wage for the occupation in the area of intended employment in order to ensure that wages are not being adversely affected by paying foreign workers less than a prevailing wage. Under the regulations, employers may choose to submit an employer-provided survey as long as they meet the criteria set forth in the regulations at 20 CFR 655.10(f). In addition, ETA has codified the standards it uses to assess employer provided surveys that may be relied on to set the prevailing wage. The Department has established a new information collection, the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey,* in order to increase compliance with the new standards applicable to employer-provided surveys and to assist the Department in reviewing those surveys. The Department uses the information collected to determine the adequacy of the data provided and validity of the methodology used in conducting the survey submitted by an employer in the H–2B program.

II. Review Focus

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension.

Title: Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey.

OMB Number: 1205–0516.

Affected Public: Private Sector–businesses or other for profits and not-for-profit institutions, Federal Government, and State, Local and Tribal Governments.

Form(s): ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey.*

Total Annual Respondents: 278.

Annual Frequency: On occasion.

Total Annual Responses: 278.

Average Time per Response: 25 Minutes.

Estimated Total Annual Burden Hours: 116.

Total Annual Burden Cost for Respondents: $5,639.

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. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number).

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2015–17431 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 2015.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 27, 2015.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of June 2015.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

89 TAA Petitions Instituted Between 6/1/15 and 6/26/15

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
86046	Aercap (State/One-Stop)	Los Angeles, CA	06/01/15	05/28/15
86047	Republic Steel (Union)	Gary, IN	06/01/15	05/29/15
86048	Spirit Aerosystem (Workers)	Tulsa, OK	06/01/15	05/29/15

89 TAA PETITIONS INSTITUTED BETWEEN 6/1/15 AND 6/26/15—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
86049	Green Diamond Company/California Redwood Company (State/One-Stop).	Eureka, CA	06/01/15	05/29/15
86050	Bank Of America (Workers)	Simi Valley, CA	06/01/15	05/29/15
86051	Archer Pressure Pumping, LLC (Workers)	Union City, OK	06/01/15	06/01/15
86052	Southwestern Wire Cloth (Workers)	Broken Arrow, OK	06/01/15	05/28/15
86053	Medco/Express Scripts (State/One-Stop)	Jersey City, NJ	06/02/15	06/01/15
86054	Sonoco (Union)	New Albany, IN	06/02/15	05/29/15
86055	Aztec Well Servicing Companies (Company)	Aztec, NM	06/02/15	05/27/15
86056	Kapstone Paper and Packaging Inc. (Union)	Longview, WA	06/02/15	06/01/15
86057	Fairmount Santrol (Brewer Facility) (State/One-Stop)	Perryville, MO	06/03/15	06/02/15
86058	Merkle Inc. (State/One-Stop)	Montvale, NJ	06/03/15	06/02/15
86059	OGCI—Petro Skills (State/One-Stop)	Tulsa, OK	06/03/15	06/02/15
86060	Worthington Industries (State/One-Stop)	Florence, SC	06/04/15	06/03/15
86061	ArcelorMittal Ferndale, Inc. (Company)	Ferndale, MI	06/04/15	06/03/15
86062	Chromalloy Southwest (Company)	Calexico, CA	06/04/15	06/03/15
86063	Heritage Home (Workers)	Saltillo, MS	06/04/15	06/03/15
86064	Texas Instruments Incorporated (Company)	Stafford, TX	06/04/15	06/02/15
86065	Cliffs Natural Resources (State/One-Stop)	Ishpeming, MI	06/05/15	06/04/15
86066	Contec LLC (Workers)	Brownsville, TX	06/05/15	06/04/15
86067	Guardian Life Insurance Company (Company)	Appleton, WA	06/05/15	06/04/15
86068	Rockwell Collins Inc. (Workers)	Calexico, CA	06/05/15	06/04/15
86069	Schlumberger (State/One-Stop)	Kellyville, OK	06/05/15	06/04/15
86070	Interplex Tech Group (Workers)	North Haven, CT	06/08/15	06/03/15
86071	INVISTA (Company)	Athens, GA	06/08/15	06/05/15
86072	Conoco-Phillips, IT Dept. (State/One-Stop)	Bartlesville, OK	06/08/15	06/05/15
86073	Norwich Aero Products (Esterline) (State/One-Stop)	Norwich, NY	06/08/15	06/05/15
86074	W.W. Grainger (State/One-Stop)	Lincolnshire, IL	06/08/15	06/05/15
86075	Epic Technologies, LLC (Company)	Johnson City, TN	06/08/15	06/05/15
86076	Omnicare Inc. (Workers)	Dublin, OH	06/09/15	06/08/15
86077	HARMAN (Company)	Northridge, CA	06/09/15	06/08/15
86078	Best Well Services, LLC. (State/One-Stop)	Guthrie, OK	06/09/15	06/08/15
86079	Airboss Defense Inc. (Company)	Milton, VT	06/09/15	06/08/15
86080	Sercel GRC (State/One-Stop)	Tulsa, OK	06/10/15	06/09/15
86081	Milco Industries, Inc. (Company)	Bloomsburg, PA	06/10/15	06/09/15
86082	AA Gear and Manufacturing (State/One-Stop)	Howell, MI	06/10/15	06/09/15
86083	Magnetation (State/One-Stop)	Grand Rapids, MN	06/10/15	06/09/15
86084	DexMedia (Workers)	Los Alamitos, CA	06/10/15	06/09/15
86085	Research in Motion (Blackberry) (State/One-Stop)	Milford, CT	06/11/15	06/10/15
86086	Mesabi Nugget/Steel Dynamics (State/One-Stop)	Chisholm/Hoyt Lakes, MN	06/11/15	06/10/15
86087	Horton Automatics (Company)	Corpus Christi, TX	06/11/15	06/10/15
86088	Breg, Inc. (State/One-Stop)	Grand Prairie, TX	06/11/15	06/09/15
86089	Huntington Alloys Corporation (Union)	Huntington, WV	06/11/15	06/10/15
86090	CoorsTek (State/One-Stop)	Tulsa, OK	06/12/15	06/11/15
86091	Frontier Airlines (State/One-Stop)	Denver, CO	06/15/15	06/12/15
86092	National Electronic Warranty/Asurion (State/One-Stop)	Sterling, VA	06/15/15	06/01/15
86093	EarthLink (State/One-Stop)	Rochester, NY	06/16/15	06/15/15
86094	Optical Disc Solutions (Workers)	Richmond, IN	06/16/15	06/15/15
86095	Essentra (Union)	Evansville, IN	06/16/15	06/15/15
86096	Dow Electronic Materials—Metal Organics incl. Kelly Services & US Security (Workers).	North Andover, MA	06/16/15	05/29/15
86097	Heritage Glass LLC (Workers)	Kingsport, TN	06/17/15	06/16/15
86098	Mattel, Inc. (State/One-Stop)	El Segundo, CA	06/17/15	06/16/15
86099	Mohawk Industries (Company)	Landrum, SC	06/17/15	06/16/15
86100	Novartis/GSK Consumer Health Care (Workers)	Lincoln, NE	06/17/15	06/16/15
86101	Paragon Store Fixtures (Company)	Big Lake, MN	06/17/15	06/16/15
86102	Vonage America (Workers)	Holmdel, NJ	06/17/15	06/16/15
86103	Wilbros (State/One-Stop)	Tulsa, OK	06/17/15	06/16/15
86104	Northwest Pipe Company (State/One-Stop)	Atchison, KS	06/18/15	06/17/15
86105	Safran Labinal Power Systems (Company)	Salisbury, MD	06/18/15	06/17/15
86106	Tucker Energy Services/McAlester OK (State/One-Stop)	Tulsa, OK	06/18/15	06/17/15
86107	Dex Media (State/One-Stop)	DFW Airport, TX	06/19/15	06/17/15
86108	SOL INC (Workers)	Palm City, FL	06/19/15	06/17/15
86109	Mammoth Webco (State/One-Stop)	Springfield, MO	06/19/15	06/09/15
86110	Allen Logging Co, Inc. (State/One-Stop)	Forks, WA	06/19/15	06/16/15
86111	Seattle-Snohomish Sawmill Co. Inc. (State/One-Stop)	Snohomish, WA	06/19/15	06/16/15
86112	Avantor Performance Materials (Workers)	Paris, KY	06/22/15	06/22/15
86113	Soo Tractor LLC (formerly Radius Steel) (State/One-Stop)	Sioux City, IA	06/22/15	06/19/15
86114	Regal Beloit America, Inc. (Company)	West Plains, MO	06/22/15	06/19/15
86115	GGS Information Services (Company)	Erie, PA	06/22/15	06/19/15
86116	Quad Graphics (State/One-Stop)	Portland, OR	06/23/15	06/22/15
86117	Conoco Phillips (State/One-Stop)	Farmington, NM	06/23/15	06/22/15

89 TAA PETITIONS INSTITUTED BETWEEN 6/1/15 AND 6/26/15—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
86118	Producers Assistants Corp (State/One-Stop)	Farmington, NM	06/23/15	06/22/15
86119	Frac Master LLC (Workers)	Farmington, NM	06/23/15	06/22/15
86120	Avery Dennison (Company)	Greensboro, NC	06/23/15	06/22/15
86121	Sandvik Coromant (Workers)	Pontiac, MI	06/23/15	06/22/15
86122	Hospira (Company)	Clayton, NC	06/23/15	06/23/15
86123	Bombardier Transportation (Workers)	Pittsburgh, PA	06/23/15	06/09/15
86124	E. H. Wachs/ITW (State/One-Stop)	Lincolnshire, IL	06/24/15	06/23/15
86125	Verizon Business (State/One-Stop)	Tulsa, OK	06/24/15	06/23/15
86126	Solid State Advanced Controls (Company)	Baldwinsville, NY	06/25/15	06/18/15
86127	Johnson Metall, Inc. (Workers)	Lorain, OH	06/25/15	05/29/15
86128	QBE First (Workers)	Moon Township, PA	06/25/15	06/19/15
86129	Frog, Switch, and MFG CO (Workers)	Carlisle, PA	06/25/15	06/19/15
86130	Vera Bradley Designs (Company)	New Haven, IN	06/25/15	06/24/15
86131	WPX Energy Services Company, LLC (State/One-Stop)	Tulsa, OH	06/25/15	06/24/15
86132	Getinge Sourcing, LLC (Company)	Rochester, NY	06/26/15	06/25/15
86133	Capital Group Companies Global, Inc. (Workers)	San Antonio, TX	06/26/15	06/10/15
86134	ESCI/Thorpe Inc. (State/One-Stop)	Broken Arrow, OK	06/26/15	06/25/15

[FR Doc. 2015–17427 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). 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, the Office of Federal Contract Compliance Programs is soliciting comments on its proposal to implement standard procedures for supply and service contractors seeking approval to develop affirmative action programs based on functional or business units. A copy of this information collection request (ICR), with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 14, 2015.

ADDRESSES: You may submit comments, identified by Control Number 1250–0006, by either one of the following methods:

Electronic comments: through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY).

Instructions: Please submit one copy of your comments using only one of the methods listed above. All submissions must include the name of the agency and the Control Number for this information collection, as identified above. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the regulations.gov Web site or to submit them by mail early. Comments, including any personal information provided, become a matter of public record and will be posted to the regulations.gov Web site. They will also be summarized or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0104 (not a toll-free number). TTY/TDD callers may call (202) 693–1337 (not a toll-free number) to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) administers three nondiscrimination and equal employment opportunity laws. These authorities prohibit employment discrimination and require affirmative action to ensure that equal employment opportunities are made available by Federal contractors regardless of race, sex, sexual orientation, gender identity, color, national origin, religion, status as a qualified individual with a disability, or protected veteran status:

- Executive Order 11246, as amended (E.O. 11246);
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and
- The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

For purpose of this clearance, the regulations permit Federal supply and service contractors to develop affirmative action programs (AAPs) that are based on business function or

business unit rather than AAPs based on establishments.[1] Functional affirmative action programs (FAAPs) are designed to provide contractors with the option of creating AAPs that better fit their business needs. To develop and implement a FAAP, Federal contractors must receive written approval from the Director[2] of OFCCP. On December 17, 2012, OFCCP issued Directive Number 305, Functional Affirmative Action Programs, which replaced Directive 296. This Information Collection Request (ICR) addresses the recordkeeping and reporting requirements involved in the procedures for obtaining a FAAP agreement as well as updating, modifying and certifying an existing FAAP agreement.

A separate ICR, approved by the Office of Management and Budget (OMB) under OMB number 1250–0003, addresses developing establishment-based AAPs and scheduling compliance evaluations for supply and service contractors with establishment-based AAPs.

II. *Desired Focus of Comments:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the renewal of OMB approval of this ICR so that it can enforce the anti-discrimination and affirmative action provisions of the legal authorities it administers.

Agency: Office of Federal Contract Compliance Programs.

Type of Review: Revision of an existing OMB Control Number.

Title: Agreement Approval Process for Use of Functional Affirmative Action Programs.

OMB Control Number: 1250–0006.

Agency Form Number: None.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 91.

Frequency: Annual.

Total Estimated Annual Responses: 91.

Estimated Average Time per Response (approximation due to rounding): 14 hours.

Estimated Total Burden Hours (approximation due to rounding): 1,508 (or 503 hours annually).

Total Estimated Annual Cost Burden: $89 (or $30 annually).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 9, 2015.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2015–17485 Filed 7–15–15; 8:45 am]

BILLING CODE 4510–CM–P

[1] 41 CFR 60–2.1(d)(4).

[2] The ''Director'' was formerly known as the Deputy Assistant Secretary.

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Proposed Collection; Comment Request; Information on Meetings With Outside Parties Pursuant to Executive Order 12866

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) is proposing to collect information from members of the public who request a meeting with OIRA on rules under review at the time pursuant to E.O. 12866. The information collected would be subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) and this notice announces and requests comment on OIRA's proposal for such a collection.

DATES: Consideration will be given to all comments received by September 14, 2015.

ADDRESSES: Submit comments by one of the following methods:

- *Email: Oira_submission@omb.eop.gov* Please include in the subject line of the email, ''Executive Order 12866 Information Collection.''
- *Fax:* 202–395–5806.

Comments submitted in response to this notice may be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: *Oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information on Meetings with Outside Parties Pursuant to Executive Order 12866.

Abstract: E.O. 12866, ''Regulatory Planning and Review,'' issued by President Clinton on September 30, 1993, establishes and governs the process under which OIRA reviews agency draft and proposed final regulatory actions. Consistent with the disclosure provisions of E.O. 12866, OIRA provides information about its work related to regulatory reviews on Reginfo.gov at *www.Reginfo.gov* and on OIRA's Web site at *https://www.whitehouse.gov/omb/oira.* OIRA makes public all substantive communications with any party outside the Executive Branch concerning regulatory actions under review. If the OIRA Administrator or his/her designee meets with outside parties during a review, the subject, date, and participants of the meeting are disclosed on the Reginfo.gov Web site, as well as any materials distributed at such meetings.

These meetings occur at the initiative and request of an outside party. Any member of the public may request a meeting about a regulatory action under OIRA review, and may invite other outside parties to attend. OIRA's role in these meetings is limited to listening to feedback on the regulation under review. OIRA invites representatives from the agency or agencies issuing the regulatory action. OIRA and agency staff may ask clarifying questions, but do not take minutes. OIRA does, however, post on RegInfo.gov any written materials provided by outside parties, including the initial meeting request.

To ensure transparency associated with meetings pursuant to E.O. 12866, OIRA is proposing to collect—and then post publicly—the following information from outside parties that request a meeting with OIRA to present their views on a regulatory action currently under review:

1. Names of all attendees who will be present at the meeting from the outside party or parties. Each attendee's organization or affiliation. If an attendee is representing another organization, please provide the name of the organization the attendee is representing.

2. The name of the regulatory action under review on which the party would like to present its views.

3. Electronic copies of all of briefing materials that will be used during the presentation.

4. An acknowledgment by the requesting party that all information submitted to OIRA pursuant to this collection and meeting request will be made publically available at Reginfo.gov.

This effort will streamline the current process for outside parties when requesting a meeting and will ensure transparency and accuracy of the docket that OIRA keeps in accordance with the disclosure provisions of E.O. 12866. OIRA welcomes any and all public comments on the proposed collection of information such as the accuracy of OIRA's burden estimate, the practical utility of collecting this information, and whether there are additional pieces of information that should be collected from meeting requestors to further the disclosure provisions of E.O. 12866.

Current actions: Proposal for new information collection requirement.

Type of review: New.

Affected public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Expected average annual number of respondents: 200.

Average annual number of responses per respondent: 2.

Total number of responses annually: 400.

Burden per response: 30 minutes.

Total average annual burden: 200 hours.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dominic J. Mancini,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2015–17391 Filed 7–15–15; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304; NRC–2015–0168]

ZionSolutions, LLC; Zion Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment and finding of no significant impact regarding exemptions from specific emergency planning requirements for License Nos. DPR–39 and DPR–48, issued to Zion*Solutions,* LLC, for the Zion Nuclear Power Station (ZNPS), Units 1 and 2.

DATES: The environmental assessment and finding of no significant impact referenced in this document is available on July 16, 2015.

ADDRESSES: Please refer to Docket ID NRC–2015–0168 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0168. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- 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 that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–00001; telephone: 301–415–3017; email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of exemptions from specific emergency planning (EP) requirements of part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), for License Nos. DPR–39 and DPR–48, issued to Zion*Solutions,* LLC (ZS, the licensee), for the ZNPS, Units 1 and 2. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment that follows, the NRC has determined not to prepare an environmental impact statement for

the exemptions, and is issuing a finding of no significant impact.

Section 50.47, ''Emergency plans,'' in 10 CFR part 50 provides in part, ''. . . no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.'' Appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' provides in part, ''This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness.''

II. Environmental Assessment

Description of Proposed Action

The proposed action would exempt ZS, a 10 CFR part 50 licensee, from certain 10 CFR 50.47, and 10 CFR part 50, appendix E, EP requirements because ZNPS is a permanently shut-down nuclear facility with all spent fuel stored in an independent spent fuel storage installation (ISFSI).

The proposed action is in accordance with the licensee's application dated May 27, 2014, (ADAMS Accession No. ML14148A295).

Need for Proposed Action

The ZNPS was shut down on February 21, 1997, and is currently in a permanently shut-down and defueled condition. In a letter dated May 4, 1998, the NRC acknowledged that pursuant to 10 CFR 50.82(a)(2), the 10 CFR part 50 licenses for the ZNPS, Units 1 and 2 no longer authorize operation of the reactors, or emplacement or retention of fuel in the reactor vessels. Active decommissioning is currently underway. As of January 12, 2015, all of the spent fuel at the ZNPS had been transferred to the Zion ISFSI.

The licensee claims that the proposed action is needed because the EP regulations impose requirements on the ZNPS that are not necessary to meet the underlying purpose of the regulations in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut down and with the removal of all spent fuel from the Spent Fuel Pool and transfer to dry cask storage at the ISFSI. Additionally, the license was amended on January 14, 2015, (ADAMS Accession No. ML14295A716) to remove from the Technical Specifications functional, operational and staffing requirements associated with the storage of spent fuel in the spent fuel pool.

Environmental Impacts of the Proposed Action

The NRC staff evaluated the environmental impacts of the proposed action and concludes that exempting the licensee from the emergency planning requirements will not have any adverse environmental impacts. With respect to radiological impacts, the NRC has determined that no credible events at the ZNPS would result in doses to the public beyond the owner controlled area boundary that would exceed the U.S. Environmental Protection Agency Protective Actions Guides at the site boundary. The proposed action is wholly procedural and administrative in nature. As such, the proposed action will not: Significantly increase the probability or consequences of radiological accidents, result in any changes to the types of effluents that may be released offsite, and result in any significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any construction activities, renovation of buildings or structures, ground disturbing activities or other alteration to land. The proposed action will not change the site activities and therefore will not result in any changes to the workforce or vehicular traffic. Furthermore, the proposed action is not a type of activity that has the potential to cause effects on historic properties or cultural resources, including traditional cultural properties. In addition the proposed action will not result in any change to non-radiological plant effluents and thus, will have no impact on either air or water quality. As the proposed action is wholly procedural and administrative in nature, the NRC staff has determined that the proposed action will have no effect on listed species or critical habitat. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the exemption request would result in no change in current environmental impacts because there would be no construction or major renovation of any buildings or structures, nor any associated ground disturbing activities. Thus, the environmental impacts of the proposed action and no-action alternative are similar. Therefore, the no-action alternative was not further considered.

Conclusion

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC contacted the Illinois Emergency Management Agency via email on February 3, 2015, concerning this request. The State official replied via email on February 5, 2015, stating that they had no questions or concerns and they did not object to the action (ADAMS Accession No. ML15168A221).

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate. In accordance with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

Dated at Rockville, Maryland, this 8th day of July 2015.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–17436 Filed 7–15–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304; NRC–2015–0082]

Zion Solutions, LLC, Zion Nuclear Power Station, Units 1 and 2, License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; reopening of comment period.

SUMMARY: On April 6, 2015, the U.S. Nuclear Regulatory Commission (NRC)

solicited comments on the License Termination Plan (LTP) for the Zion Nuclear Power Station (ZNPS), Units 1 and 2. The public comment period closed on May 26, 2015. The NRC has decided to reopen the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The comment period for the document published on April 6, 2015 (80 FR 18443) has been reopened. Comments should be filed no later than August 17, 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 on or 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–2015–0082. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; 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: O12–H08, 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: John Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3017, email: *John.hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0082 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–2015–0082
- 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
- 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–2015–0082 in your comment submission.

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

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

II. Discussion

Zion Solution (ZS), LLC, is the holder of Facility Operating License Nos. DPR–39 and DPR–48. The licenses provide, among other things, that ZS is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The ZNPS facility consists of two pressurized-water reactors located in Lake County, Illinois.

In September 1996, ZNPS, Unit 2 was permanently shut-down after approximately 23 years of operation. In February 1997, ZNPS, Unit 1 was permanently shut-down after approximately 24 years of operation. In early 1998, in accordance with 10 CFR 50.82(a)(1)(i) and (ii) of Title 10 of the *Code of Federal Regulations* (10 CFR 50), Exelon Generating Company LLC (Exelon) notified the NRC of the permanent cessation of operations at the ZNPS and the permanent removal of all spent fuel assemblies from the reactor vessels to the spent fuel pool (ADAMS Legacy Accession Nos. 9902200407 and 9803110251). On February 14, 2000, Exelon submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for the Zion units, pursuant to 10 CFR 50.82(a)(4)(i) (ADAMS Accession No. ML003685889). The PSDAR was updated on March 18, 2008 (ADAMS Accession No. ML080840398). On September 1, 2010, the NRC transferred Facility Operating License Numbers DPR–39 and DPR–48 from Exelon to ZS (ADAMS Accession No. ML102290437). The ZS acquired ZNPS to conduct the decommissioning of the facility and then return the decommissioned site back to Exelon. The spent fuel has been moved from the spent fuel pool to the Independent Spent Fuel Storage Installation. Decommissioning of ZNPS is scheduled to be completed in 2018.

By letter dated December 19, 2014 (ADAMS Accession No. ML15005A336), and supplemented on February 26, 2015 (ADAMS Accession No. ML15061A281), ZS submitted the LTP for ZNPS in accordance with § 50.82(a)(9). The LTP addresses site characterization to ensure that final radiation surveys (FRS) cover all areas where contamination existed, remains, or has the potential to exist or remain; identification of remaining dismantlement activities; plans for site remediation; a description of the FRS plan to confirm that ZNPS will meet the release criteria in 10 CFR part 20, subpart E; dose-modeling scenarios that ensure compliance with the radiological criteria for license termination; an estimate of the remaining site-specific decommissioning costs; and a supplement to the Defueled Safety Analysis Report and the Environmental Report describing any new information or significant environmental change associated with proposed license termination activities.

A public meeting was held on April 28, 2015, in Zion, IL to discuss the LTP and solicit public comments. A transcript of that meeting is available (ADAMS Accession No. ML15148A377). Based on the interest expressed at that meeting and in subsequent communications with the NRC staff, the NRC has decided to reopen the comment period.

On April 6, 2015, the NRC solicited comments on the License Termination Plan for the Zion Nuclear Power Station,

Units 1 and 2. The public comment period closed on May 26, 2015. The NRC has decided to reopen the public comment period on this document until August 17, 2015.

Dated at Rockville, Maryland, this 26th day of June, 2015.

For the Nuclear Regulatory Commission.

Zahira Cruz,

Acting Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–17387 Filed 7–15–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: STN 50–456, STN 50–457, STN 50–454, and STN 50–455; NRC–2012–0116]

Exelon Generation Company, LLC, Braidwood Station, Units 1 and 2, and Byron Station, Unit No(s). 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Exelon Generation Company, LLC to withdraw its application dated January 31, 2012, as supplemented by letter dated February 1, 2013, for proposed amendments to Braidwood Station, Units 1 and 2, Facility Operating License No(s). NPF–72 and NPF–77, located in Will County, Illinois and Byron Station, Unit No(s). 1 and 2, Facility Operating License No(s). NPF–37 and NPF–66, located in Ogle County, Illinois. The proposed amendment would have modified the Updated Final Safety Analysis Report (UFSAR) to describe the use of an Auxiliary Feedwater (AF) cross-tie.

DATES: July 16, 2015.

ADDRESSES: Please refer to Docket ID NRC–2012–0116 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0116. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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 that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6606; email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Exelon Generation Company, LLC (the licensee) to withdraw its January 31, 2012, application (ADAMS Accession No. ML12033A023), as supplemented by letter dated February 1, 2013 (ADAMS Accession No. ML13035A017), for proposed amendments to Braidwood Station, Units 1 and 2, Facility Operating License No(s). NPF–72 and NPF–77, located in Will County, Illinois and Byron Station, Unit No(s). 1 and 2, Facility Operating License Nos. NPF–37 and NPF–66, located in Ogle County, Illinois.

The proposed amendment would have modified the Updated Final Safety Analysis Report (UFSAR) to describe the use of an Auxiliary Feedwater (AF) cross-tie. Specifically, this change would have added information to the UFSAR describing the design and shared operation of cross-tie piping between the discharges of the Unit 1 and Unit 2 Train A motordriven AF pumps.

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on May 29, 2012 (77 FR 31660). However, by letter dated June 3, 2015 (ADAMS Accession No. ML15154B363), the licensee withdrew the proposed change.

Dated at Rockville, Maryland, this day of July 9, 2015.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Plant Licensing III–2 and Planning and Analysis Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–17385 Filed 7–15–15; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Submit comments on or before September 14, 2015.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The information in the Peace Corps Volunteers Long Term Health Outcomes survey will be compiled and analyzed by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention in conjunction with the Peace Corps, Office of Health Services, Epidemiology and Surveillance Unit to determine what the long term health outcomes of Peace Corps Volunteer service are.

OMB Control Number: 0420–XXXX.

Title: Peace Corps Volunteers Long Term Health Outcomes Survey.

Type of Review: New.

Affected Public: Individuals.

Respondents' Obligation To Reply: Voluntary.

Burden to the Public:

a. *Estimated number of Returned Peace Corps Volunteers:* 44,787.

b. *Estimated number of respondents:* 11,196.

c. *Frequency of response:* One time.

d. *Completion time:* 15 minutes.

e. *Annual burden hours:* 2,799 hours.

General Description of Collection: The Peace Corps needs the information that will be collected on the survey to inform the programming and training needs of Peace Corps Volunteers. The data generated from this survey can help Peace Corps understand long-term health outcomes of Peace Corps Volunteers in terms of prevalence of select diseases in comparison to the general U.S. population.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on July 10, 2015.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2015–17390 Filed 7–15–15; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Proposed New Routine Use; System of Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice to establish new Privacy Act routine use.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB), Circular No. A–130, notice is given that the U.S. Office of Personnel Management proposes to modify all of its systems of records, as identified in the list below.

DATES: Please submit any comments by August 17, 2015.

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments by mail or email to Mary Volz-Peacock, Information Management, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–1000, or *recordsmanagement@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Volz-Peacock at 202–606–4942.

SUPPLEMENTARY INFORMATION: The agency has modified all of its systems of records to include a new routine use that allows disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there has been a breach of the data contained in the systems. This routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the agency's response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms from the breach.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the OMB, which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the systems. OPM has sought a waiver of the OMB 40-day review period, which the agency expects will be granted. Therefore, please submit any comments by August 17, 2015.

A description of the modification to the agency's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the agency has provided a report to OMB and the Congress.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

U.S. Office of Personnel Management Privacy Act notices and citations follow. An asterisk (*) designates the last publication of the complete document in the **Federal Register**.

SORN	Title	FR No.
2013 statement	2013 OPM Statement of Routine Uses for OPM's Internal and Central Systems of Records.	60 FR 63075.
CENTRAL–1	Civil Service Retirement and Insurance Records	73 FR 15013.* 64 FR 54930. 63 FR 45881. 60 FR 63075.
CENTRAL–2	Complaints and Inquiries Records	60 FR 63075.
CENTRAL–4	Inspector General Investigations Case File	60 FR 63075.
CENTRAL–5	Intergovernmental Personnel Act Assignment Records	64 FR 60249.* 60 FR 63075.
CENTRAL–6	Administrative Law Judge Application Records	60 FR 63075.
CENTRAL–7	Litigation and Claims Records	60 FR 63075.
CENTRAL–8	Privacy Act/Freedom of Information Act (PA/FOIA) Case Records	64 FR 53424.* 60 FR 63075. vol. 58, no. 68, 4/12/1993.
CENTRAL–9	Personnel Investigations Records	75 FR 28307.* 60 FR 63075.
CENTRAL–10	Federal Executive Institute Program Participants Records	64 FR 59221.* 60 FR 63075.
CENTRAL–11	Presidential Management Fellows (PMF) Program Records	77 FR 61791.* 74 FR 42334. 60 FR 63075.
CENTRAL–13	Executive Personnel Records	64 FR 60247.* 60 FR 63075.
CENTRAL–14	Debarment or Suspension Records for Federal Employee Health Benefits	60 FR 63075.* 60 FR 39194.
CENTRAL–15	Health Claims Data Warehouse	78 FR 23313.* 76 FR 35050.
CENTRAL–16	Health Claims Disputes External Review Services	76 FR 70512.* 75 FR 56601.

SORN	Title	FR No.
CENTRAL–18	Federal Employees Health Benefits Program Claims Data Warehouse	76 FR 35052.
CENTRAL–X	Federal Competency Assessment Tool	72 FR 60396.
GOVT–1	General Personnel Records	77 FR 73694.*
		76 FR 32997.
		71 FR 35342.
		65 FR 24732.
		61 FR 36919.
GOVT–2	Employee Performance File System Records	71 FR 35342.*
		65 FR 24732.
		61 FR 36919.
GOVT–3	Records of Adverse Actions, Performance Based Reductions In Grade and Removal Actions, and Terminations of Probationers.	71 FR 35342.*
		65 FR 24732.
		61 FR 36919.
GOVT–5	Recruiting, Examining and Placement Records	79 FR 16834.*
		71 FR 35342.
		65 FR 24732.
GOVT–6	Personnel Research and Test Validation Records	71 FR 35342.*
		65 FR 24732.
		61 FR 36919.
GOVT–7	Applicant Race, Sex, National Origin, and Disability Status Records	71 FR 35342.*
		65 FR 24732.
		61 FR 36919.
GOVT–9	File on Position Classification Appeals, Job Grading Appeals, Retained Grade or Pay Appeals, Fair Labor Standard Act (FLSA) Claims and Complaints, Federal Civilian Employee Compensation and Leave Claims, and Settlement of Accounts for Deceased Civilian Officers and Employees.	78 FR 60331.*
		71 FR 35342.
		65 FR 24732.
		61 FR 36919.
GOVT–10	Employee Medical File Systems Records	75 FR 35099.*
		71 FR 35342.
		65 FR 24732.
Internal-1	Defense Mobilization Emergency Cadre Records	64 FR 72705.*
		60 FR 63075.
Internal-2	Negotiated Grievance Procedure Records	60 FR 63075.
Internal-3	Security Officer Control Files	65 FR 14635.*
		60 FR 63075.
Internal-4	Health Program Records	64 FR 51807.*
		60 FR 63075.
Internal-5	Pay, Leave, and Travel Records	64 FR 61949.*
		60 FR 63075.
Internal-6	Appeal and Administrative Review Records	60 FR 63075.
Internal-7	Complaints and Inquiries Records	60 FR 63075.
Internal-8	Employee Counseling Services Program Records	60 FR 63075.
Internal-9	Employee Locator Card Files (PDF file)	64 FR 51807.*
		60 FR 63075.
Internal-10	Motor Vehicle Operator and Accident Report Records	60 FR 63075.
Internal-11	Administrative Grievance Records	60 FR 63075.
Internal-12	Telephone Call Detail Records	64 FR 54934.
Internal-13	Parking Program Records	65 FR 540.
Internal-14	Photo Identification and Visitor Access Control Records	64 FR 73108.
Internal-15	OPM Child Care Tuition Assistance Records	65 FR 30643.
Internal-16	Adjudications Officer Control Files	79 FR 30202.*
		66 FR 42568.
Internal-17	Web-Enabled Voting Rights System (WEVRS)	71 FR 38190.
Internal-18	CyberCorps®: Scholarship For Service (SFS)	79 FR 42064.*
		74 FR 42336.
Internal-19	Investigation Training Records	79 FR 8515.
Internal-20	Integrity Assurance Officer Control Files	80 FR 2447.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OPM or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. 2015–17583 Filed 7–15–15; 8:45 am]

BILLING CODE 6325–47–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–67 and CP2015–98; Order No. 2577]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 133 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:* July 17, 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:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 133 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–67 and CP2015–98 to consider the Request pertaining to the proposed Priority Mail Contract 133 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than July 17, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–67 and CP2015–98 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than July 17, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–17403 Filed 7–15–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 133 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 9, 2015 (Request).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–560, OMB Control No. 3235–0622]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Interagency Statement on Sound Practices.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in the Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (''Statement'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') and the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*) (''Advisers Act'').

The Statement was issued by the Commission, together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (together, the ''Agencies''), in May 2006. The Statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with elevated risk complex structured finance transactions.

The primary purpose of the Statement is to ensure that these transactions receive enhanced scrutiny by the institution and to ensure that the institution does not participate in illegal or inappropriate transactions.

The Commission estimates that approximately 5 registered broker-dealers or investment advisers will spend an average of approximately 25 hours per year complying with the Statement. Thus, the total compliance burden is estimated to be approximately 125 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–17392 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75421; File Nos. SR–BSECC–2015–001; SR–BX–2015–030; SR–NASDAQ–2015–058; SR–Phlx–2015–46; SR–SCCP–2015–01]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

July 10, 2015.

I. Introduction

On May 19, 2015, each of the Boston Stock Exchange Clearing Corporation (''BSECC''), NASDAQ OMX BX, Inc. (''BX''), The NASDAQ Stock Market LLC (''NASDAQ''), NASDAQ OMX PHLX LLC (''Phlx''), and the Stock Clearing Corporation of Philadelphia (''SCCP'' and, together with BSECC, BX, NASDAQ, and Phlx, the ''SROs''), 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] proposed rule changes with respect to amendments to the Amended and Restated Certificate of Incorporation (the ''Charter'') and By-Laws (the ''By-Laws'') of The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), the parent company of the SROs, to change its name to Nasdaq, Inc. The BX, NASDAQ, and Phlx proposed rule changes were published for comment in the **Federal Register** on June 2, 2015.[3] The BSECC and SCCP proposed rule changes were published for comment in the **Federal Register** on June 3, 2015.[4] The Commission did not receive any comment letters on the proposals. This order approves the proposed rule changes.

II. Description of the Proposal

NASDAQ OMX, as part of an ongoing global rebranding initiative, has begun to refer to itself, both internally and externally, as Nasdaq, rather than NASDAQ OMX. As a result of this initiative, the SROs note that for purposes of consistency with its marketing, communications, and other materials, NASDAQ OMX intends to change the legal names of NASDAQ OMX and certain of its subsidiaries to eliminate references to OMX. As represented in the current proposed rule changes by each of its subsidiaries, NASDAQ OMX has therefore proposed to amend its Charter and By-Laws to change its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc.

Specifically, NASDAQ OMX proposes to file a Certificate of Amendment to its Charter with the Secretary of State of the State of Delaware to amend Article First of the Charter to reflect the new name. In addition, NASDAQ OMX proposes to amend the title and Article I(f) of its By-Laws to reflect the new name.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of the proposals by BX, NASDAQ, and Phlx, and to a clearing agency, in the case of the proposals by BSECC and SCCP.[5]

In particular, the Commission finds that the proposed rule changes by BX, NASDAQ, and Phlx are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Section 6(b)(5) of the Act requires, among other things, that an exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest.[6] The Commission believes that the proposed rule changes by BX, NASDAQ, and Phlx are consistent with the requirements of section 6(b)(5) of the Act [7] because they would reflect the change made by NASDAQ OMX, the exchanges' parent company,[8] to its Charter and By-Laws to change its legal name to Nasdaq, Inc., which should eliminate potential confusion among investors and market participants because of differences between NASDAQ OMX's corporate name and the manner in which it refers to itself as part of its current global branding initiative.

The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest.[9] In addition, Rule 17Ad–22(d)(8) under the Act [10] requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent. Here, BSECC and SCCP filed proposed rule changes to highlight a change being made in the Charter and By-laws of NASDAQ OMX,[11] which indirectly owns BSECC and SCCP. Therefore, the proposed rule changes by BSECC and SCCP help make clear and transparent the governance arrangements of NASDAQ OMX and, thus, BSECC and SCCP, which helps ensure investor protection and the public interest.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, in the case of BX, NASDAQ, and Phlx, and to a registered clearing agency, in the case of BSECC and SCCP.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule changes (SR–BSECC–2015–001; SR–BX–2015–030; SR–NASDAQ–2015–058; SR–Phlx–2015–46; SR–SCCP–2015–01) be, and hereby are, approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 75051 (May 27, 2015), 80 FR 31427 (SR–BX–2015–030); 75052 (May 27, 2015), 80 FR 31438 (SR–NASDAQ–2015–058); 75053 (May 27, 2015), 80 FR 31439 (SR–Phlx–2015–46).

[4] Securities Exchange Act Release Nos. 75064 (May 28, 2015), 80 FR 31627 (SR–BSECC–2015–001); 75063 (May 28, 2015), 80 FR 31625 (SR–SCCP–2015–01).

[5] Additionally, in approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] Certain provisions of NASDAQ OMX's Charter and By-Laws are considered rules of BX, NASDAQ, and Phlx if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of BX, NASDAQ, and Phlx, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b); 17 CFR 240.19b–4.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(d)(8).

[11] Certain provisions of NASDAQ OMX's Charter and By-Laws are considered rules of BSECC and SCCP if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of BSECC and SCCP, and must be filed with the Commission pursuant to section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78q–1(b); 17 CFR 240.19b–4.

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17394 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75423; File No. SR–NASDAQ–2015–070]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relating to Non-Penny Pilot Options Fees

July 10, 2015.

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 June 30, 2015, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at chapter XV, section 2 entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on July 1, 2015.

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 Exchange proposes to amend the Non-Penny Pilot Options [3] Fees for Removing Liquidity [4] for all market participants, except Customers.[5] The Exchange is also proposing to remove all fees for options overlying the PHLX Semiconductor Sector℠ (SOX℠).

Non-Penny Pilot Options Fees for Removing Liquidity

The Exchange proposes to amend the Non-Penny Pilot Options Fees for Removing Liquidity (including NDX) for Professionals,[6] Firms,[7] Non-NOM Market Makers,[8] NOM Market Makers [9] and Broker-Dealers [10] from $0.89 to $0.94 per contract. Customers will continue to be assessed a Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract. The Exchange believes that despite this fee increase, Fees for Removing Liquidity in Non-Penny Pilot Options remain competitive.

SOX

The Exchange is proposing to remove all fees related to SOX from chapter XV, section 2 of the NOM Rules. Currently, chapter XV, section 2 specifies the following fees related to SOX:

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 is currently expanded and extended through June 30, 2015. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2013); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR–NASDAQ–2013–154) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2014); 79 FR 31151 (May 23, 2014), 79 FR 31151 (May 30, 2014) (SR–NASDAQ–2014–056) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2014); 73686 (December 2, 2014), 79 FR 71477 (November 25, 2014) (SR–NASDAQ–2014–115) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2015); and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted). See also NOM Rules, chapter VI, section 5.

[4] The Non-Penny Pilot Options pricing includes options overlying the Nasdaq 100 Index traded under the symbol NDX. For transactions in NDX, a surcharge of $0.15 per contract will be added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

[5] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in chapter I, section 1(a)(48)).

[6] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to chapter I, section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[7] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[8] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[9] The term ''NOM Market Maker'' means a Participant that has registered as a Market Maker on NOM pursuant to chapter VII, section 2, and must also remain in good standing pursuant to chapter VII, section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[10] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

FEES AND REBATES
[Per executed contract]

	Customer	Professional	Firm	Non-NOM market maker	NOM Market maker	Broker-dealer
SOX:						
Fee for Adding Liquidity	$0.40	$0.89	$0.89	$0.89	$0.40	$0.89
Fee for Removing Liquidity	0.40	0.89	0.89	0.89	0.40	0.89

The Exchange is proposing to remove the above-referenced fees as will delist SOX from NOM as of July 1, 2015.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[11] in general, and with section 6(b)(4) and 6(b)(5) of the Act,[12] 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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Non-Penny Pilot Options Fees for Removing Liquidity

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fees for Removing Liquidity from $0.89 to $0.94 per contract is reasonable because this fee remains competitive with fees at other exchanges.[13] Further, these fees are designed to attract and compete for order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[14] In addition, the increased Non-Penny Pilot Options Fees for Removing Liquidity are reasonable because the fees generate revenue that would support the various rebates which NOM pays for adding liquidity, which attracts order flow to the Exchange.

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fee for Removing Liquidity from $0.89 to $0.94 per contract is equitable and not unfairly discriminatory because the Exchange would uniformly assess all non-Customers a Non-Penny Pilot Options Fee for Removing Liquidity of $0.94 per contract. Customers would be assessed the lowest Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract. Customer order flow enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

SOX

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX is reasonable because the Exchange is delisting SOX from NOM on July 1, 2015.

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX is equitable and not unfairly discriminatory because the Exchange is delisting SOX from NOM on July 1, 2015 and therefore no market participant will be subject to these fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer Non-Penny Pilot Options Fee for Removing Liquidity from $0.89 to $0.94 per contract does not create an undue burden on competition. All market participants, other than Customers, will be assessed a Non-Penny Pilot Options Fee for Removing Liquidity of $0.94 per contract. Customers are assessed a lower Non-Penny Pilot Options Fee for Removing Liquidity because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants.

The Exchange's proposal to remove the Fees for Adding and Removing Liquidity in options overlying SOX does not create an undue burden on competition because no market participant will be subject to these fees.

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.[15] 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–2015–070 on the subject line.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* NYSE Arca's Options Fees and Charges. NYSE Arca assesses a take liquidity fee of $0.94 per contract to Professional Customers, Firms and Broker-Dealers in Non-Penny Pilot Options. A NYSE Market Maker is assessed a take liquidity fee of $0.92 per contract in Non-Penny Pilot Options. A Customer is assessed a take liquidity fee of $0.85 per contract in Non-Penny Pilot Options.

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2015–070. 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–2015–070 and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17396 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75427; File No. SR–OCC–2015–010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Concerning the Implementation of New Risk Models in Order To Support the Clearance and Settlement of Asian-Style Flexibly Structured Options and Flexibly Structured Cliquet Options

July 10, 2015.

I. Introduction

On May 1, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2015–010 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 22, 2015.[3] The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

OCC is proposing to implement new risk models to support the clearance and settlement of Asian-style and Cliquet flexibly structured options[4] (''Asian Options'' and ''Cliquet Options,'' respectively). OCC already clears other flexibly structured options (''Current Index Flex Options'')[5] on various securities indices[6] and risk manages clearing member positions (*i.e.,* computes margin requirements) through its STANS methodology.[7]

Asian Options use an ''Asian-style'' methodology for determining the exercise settlement amount of an option, which is the difference between the aggregate exercise price and the aggregate current underlying interest value, which is based on the average of twelve monthly price ''observations.'' OCC states that traders of Asian Options will select an observation date as well as an expiration date.[8]

Cliquet Options use a cliquet[9] method for determining the exercise settlement amount of the option, which is the greater of: (i) Zero (*i.e.,* the underlying index had negative returns during the option's tenor); and, (ii) the difference between the aggregate exercise price and the aggregate current underlying interest value, which is based on the sum of the Capped Returns of the underlying index on 12 predetermined ''observation dates''[10] (each an ''Observation Date,'' and the computed value an ''Observation'').[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–74966 (May 14, 2015), 80 FR 29784 (May 22, 2015) (SR–OCC–2015–010). The proposed rule change was published in the **Federal Register** on May 22, 2015, but was deemed published on May 1, 2015, pursuant section 19b(2)(E) of the Act.

[4] Flexibly structured options permit the buyer and seller to negotiate and customize certain variable terms pursuant to exchange rules. *See* OCC By-Laws Article 1, section 1(F)(5). For example, parties may select from a variety of underlying indices, pick a strike price and expiration date as well as pick the exercise-style of the option—*i.e.,* American or European exercise. Options with an American style exercise may be exercised at any time prior to, and including, expiration. Options with a European style exercise may only be exercised at expiration.

[5] The exercise settlement amount for Current Index Flex Options is determined based entirely on the strike price of a given option and the current underlying interest value on the day of exercise, in the case of American style Current Index Flex Options, or final day of trading, in the case of European style Current Index Flex Options.

[6] OCC clears Current Index Flex Options on the S&P 500 Index, S&P 100 Index, Nasdaq 100 Index and Russell 2000 Index, among other underlying indexes.

[7] *See http://www.theocc.com/risk-management/margins/* for a description of OCC's margin methodology. *See also* OCC Rule 601.

[8] OCC provides that, since Expiration dates must be within 50 to 53 calendar weeks from the date of listing, all Asian Options that it will clear will have a term of approximately one year. OCC explains that if the expiration date precedes the observation date in the final month, then the final ''observation'' will be the current underlying interest value on expiration date and not the observation date, and if one of the observation dates falls on a weekend or holiday, the value used will be from the previous business day.

[9] Cliquet style settlement provides for payout based on the (positive) sum of ''capped'' returns of an index on pre-determined dates over a specified period of time.

[10] OCC states that the parties to a Cliquet Option will designate a set of Observation Dates for each contract as well as an expiration date. According to OCC, Observation Dates will generally be a given date each month for the twelve months preceding the expiration date, with the last Observation Date being the expiration date. If the Observation Date chosen by the parties to a Cliquet Option precedes the expiration date then OCC states that there will be two Observation Dates in the final month (*i.e.,* the expiration date will always be an Observation Date) and ten other Observation Dates; one date in each of the ten months preceding the expiration month that will coincide with the Observation Date that was chosen by the parties to a Cliquet Option (not the expiration date). OCC explains that expiration dates must be within 50 to 53 calendar weeks from the date of listing, and that if one of the Observation Dates falls on a weekend or holiday, the previous business day will be deemed to be the Observation Date.

[11] OCC explains that, on each Observation Date, the exchange on which the Cliquet Options is listed will determine the actual return of the underlying index from observation period-to-observation period, which will be compared to the observation cap, an amount designated the parties to the Cliquet Option. OCC further states that the Capped Return

Continued

OCC states that both Asian Options and Cliquet Options will be only available in European style exercises, and will be subject to OCC's expiration exercise procedures set forth in OCC Rule 805, as supplemented by OCC Rule 1804. In addition, OCC represents that it will initially clear Asian Options and Cliquet Options on the S&P 500 Index, Nasdaq 100 Index, Russell 2000 Index and Dow Jones Industrial Average Index and it may clear Asian Options and Cliquet Options on other indices in the future.

New Risk Models

As noted above, OCC will risk manage clearing member positions in Asian Options and Cliquet Options through its STANS methodology. Due to certain features of Asian Options and Cliquet Options described below, OCC proposed adding new pricing models into its STANS methodology so that OCC may compute appropriate margin requirements for clearing members holding positions in Asian Options and Cliquet Options.[12]

Asian Options

Asian Options differ from the Current Index Flex Options currently cleared by OCC due to the option's exercise settlement amount being a function of the arithmetic average of the underlying index on certain observation dates, rather than the value of the underlying index of a given option on the exercise date or expiration date. Based on this phenomenon, OCC proposed to add a new pricing model for Asian Options that will be a shifted lognormal model[13] to accommodate the fact that Asian Options will have an arithmetic average value of the underlying index within the final exercise settlement amount calculation. OCC states that the shifted lognormal model will account for the fact that the current underlying interest value on the expiration date of an Asian Option is based on an arithmetic average of prices, and not the value of the underlying index on the option's expiration date, which introduces non-normality into the probability distribution of contract payoffs.

With respect to the Asian Option shifted lognormal pricing model, OCC proposed to utilize a modified Black-Scholes pricing model with a shift parameter that employs the first three statistical ''moments.'' In accordance with such model, OCC states that the first moment is the expected value of an Asian Option's value based on the option's implied volatility, the second moment accounts for the statistical volatility of the option's value, and the third moment accounts for the statistical skewness of the option's value. OCC represents that the moments are intended to account for variability in the arithmetic average value of an Asian Option's underlying index. OCC states that the shifted lognormal distribution (*i.e.,* the lognormal probability distribution derived using the first through third moments above) is then priced through the standard Black-Scholes equation.[14] OCC further states that the shift parameters are then adjusted out of the Black-Scholes price in order to derive a price for a given Asian Option that is appropriate to be utilized within the STANS methodology for the purposes of computing clearing member margin on Asian Options.

Cliquet Options

Similar to Asian Options, the price of a given Cliquet Options is based on monthly Observations of an underlying index. OCC states that while a shifted lognormal model is an appropriate pricing model for Asian Options, the capped return feature of Cliquet Options makes the numerical solution to the Black-Scholes Partial Differential Equation[15] the appropriate pricing model for Cliquet Options.[16] OCC therefore proposed to add a Cliquet Option pricing model to its STANS methodology that will compute the numerical solution to the Black-Scholes Partial Differential Equation. OCC represents that such a solution will provide OCC with the price of a given Cliquet Option that will be utilized within the STANS methodology for the purposes of computing clearing member margin requirements.

With respect to the pricing of a given Cliquet Option, and based on the capped return feature of Cliquet Options, OCC states that it will identify the known implied volatility skew of standard options with the same underlying interest, a similar tenor and a similar amount of forward moneyness[17] of the given Cliquet Option. OCC represents that its calculation of forward moneyness will include an adjustment to account for any known Observations of the underlying interest for a given Cliquet Option. OCC further states that the known implied volatility skew will subsequently be utilized within the Black-Scholes Partial Differential Equation so that OCC will be able to derive the price of a given Cliquet Option, which will then be utilized within the STANS methodology for purposes of computing clearing member margin requirements on a Cliquet Options.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[18] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[19] requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In addition,

for a given Observation Date will be the lesser of the actual observation period-to-observation period return or the observation cap. For example, if the actual return of the underlying index was 1.75% and the designated capped return for a Cliquet Option was 2%, the 1.75% value will be included (and not the 2%) as the value for the Observation Date. Using this same example, if the actual return of the underlying index was 3.30%, the 2% value will be included (and not the 3.30%) as the value for the Observation Date.

[12] OCC explains that it currently computes the price of Current Index Flex Options on indices through standard pricing models (*i.e.,* the Black-Scholes pricing model) that consider: (i) The value of the option's underlying index, (ii) the implied volatility of an option's underlying index, (iii) time until expiration, (iv) risk-free interest rate, and (v) the strike price of the option.

[13] *See* Andreasen, J., ''The pricing of discretely sampled Asian and lookback options: a change of numeraire approach,'' Journal of Computational Finance, September 2000. *See also* Brigo, D., Mercurio, F., Rapidsarda, F., Scotti, R., ''Approximated moment-matching dynamics for basket-options simulation,'' EFMA Lugano meetings, November 2001. *See also* Haug, E.G. and Margrabe, W., ''Asian Pyramid Power,'' Wilmott Magazine, March 2003.

[14] In connection with using the standard Black-Sholes equation, OCC will also compute each of the three moments using a random shifted lognormal variable.

[15] OCC represents that the differential equation model incorporates boundary conditions, which are necessary in order to solve differential equations, to ensure that the value of a given Cliquet Option is consistent throughout the equation.

[16] *See* Andreasen, J., ''The pricing of discretely sampled Asian and lookback options: a change of numeraire approach.'' Journal of Computational Finance (2000). *See also* Bernard, C., & Li, W. V., ''Pricing and Hedging of Cliquet Options and Locally Capped Contracts.'' SIAM Journal on Financial Mathematics, 353–371 (2013). *See also* Hagan, P. S., Kumar, D., & Lesniewski, A. S., ''Managing Smile Risk.'' Wilmott Magazine, 84–108 (2002). *See also* Hull, John C., ''Options Futures and other Derivatives.'' McGraw Hill (2000). *See also* Kjaer, M., ''Fast pricing of cliquet options with global floor.'' Journal of Derivatives, 14(2), 47–60 (2006).

[17] OCC describes forward moneyness as the ratio of the strike to the current value of the implied forward for the index.

[18] 15 U.S.C. 78s(b)(2)(C).

[19] 15 U.S.C. 78q–1(b)(3)(F).

Rule 17Ad–22(b)(2) [20] requires registered clearing agencies, among other things, to establish, implement, maintain, and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements.

The Commission finds that the proposed rule change is consistent with Section 17A of the Act [21] and the rules thereunder applicable to OCC. The proposal will integrate new pricing models into the STANS methodology to accommodate the manner in which the exercise settlement amount for Asian Options and Cliquet Options is determined. The Commission believes these changes are designed to enable OCC to accurately compute margin requirements for Asian Option and Cliquet Option positions through its STANS methodology, therefore reducing the risk that clearing member margin assets would be insufficient should OCC need to use such assets to close-out the positions of a defaulted clearing member. The Commission therefore believes that the proposed rule change is reasonably designed to limit OCC's credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements, consistent with the requirements of Rule 17Ad–22(b)(2).[22] Accordingly, the Commission believes that the proposed rule change is designed to assure the safeguarding of securities and funds in OCC's custody or control or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[23]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act [24] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–OCC–2015–010) be, and hereby is, approved.[26]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17400 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75422; File No. SR–BATS–2015–52]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

July 10, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members [5] of the Exchange pursuant to Rule 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Options Pricing'' section of its fee schedule, effective immediately, in order to modify pricing charged by the Exchange's options platform (''BATS Options'') including: (i) Amend footnote 2 to remove Professional [6] orders from the Professional and Firm Penny Pilot Add Volume Tiers related to the pricing for Professional and Firm [7] orders that add liquidity in Penny Pilot Securities; [8] (ii) further amend footnote 2 to change the standards for meeting Tiers 1 and 2, changing the rebate for Tier 2, and adding a new Tier 3; (iii) amend the standard rebate associated with Fee Code PF for Firm orders that add liquidity in Penny Pilot Securities; (iv) create a new Fee Code NF for Firm orders that add liquidity in non-Penny Pilot Securities; (v) create a new footnote 8 titled ''Firm Non-Penny Pilot Add Volume Tiers;'' (vi) add a new Tier 3 to the Market Maker Penny Pilot Add Volume Tiers; (vii) amend the fees that the Exchange charges for orders routed by the Exchange for execution at other venues, including those associated with Fee Codes 2C, CC, CF, HF, and OF; and (viii) amend the Options Physical Connection Fees for both 1G and 10G physical ports.

Professional Orders in Penny Pilot Securities

The Exchange proposes to remove Professional orders from inclusion in the Professional and Firm Penny Pilot

[20] 17 CFR 240.17Ad–22(b)(2).

[21] 15 U.S.C. 78q–1.

[22] 17 CFR 240.17Ad–22(b)(2).

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] 15 U.S.C. 78q–1.

[25] 15 U.S.C. 78s(b)(2).

[26] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] ''Professional'' applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

[7] ''Firm'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC.

[8] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

Add Volume Tiers, which apply to fee codes PA and PF. Currently, the Exchange provides a standard rebate of $0.40 per contract under Fee Code PA for Professional orders that add liquidity in Penny Pilot Securities and an enhanced rebate of $0.42 per contract for each Professional or Firm order that adds liquidity in Penny Pilot Securities and meets the requirements for either Tier 1 or Tier 2 of the Professional and Firm Penny Pilot Add Volume Tiers. Specifically, the Exchange is proposing to eliminate Professional orders from the Professional and Firm Penny Pilot Add Volume Tiers such that Professional orders subject to Fee Code PA would not be eligible for enhanced rebates under footnote 2. Such orders would remain eligible to receive enhanced rebates under footnotes 4 (NBBO Setter Tiers) and 5 (Quoting Incentive Program Tiers).

Firm Orders That Add Liquidity in Penny Pilot Add Volume Tiers

The Exchange is proposing to make several changes to the Firm Penny Pilot Add Volume Tiers. First, the Exchange is proposing to change the standard rebate associated with Fee Code PF for Firm orders that add liquidity in Penny Pilot Securities from $0.40 per contract to $0.36 per contract. The Exchange is also proposing to change the rebate for Firm orders in Penny Pilot Securities for Members that meet Tier 1 of the Firm Penny Pilot Add Volume Tiers from $0.42 per contract to $0.40 per contract.

The Exchange is also proposing to amend the standards required to meet Tiers 1 and 2 of the Firm Penny Pilot Add Volume Tiers. Currently, a Member qualifies for Tier 1 where the Member has an Options Step-up Add TCV [9] from June 2014 baseline equal to or greater than 0.50% and qualifies for Tier 2 where the Member has: (i) An Options Step-Up Add TCV from September 2014 baseline equal to or greater than 0.30%; and (ii) an ADV [10] equal to or greater than 0.40% of average TCV.[11] Specifically, the Exchange is proposing to change the Tier 1 required criteria such that a Member qualifies for Tier 1 where the Member has an ADV equal to or greater than 0.30% of average TCV. The Exchange is also proposing to change the Tier 2 required criteria such that a Member qualifies for Tier 2 where the Member has an ADV equal to or greater than 1.00% of average TCV.

The Exchange is also proposing to add an additional tier to the Firm Penny Pilot Add Volume Tier under footnote 2 of the fee schedule. As described above, the Exchange currently offers two tiers under the Firm Penny Pilot Add Volume Tiers. The Exchange is proposing to add Tier 3 under which Members would receive a $0.43 per contract rebate for Firm orders that add liquidity in Penny Pilot Securities where the Member: (i) Has an ADAV [12] in Firm orders in Penny Pilot Securities equal to or greater than 0.35% of average TCV; and (ii) has an ADV equal to or greater than 1.00% of average TCV.

Firm Orders That Add Liquidity in Non-Penny Pilot Securities

The Exchange is proposing to make two changes to its fee schedule regarding Firm orders that add liquidity in non-Penny Pilot Securities. First, the Exchange is proposing to create a new Fee Code NF which would apply to Firm orders that add liquidity in non-Penny Pilot Securities and for which the standard pricing would be a $0.40 rebate per contract. As part of this change, the Exchange is also proposing to delete the reference to ''Firm'' in Fee Code NA, which currently applies to both Professional and Firm orders that add liquidity in non-Penny Pilot Securities, which are subject to a standard rebate of $0.65 per contract. Like Fee Code NA, as proposed, orders yielding Fee Code NF would be eligible for enhanced rebates under the NBBO Setter Tiers and the Quoting Incentive Program Tiers.

The Exchange is also proposing to add a new footnote 8 titled ''Firm Non-Penny Pilot Add Volume Tiers'' under which there would be three new tiers offering enhanced rebates for Firm orders that add liquidity in non-Penny Pilot Securities. Specifically, as proposed, the tiers would provide the following rebates under the following conditions for Firm orders that add volume in non-Penny Pilot Securities: Tier 1 would provide a $0.50 rebate per contract to a Member that has an ADV equal to or greater than 0.05% of average TCV; Tier 2 would provide a $0.60 rebate per contract to a Member that has an ADV equal to or greater than 0.15% of average TCV; and Tier 3 would provide a $0.65 rebate per contract to Member that has an ADV equal to or greater than 0.25% of average TCV.

Market Maker Penny Pilot Add Volume Tiers

The Exchange is proposing to add a new Tier 3 to the Market Maker Penny Pilot Add Volume Tiers in order to provide another means for Market Maker orders in Penny Pilot Securities to receive a rebate of $0.42 per contract. Currently, the standard rebate for Market Maker orders in Penny Pilot Securities is $0.36 per contract. Such orders can receive an enhanced rebate of $0.40 by meeting Tier 1 of the Market Maker Penny Pilot Add Volume Tiers or $0.42 by meeting Tier 2 of such Tiers. The Exchange is proposing to add a new Tier 3 under which a Member would receive $0.42 per contract where: (i) The Member has an ADAV in Firm orders in Penny Pilot Securities (orders that yield Fee Code PF) equal to or greater than 0.35% of average TCV; and (ii) the Member has an ADV equal to or greater than 1.00% of average TCV.

Routing Fee Changes

The Exchange currently charges certain flat rates for routing to other options exchanges based on the approximate cost of routing to such venues. Such flat rates for routing to such options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). To address different fees at various other options exchanges, the Exchange differentiates its flat rates depending on whether they are for Customer orders or for Professional, Firm, and Market Maker [13] orders (collectively, ''non-Customer orders'').

As noted previously and as set forth above, the Exchange's current approach to routing fees is to set forth in a simple manner certain flat fees that approximate the cost of routing to other options exchanges. The Exchange then monitors the fees charged as compared to the costs of its routing services, as well as monitoring for specific fee changes by other options exchanges, and adjusts its flat routing fees and/or groupings to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower

[9] ''Options Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

[10] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[12] ''ADAV'' means average daily added volume calculated as the number of contracts added per day.

[13] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

in any area. Over the last several months, due to various increases in fees assessed by other options exchanges, the Exchange's overall Routing Costs have increased. As a result, and in order to avoid subsidizing routing to away options exchanges and to continue providing quality routing services, the Exchange proposes various increases to the charges assessed for most orders routed to most options exchanges, as set forth below.

The Exchange is proposing to amend the fees that the Exchange charges for orders routed by the Exchange for execution at other venues, including those associated with Fee Codes 2C, CC, CF, HF, and OF. The Exchange is proposing to amend the fees for those Fee Codes as follows: From $0.00 to $0.47 per contract for orders yielding Fee Code 2C, which are Customer orders routed to C2 Options Exchange, Inc. (''C2''); from $0.12 to $0.13 per contract for orders yielding Fee Code CC, which are Customer orders routed to Chicago Board Options Exchange (''CBOE''); from $0.65 to $0.75 per contract for orders yielding Fee Code CF, which are Professional, Firm, or Market Maker orders routed to CBOE; from $0.65 to $0.70 per contract for orders yielding Fee Code HF, which are Professional, Firm, or Market Maker orders routed to NASDAQ OMX PHLX LLC (''PHLX''); and from $0.65 to $0.99 for orders yielding Fee Code OF, which are Professional, Firm, or Market Maker orders routed to BOX Options Exchange, LLC (''BOX''). The Exchange notes that certain of the above changes are being proposed in order to maintain a simple, flat fee structure for routing to other venues in both Penny Pilot Securities and non-Penny Pilot Securities.

Physical Connection Fees

The Exchange proposes to amend its fee schedule to modify its fees for physical connectivity. A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: $1,000 per physical port that connects to the System [14] via 1 gigabyte circuit; and $2,500 per physical port that connects to the System via 10 gigabyte circuit.

The Exchange now proposes to amend its physical connectivity fees to align its fees with its affiliates.[15] The Exchange proposes to increase the fee per physical port that connects to the System via: (i) 1 gigabyte circuit from $1,000 per month to $2,000 per month; and (ii) 10 gigabyte circuit from $2,500 per month to $4,000 per month.

Effectiveness Date

As noted above, the Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[16] Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates and fees such as the ones currently maintained on BATS Options have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

Professional Orders in Penny Pilot Securities

The Exchange believes the proposed removal of Professional orders in Penny Pilot Securities that add liquidity from the Professional and Firm Penny Pilot Add Volume Tiers is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because, while Members entering such orders will not be eligible for the $0.02 per contract enhanced rebate that they would have potentially been eligible to receive under the tiers ($0.42 per contract vs. $0.40 per contract standard rebate for Fee Code PA), such Members will still be eligible for enhanced rebates through both the NBBO Setter Tiers (up to an additional $0.04 per contract) and the Quoting Incentive Program Tiers (also up to an additional $0.04 per contract). Further, such a reduction in rebates will allow the Exchange to allocate fees and rebates to other orders in order to encourage increased participation on BATS Options, which the Exchange believes will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

Firm Orders That Add Liquidity in Penny Pilot Add Volume Tiers

The Exchange also believes that the proposed amendments to the fee schedule related to Firm orders in Penny Pilot Securities related to the standard rebate under Fee Code PF and the proposed amendments to footnote 2, including to reduce the rebate for Tier 1, add a new tier, and amend the standards for Tiers 1 and 2 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members entering Firm orders with the opportunity to receive higher rebates while simultaneously encouraging greater participation on BATS Options, which, as described above the Exchange believes will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options. Specifically, the Exchange believes that the reduction of the standard rebate associated with Fee Code PF combined with the amended and lowered standard for meeting Tier 1 of the Firm Penny Pilot Add Volume Tiers is a reasonable, fair and equitable, and not unfairly discriminatory

[14] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[15] For purposes of this filing, the Exchange's affiliates are EDGX Exchange, Inc. (''EDGX''), EDGA Exchange, Inc. (''EDGA''), the Exchange's equity exchange (''BATS Equities'') and BATS Y-Exchange, Inc. (''BYX'', together with BATS Equities, EDGA and EDGX, the ''BATS Exchanges''). The Exchange notes that each of its affiliates will also file proposed rule changes with Commission to adopt similar physical connectivity fees to be effective July 1, 2015.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

allocation of fees and rebates because, in conjunction, they will both provide Members with a reasonably achievable threshold for receiving the same rebate as they do today while at the same time encouraging and rewarding higher levels of participation on the Exchange overall. The Exchange also believes that amending the standard for meeting Tier 2 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will similarly encourage increased participation on the Exchange by offering a rebate that applies equally to all Members without regard to prior trading volumes. Such rebate will encourage greater general participation on the Exchange, which will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options. Finally, the Exchange believes that proposed Tier 3 is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because the second of its two requirements (that a Member has an ADV equal to or greater than 1.00% of average TCV) is identical to the only requirement for meeting Tier 2, meaning that any Member that meets Tier 2 will only need to meet the additional requirement that a Member has an ADAV in Firm orders in Penny Pilot Securities equal to or greater than 0.35% of average TCV in order to receive the enhanced rebate. This will provide a direct incentive for any Member that meets Tier 2 to further increase participation in Firm orders in Penny Pilot Securities and, as with each of the proposed changes mentioned in this paragraph, will encourage greater participation on the Exchange, which will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

Firm Orders That Add Liquidity in Non-Penny Pilot Securities

The Exchange believes that the amendments for Firm orders that add liquidity in non-Penny Pilot Securities mark a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because while the new Fee Code NF and the associated standard rebate marks a reduction in rebate (from $0.65 per contract to $0.40 per contract), under the new Firm Non-Penny Pilot Add Volume Tiers, Members will be eligible to receive an enhanced rebate ($0.50 per contract) by meeting a relatively low threshold of ADV as a percentage of TCV (0.05%), will receive a further enhanced rebate ($0.60 per contract) by meeting Tier 2 (0.15% ADV as a percentage of TCV), or receive the same rebate that they currently receive ($0.65 per contract) by meeting Tier 3 (0.25% of average TCV). Further, the proposed standard rebate is still higher than those offered at NOM and NYSE Arca, Inc., which each charge fees for Firm orders that add liquidity in non-Penny Pilot Securities. The Exchange believes that such a fee structure will provide Members with the ability to receive reasonable rebates while strongly encouraging Members to increase their participation on the Exchange. Such increased participation on BATS Options will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

Market Maker Penny Pilot Add Volume Tiers

The Exchange believes that the addition of Tier 3 to the Market Maker Penny Pilot Add Volume Tiers is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it provides an opportunity for Market Maker orders that add liquidity in Penny Pilot Securities with an alternate means of achieving the current maximum rebate of $0.42 per contract and only represents a potential increase in rebates for such orders. The inclusion of the requirement that a Member has an ADAV in Firm orders in Penny Pilot Securities equal to or greater than 0.35% is designed to incentivize Members to increase their participation on the Exchange in organizational order flow beyond just Market Maker orders. Further, this enhanced rebate will incentivize increased participation on BATS Options both through the enhanced rebate itself and the required criteria for a Member to become eligible for the enhanced rebate. Such increased participation on BATS Options will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

Routing Fee Changes

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges, and the proposal is in response to various increases in fees assessed by other options exchanges. Accordingly, the Exchange believes that the proposed increases are fair, equitable and reasonable because they will help the Exchange to avoid subsidizing routing to away options exchanges and to continue providing quality routing services. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at away options exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

Physical Connection Fees

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected Members and non-Members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Furthermore, the proposed rule change is also an equitable allocation of

reasonable dues, fees, and other charges as the Exchange believes that the increased fees obtained will enable it to cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services. The Exchange believes that the proposed fees for 1 gigabyte circuit of $2,000 per month and for 10 gigabyte circuit of $4,000 per month are reasonable in that they are less than analogous fees charged by the Nasdaq Stock Market LLC (''Nasdaq''), which are $2,500 per month for 1 gigabyte connectivity and range from $10,000–$15,000 per month for 10 gigabyte circuits.[18] In addition, the Exchange proposed physical connectivity fees are designed to align the Exchange's fees with its affiliates.[19]

Finally, the Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members and non-Members. Members and non-Members will continue to choose whether they want more than one physical port and choose the method of connectivity based on their specific needs. All Exchange Members that voluntarily select various service options will be charged the same amount for the same services. As is true of all physical connectivity, all Members and non-Members have the option to select any connectivity option, and there is no differentiation with regard to the fees charged for the service.

The Exchange reiterates that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposed changes to fees for Professional and Firm orders that add liquidity in Penny Pilot Securities, including the proposed changes to the Professional and Firm Penny Pilot Add Volume Tiers, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options.

Similarly, with respect to the proposed new fees for Firm orders that add liquidity in non-Penny Pilot Securities, including both new Fee Code NF and new Firm Non-Penny Pilot Add Volume Tiers, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options.

With respect to the proposed new Tier 3 of the Market Maker Penny Pilot Add Volume Tiers, the Exchange similarly believes that the changes do not burden competition, but rather allow the Exchange to better compete and are intended to draw additional volume to BATS Options.

As it relates to the proposed routing fee changes, the proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects pricing changes by various options exchanges as well as increases to other Routing Costs incurred by the Exchange. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[20]

Finally, as it relates to physical connection fees, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including port fee access, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The proposal to increase the fees for physical connectivity would bring the fees charged by the Exchange closer to similar fees charged for physical connectivity by other exchanges.[21] In addition, the proposed rule change does not impose any burden on intramarket competition as the fees are uniform for all Members and non-Members. The Exchange notes that Members and non-Members also have the ability to obtain access to these services without the need for an independent physical port connection, such as through alternative means of financial extranets and service bureaus that act as a conduit for orders entered by Members and non-Members.

As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[22] and paragraph (f)(2) of Rule 19b–4 thereunder.[23] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–52. This file number should be included on the subject line if email is used. To help the

[18] *See* Nasdaq Rule 7034(b).

[19] *See supra* note 15.

[20] *See* BATS Rule 21.1(d)(8) (describing ''BATS Only'' orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

[21] *See supra* note 18.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–52 and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17395 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75426; File No. SR–ICEEU–2015–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Credit Default Swap Risk Policies

July 10, 2015.

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 June 25, 2015, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed changes to the rules from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to amend certain of its credit default swap (''CDS'') risk policies (the ''Risk Policy Amendments'') in order to enhance its current risk model.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The principal purpose of the proposed rule change is to amend certain ICE Clear Europe risk policies relating to the CDS product category to incorporate enhancements to the existing CDS risk model. The relevant policies being modified are the CDS Risk Policy (''CDS Risk Policy'') and the CDS Risk Model Description (''Risk Model Description''). ICE Clear Europe does not propose to make any changes to its Clearing Rules or Procedures in connection with these amendments.

The proposed rule change would, among other matters, (i) modify the credit spread response component of the risk model to devolatilize returns, (ii) enhance the portfolio spread response component of the risk model to limit procyclicality, (iii) establish a new framework for recovery rate sensitivity requirement (''RRSR'') parameters, (iv) modify the CDS Guaranty Fund allocation methodology, (v) modify index liquidity and concentration charges and (vi) revise procedures for intraday margin calls. The Risk Policy Amendments also include certain other clarifications and conforming changes.

The following is a summary of the principal changes in the Risk Policy Amendments:

Devolatilization of Credit Spread Response. Under the revised Risk Model Description, the credit spread response component of the margin model would be revised to provide that the tail estimation of the relevant fitted returns distribution is based on devolatilized returns. The use of devolatilized returns in this manner facilitates the comparison of returns for periods with different volatilities.

Procyclicality of Portfolio Spread Response. In order to limit procyclicality of the spread response component of the model, ICE Clear Europe proposes to modify the CDS Risk Policy and Risk Model Description to use an additional portfolio analysis that features price changes observed during and immediately after the Lehman Brothers default. The analysis considers price scenarios derived from the greatest price decrease and increase during and immediately after the Lehman Brothers default. These scenarios are designed to capture the default of a major participant in the credit market and the market response to the event. The introduced scenarios are defined in price terms to maintain the stress severity during periods of low credit spread levels (high price) when the spread response requirements, computed under the current framework, are expected to be lower. Furthermore, the Lehman default price scenarios are also incorporated into the calculation of CDS Guaranty Fund requirements.[3]

Recovery Rate Sensitivity Requirements

ICE Clear Europe proposes to revise the Risk Model Description to incorporate a more sensitive parameter estimation approach for the RRSR computation. The RRSR factor is designed to capture the risk of fluctuations in market expected recovery rates under CDS transactions. Under the current model, the RRSR is determined using fixed minimum and maximum recovery rate stress scenarios based on sector levels. In calculating the RRSR, all instruments belonging to a risk factor (''RF'') or risk sub-factor (''RSF'') are subjected to recovery rate stress scenarios to obtain resulting profit/loss responses, and the worst scenario response is chosen for the estimation of the RRSR. (In addition, these same recovery rate stress scenarios

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This enhancement also addresses a regulatory requirement in Article 30 of the Regulatory Technical Standards implementing the European Market Infrastructure Regulations (''EMIR''). Commission Delegated Regulation (EU) No. 153/2013 of 19 December 2012 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to Regulatory Technical Standards on Requirements for Central Counterparties (the ''Regulatory Technical Standards'').

are used in determination of jump-to-default requirements.)

ICE Clear Europe proposes separating the recovery rate stress levels for these two computations in order to introduce more dynamic and appropriate estimations of the recovery rate stress levels for RRSR purposes. Under the revised framework, the recovery rate levels for RRSR purposes will be determined using a 5-day, 99% confidence interval expected shortfall risk measure assuming a distribution of recovery rate fluctuations. The proposal will also eliminate index RRSR, as index recovery rates are assumed under relevant market convention and are thus not subject to market uncertainty. The dynamic feature of the revised stress level estimations is achieved by analyzing historical time series of recovery rates in order to calibrate a statistical model with a time varying volatility. In ICE Clear Europe's view, the proposed enhancements provide a robust and quantitative driven approach for establishing the recovery rate stress scenarios.

Modifications to Guaranty Fund Methodology. ICE Clear Europe proposes certain clarifications and enhancements to its CDS Guaranty Fund methodology. The Risk Model Description has been revised to clarify that the CDS Guaranty Fund size is calculated to cover losses associated with the default of the two Clearing Members and their affiliates that create the greatest cumulative uncollateralized loss under extreme but plausible scenarios. Certain other clarifications have been made in the calculation of the various components of the overall CDs Guaranty Fund requirement.

ICE Clear Europe also proposes to modify the procedure for allocating CDS Guaranty Fund requirements among the CDS Clearing Members. Under the existing model, CDS Guaranty Fund allocations reflect a risk ''silo'' approach, in which a Clearing Member's contribution reflects its uncollateralized exposure for each CDS Guaranty Fund component or ''silo''. Under the current approach, allocations can significantly fluctuate in response to position changes in the portfolios of the Clearing Members that drive the CDS Guaranty Fund size, and in response to the distribution of the total CDS Guaranty Fund size across all ''silos''. The Clearing House proposes modifying the methodology, so that the allocations are based on the Clearing Members' total unconditional uncollateralized losses in the CDS product category.[4] Under the proposed approach, the allocations are independent of the distribution of the uncollateralized losses across the ''silos''. In ICE Clear Europe's view, the new allocation methodology reflects an improved and more stable approach which allows for easier attributions of contributions to individual CDS Clearing Member or client portfolios.

The CDS Risk Policy's discussion of the ICE Clear Europe's initial CDS Guaranty Fund contribution has been revised to be consistent with the requirements of the Finance Procedures.

Index Liquidity and Concentration Charges

ICE Clear Europe proposes to modify the liquidity charge calculation in the margin model as it applies to index CDS positions. (The existing liquidity charge calculation for single-name CDS will remain unchanged.) The revised approach will address calculation of liquidity charges where index CDS is traded under either price or spread terms, and will calculate a separate liquidity charge for positions in each series of the relevant index. The revised approach also limits the reduction in liquidity charge for offsetting positions across different series of the same index family, by applying the greater of the liquidity charge applicable to the long and short positions in the relevant portfolio in the same index family. Under the revised methodology, the reduction in liquidity charge is greatest across positions in the ''on-the-run'' (current) index and first (most recent) ''off-the-run'' indices, with a higher reduction during the period immediately following the index roll (when the two indices are treated as effectively the same index) and a lower reduction over time as the liquidity of contracts in the two series diverge.

Similarly, ICE Clear Europe proposes to modify the concentration charge calculation for index CDS positions. (Again, the existing approach for single-name CDS will not change.) The revised framework provides for calculation of series-specific concentration charges, based on the direction of the 5-year equivalent notional amount or the net notional amount of positions in the particular series and a series threshold limit (above which the concentration charge is imposed). Series threshold limits are expected to be higher for the on-the-run and the first off-the-run index series, and are determined based on a formula comparing the open interest in the series to the on-the-run open interest.

Intraday Margin Calls

Certain amendments are proposed to the intra-day risk monitoring and special margin call processes. Intra-day margin calls will be made based on an ''Intraday Risk Limit.'' The Intraday Risk Limit is set at the Clearing Member level and is calculated based on 40% of the total initial margin requirements (across all account classes), with a minimum amount of EUR 15 million and a maximum of EUR 100 million. Intra-day margin calls will be made on the following basis: (i) Where there has been a 50% erosion of the Intraday Risk Limit, the Risk Department will investigate what is driving the shortfall and monitor the CDS Clearing Member, (ii) where the erosion of the Intraday Risk Limit exceeds 50%, the Risk Department will inform the CDS Clearing Member that its initial margin may cease to be sufficient and that it may be subject to an intraday margin call, and (iii) where there has been a 100% erosion of the Intraday Risk Limit, the Risk Department will issue an intraday margin call to the CDS Clearing Member (and will also contact it by telephone and/or email) for a sum sufficient to reduce the level of Intraday Risk Limit erosion back to 0%. The member intraday shortfall is the sum of intraday shortfalls at account level (*i.e.* house and client accounts), and the account level shortfall represents the unrealized profit and loss from the aggregate change in the Mark-to-Market Margin and Initial Margin.

Governance. The CDS Risk Policy has been revised to address in further detail management and governance oversight in a new Management and Governance Oversight section. The new section provides that the CDS Director of Risk is responsible for ensuring that the CDS Risk Policy remains up-to-date and is reviewed in accordance with certain guidelines. The Risk Working Group (''RWG'') and Trading Advisory Committee (''TAC'') will provide on-going consultation and support with respect to the CDS Risk Policy. The composition of the RWG and the TAC include both ICE Clear Europe Management and Clearing Member representatives, mainly from risk, trading and compliance areas.

Changes to the CDS Risk Policy are subject to initial approval by the Director of Risk and may be determined in consultation with the RWG and/or the TAC. Any changes that affect the risk profile of ICE Clear Europe are subject to Board approval on the advice and support of the CDS Risk Committee

[4] The existing specific wrong way risk component of the CDS Guaranty Fund calculation is maintained.

and the Board Risk Committee. In addition, the CDS Risk Policy is subject to at least an annual routine approval by the Board, after consultation with the CDS Risk Committee and the Board Risk Committee. CDS risk model performance testing is subject to review by the Director of Risk and reported to the CDS Risk Committee and the Board Risk Committee.

Additional Changes. The Risk Policy Amendments contain certain other clarifications and enhancements. Certain clarifications are made in the CDS Risk Policy with respect to wrong way risk requirements. The policy has also been revised to clarify that the currency specific initial margin requirements must cover at least the specific and general wrong way risk components of the initial margin requirement for the relevant currency. The CDS Risk Policy has also been revised to incorporate (without change) from the Clearing House's existing CDS clearing membership policy the capital-to-margin ratio limit (which requires that certain remedial actions be taken if the margin requirement for a Clearing Member's CDS positions would exceed three times the Clearing Member's capital as set forth on its balance sheet). The description of the Clearing House's Monte Carlo model has been revised to clarify that model parameters used are the same as those used in the credit spread model. Various other defined terms and certain obsolete references have been updated throughout the CDS Risk Policy and Risk Model Description.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of section 17A of the Act[5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[6] Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency, and the protection of investors and the public interest. The proposed rule change is designed to enhance relevant risk policies, impose more conservative initial margin requirements and in general tailor CDS margin and guaranty fund requirements more closely to the specific risks presented by cleared CDS Contracts. As a result, ICE Clear Europe believes that the proposed rule change will enhance the financial resources available to the Clearing House and enhance the stability of the clearing system, by reducing the risk to market participants of a default by a CDS Clearing Member or customer. The amendments thereby facilitate the Clearing House's ability to promptly and accurately clear and settle CDS contracts, within the meaning of section 17(A)(b)(3)(F).[8]

In addition, the Risk Policy Amendments are consistent with the relevant requirements of Rule 17Ad–22.[9] In particular, the amendments to the CDS Risk Policy and Risk Model Description will enhance the financial resources available to the clearing house by imposing more appropriate initial margin requirements for CDS, and are therefore reasonably designed to meet the margin and financial resources requirements of Rule 17Ad–22(b)(2–3).[10] Additionally, the amendments to the CDS Guaranty Fund methodology further ensure that the Clearing House maintains sufficient financial resources for CDS clearing, consistent with the requirements of Rule 17Ad–22(b)(3).[11] The changes also enhance and clarify the Clearing House's governance process concerning review and modification of the CDS risk policies, consistent with the requirements of Rule 17Ad–22(d)(8).[12] For the reasons noted above, ICE Clear Europe believes that the proposed Risk Policy Amendments are consistent with the requirements of Section 17A of the Act and regulations thereunder applicable to it.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the Risk Policy Amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Risk Policy Amendments will apply to all CDS Clearing Members, and the changes to the margin model applicable to customer business will apply to all other market participants. ICE Clear Europe does not believe that the adoption of the policy amendments will adversely affect competition among Clearing Members, or the ability of market participants to clear contracts generally. The Clearing House also does not believe that the amendments will reduce access to clearing CDS contracts generally or limit market participants' choices for clearing CDS. The Risk Policy Amendments may result in higher initial margin or guaranty fund requirements for certain positions or portfolios of CDS, which may increase the costs for some Clearing Member and other market participants of trading or carrying those positions or portfolios. However, ICE Clear Europe believes that the amendments appropriately tailor CDS margin and guaranty fund requirements to the risks presented by particular CDS positions, and that the amendments will therefore enhance the Clearing House's financial resources and risk management. As a result, in ICE Clear Europe's view, any incremental increase in cost resulting from such higher margin or guaranty fund requirements is warranted in light of the risks posed to the Clearing House. ICE Clear Europe therefore believes that any impact on competition from the amendments is appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the rule changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(b)(2–3).

[11] 17 CFR 240.17Ad–22(b)(3).

[12] 17 CFR 240.17Ad–22(d)(8).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2015–010 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–010. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.* 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–ICEEU–2015–010 and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17399 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75428; File No. SR–FINRA–2015–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6730 (Transaction Reporting) To Require Members To Report Transactions in TRACE-Eligible Securities as Soon as Practicable

July 10, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to codify that members are required to report transactions in TRACE-Eligible Securities subject to dissemination as soon as practicable.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 6730 (Transaction Reporting) generally requires that each FINRA member that is a Party to a Transaction[3] in a TRACE-Eligible Security[4] report the transaction within 15 minutes of the Time of Execution,[5] unless a different time period for the security is otherwise specified in the rule, or the transaction report will be deemed ''late.'' Paragraph (a)(4) of Rule 6730 further provides that members have an ongoing obligation to report transaction information promptly, accurately and completely.[6]

FINRA is filing this proposed rule change to codify that members are expected to report transactions in TRACE-Eligible Securities that are subject to dissemination as soon as practicable following the Time of Execution, and must not deliberately delay their reporting.[7] While FINRA provides a time period for members to conduct the necessary actions to report transactions, FINRA believes it is important for public price transparency that members do not delay reporting executed transactions and has conveyed this expectation to members.[8] FINRA

[3] Rule 6710(e) provides that a ''Party to a Transaction'' is an introducing broker-dealer, if any, an executing broker-dealer, or a customer. ''Customer'' includes a broker-dealer that is not a FINRA member.

[4] Rule 6710(a) provides that a ''TRACE-Eligible Security'' is a debt security that is United States dollar-denominated and issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n). ''TRACE-Eligible Security'' does not include a debt security that is: Issued by a foreign sovereign, a U.S. Treasury Security as defined in paragraph (p), or a Money Market Instrument as defined in paragraph (o).

[5] Among other things, Rule 6710(d) provides that the ''Time of Execution'' for a transaction in a TRACE-Eligible Security means the time when the Parties to a Transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade.

[6] While a member may employ an agent for the purpose of submitting transaction information, the primary responsibility for the timely, accurate and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

[7] FINRA Rule 6750 (Dissemination of Transaction Information) provides that FINRA will disseminate information on all transactions in TRACE-Eligible Securities, including transactions effected pursuant to Securities Act Rule 144A, immediately upon receipt of the transaction report, except as specified in the rule.

[8] For example, in a *Notice* regarding TRACE trade reporting obligations for transactions in Asset-

Continued

now proposes to amend Rule 6730 to provide in the rule text that each member that is a Party to a Transaction in a TRACE-Eligible Security that is subject to dissemination must report the transaction to TRACE as soon as practicable, but no later than within 15 minutes of the Time of Execution, or other timeframe specified in Rule 6730. Further, the proposed amendment includes new Supplementary Material .03 to provide additional guidance around FINRA's expectations regarding the timeliness of reports submitted to TRACE. Specifically, new Rule 6730.03 provides that members must adopt policies and procedures reasonably designed to comply with the requirement that transactions in TRACE-Eligible Securities that are subject to dissemination be reported as soon as practicable by implementing systems that commence the trade reporting process at the Time of Execution without delay. In addition, where a member has such reasonably designed policies, procedures and systems in place, the member generally will not be viewed as violating the ''as soon as practicable'' requirement because of delays in trade reporting that are due to extrinsic factors that are not reasonably predictable and where the member does not purposely intend to delay the reporting of the trade. In no event may a member purposely withhold trade reports, *e.g.,* by programming its systems to delay reporting until the end of the reporting time period.

The supplementary material also recognizes that members may manually report transactions in TRACE-Eligible Securities and, as a result, the trade reporting process may not be completed as quickly as where an automated trade reporting system is used. In these cases, FINRA will take into consideration the manual nature of the member's trade reporting process in determining whether the member's policies and procedures are reasonably designed to report the trade ''as soon as practicable'' after execution. FINRA believes that codifying this ''as soon as practicable'' requirement is necessary to promote consistent and timely reporting by all members and will improve the usefulness of disseminated TRACE information for investors.

If the Commission approves the filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no sooner than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In particular, the proposed rule would require that members report transactions in TRACE-Eligible Securities that are subject to dissemination as soon as practicable from the Time of Execution. FINRA believes it is important to ensure that members do not delay the reporting of executed transactions, particularly, for example, by imbedding into the trade reporting process deliberate delays until the end of the reporting time period. Specifically, the proposed rule change will help improve the value of transaction information for price transparency, which enhances its value for regulators, investors and other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78*o*–3(b)(6).

Economic Impact Assessment

The proposed rule change seeks to codify that members are expected to report transactions in TRACE-Eligible Securities as soon as practicable following the Time of Execution, and must not deliberately delay their reporting.

The economic baseline of the proposed rule change is the current rules and industry practice relating to trade reporting. As discussed above, the proposed rule change is consistent with FINRA's current expectation that members submit trade reports as soon as practicable. Further, FINRA understands that the vast majority of firms that report transactions to TRACE have automated their trade reporting systems, which may facilitate their ability to comply with this rule.

For example, based on a review of TRACE trade reporting data from January 2014 through December 2014, over 90% of trade reports in corporate and agency debt are submitted within five minutes of the time of execution, and 79% percent were reported within one minute. Approximately 71% of trade reports in securitized products are submitted within five minutes of execution, and over 55% were reported within one minute.

FINRA recognizes that reporting within a short time frame may not mean that firms are reporting as soon as practicable, but does indicate general timeliness in reporting. FINRA has observed instances that appear to indicate firms have taken more time than is operationally necessary to report trades, which results in delays in transaction information reaching investors and other market participants, and may raise the possibility that certain firms may have intentionally delayed trade reporting, possibly to delay public dissemination of the trade. FINRA believes such conduct is inconsistent with the purpose of the trade reporting rules and further believes that explicitly prohibiting such conduct is important for the effective operation of the rule.

Therefore, FINRA expects that the primary economic benefit arising from this proposed rule change will be a reduction in the delay between a transaction's Time of Execution and when a member reports the trade to TRACE, which will result in more timely information being disseminated to investors and other market participants. FINRA also believes that the proposal will provide further clarity as to the operation of Rule 6730—particularly in clarifying that intentionally delaying trade reporting is

Backed Securities (ABS), FINRA stated that, although firms have up to two business days to report transactions in ABSs, firms should submit reports as soon as practicable after the execution of a transaction and throughout the trading day, rather than queuing such reports until the end of the reporting time period. *Trade Reporting Notice,* May 10, 2011 (Reporting Asset-Backed Securities to the Trade Reporting and Compliance Engine). In addition, in *Regulatory Notice 12–52* (December 2012), FINRA stated that transactions in securities subject to TRACE reporting requirements should be reported without delay, even though the TRACE rule generally allows for up to 15 minutes to report transactions in corporate and agency debt securities. *See also* Letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 29, 2012 (Letter Responding to Comments received on SR–FINRA–2012–025). FINRA also has already codified the ''as soon as practicable'' requirement for the reporting of transactions to the equity trade reporting facilities, which require reporting as soon as practicable but no later than 10 seconds after execution. *See* FINRA Rules 6282 (governing transaction reporting on the ADF), 6380A (governing transaction reporting on the FINRA/NASDAQ TRF), 6380B (governing transaction reporting on the FINRA/NYSE TRF) and 6622 (Transaction Reporting on the FINRA ORF).

violative of a member's ongoing obligation to report transaction information to TRACE promptly. FINRA anticipates that this rule will not impose any significant new compliance costs on members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–FINRA–2015–025 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–025 and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17402 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0687, SEC File No. 270–638]

Submission Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 239.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 239 (17 CFR 230.239) provides exemptions under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Trust Indenture Act of 1939 (U.S.C. 77aaa *et seq.*) for security-based swaps issued by certain clearing agencies satisfying certain conditions. The purpose of the information required by Rule 239 is to make certain information about security-based swaps that may be cleared by the registered or the exempt clearing agencies available to eligible contract participants and other market participants. We estimate that each registered or exempt clearing agency issuing security-based swaps in its function as a central counterparty will spend approximately 2 hours each time it provides or update the information in its agreements relating to security-based swaps or on its Web site. We estimate that each registered or exempt clearing agency will provide or update the information approximately 20 times per year. In addition, we estimate that 75% of the 2 hours per response (1.5 hours) is prepared internally by the clearing agency for a total annual reporting burden of 180 hours (1.5 hours per response × 20 times × 6 respondents).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–17393 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75312; File No. SR–ISE–2015–21]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 26, 2015.

Correction

In notice document 2015–16270, appearing on pages 38251 through 38253 in the issue of Thursday, July 2, 2015, make the following correction:

On page 38253, in the first column, on the eighth line from the bottom, ''July 22, 2015'' should read ''July 23, 2015''.

[FR Doc. C1–2015–16270 Filed 7–15–15; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75425; File No. SR–CBOE–2015–044]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule, as Modified by Amendment No. 1, To Introduce Asian Style Settlement and Cliquet Style Settlement for FLexible Exchange Broad-Based Index Options

July 10, 2015.

I. Introduction

On May 6, 2015, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit Asian style settlement and Cliquet style settlement for FLexible Exchange (''FLEX'') Broad-Based Index options. The proposed rule change was published for comment in the **Federal Register** on May 13, 2015.[3] CBOE filed Amendment No. 1 to the proposed rule change on June 18, 2015.[4] The Commission received no comments regarding the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rules 24A.1 (Definitions), 24A.4 (Terms of FLEX Options), 24B.1 (Definitions) and 24B.4 (Terms of FLEX Options) to permit Asian style settlement and Cliquet style settlement for FLEX Broad-Based Index options.[5]

Asian Style Settlement

FLEX Broad-Based Index options with Asian style settlement will be cash-settled call [6] option contracts for which the final payout will be based on an arithmetic average of specified closing values of the underlying broad-based index (''Asian option''). Exercise (strike) prices and premium quotations for Asian options will be expressed and governed as provided for in CBOE Rules 24A.4(b)(2) and 24B.(b)(2). Asian options will have a term of approximately one year and would expire anytime from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier for an Asian option will be $100.[7]

The parties to an Asian option contract will designate a set of monthly observation dates and an expiration date for each contract. The monthly observation date will be the date each month on which the price of the underlying broad-based index will be observed for the purpose of calculating the exercise settlement value for Asian options. Each Asian option will have 12 consecutive monthly observation dates (which includes an observation on the expiration date) and each observation will be based on the closing price of the underlying broad-based index. The specific monthly observation dates will be determined by working backward from the farthest out observation date prior to the expiration date. If a given monthly observation date falls on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation will be on the immediately preceding business day (''preceding business day convention''). The parties may not designate a subsequent business day convention for Asian options.

Asian options will have European-style exercise and may not be exercised prior to the expiration date. The exercise settlement value for Asian options will be the arithmetic average of the closing values of the underlying broad-based index on the 12 consecutive monthly observation dates, which include the expiration date of the option. Mathematically this is expressed as:

$$\text{Exercise Settlement Value} = \frac{\sum_{i=1}^{12} S_i}{12}$$

Where S_i is the closing price of the underlying broad-based index on monthly observation date on the i^{th} monthly observation date.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74914 (May 8, 2015), 80 FR 27408.

[4] Amendment No. 1 replaces the original filing in its entirety. Amendment No. 1 removes proposed amendments to the strategy-based customer margin requirements in CBOE Rule 12.3 and modifies Form 19b–4, and Exhibits 1, 3, and 5 to clarify that the Exchange would apply the Exchange's existing strategy-based customer margin requirements for broad-based index options, which are set forth in Rule 12.3. Amendment No. 1 also deletes references to portfolio margining from Form 19b–4 and Exhibits 1 and 3.

[5] Chapter XXIVA sets forth Flexible Exchange Options rules and chapter XXIVB sets forth FLEX Hybrid Trading System rules.

[6] Puts will not be permitted.

[7] *See* Rules 24A.1(i) and 24B.1(m). ''The Index Multiplier for FLEX Index Options is $100.''

Where S_i is the closing price of the underlying broad-based index on monthly observation date on the *i*th monthly observation date.

The exercise settlement amount for Asian options will be calculated similarly to other options, *i.e.,* the difference between the strike price and the averaged settlement value will determine the value, or ''moneyness'' of the contract at expiration.

An example of an Asian FLEX call option expiring in-the-money follows. On January 21, 2015, an investor hedging the value of the S&P 500 Index over a year purchases a call option expiring on January 22, 2016 with a strike price of 2000 and a contract multiplier of $100. The option has monthly observation dates occurring on the 23rd of each month.

Monthly observation date	S&P 500 Index closing value
23–Feb–15	2025.36
23–Mar–15	2049.34
23–Apr–15	2019.77
22–May–15 *	1989.65
23–Jun–15	2005.64
23–Jul–15	2035.10
21–Aug–15 *	2032.15
23–Sep–15	2076.18
23–Oct–15	2099.01
23–Nov–15	2109.32
23–Dec–15	2085.42
22–Jan–16	2084.81
Exercise (Averaged) Settlement Value	24,611.75/12 = 2050.98

* Because Asian FLEX options use the ''preceding business day convention,'' the dates of May 23, 2015 and August 23, 2015, were not used in the above example because those dates will fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation date.

The exercise settlement amount for this 2000 Asian FLEX call option would be equal to $5,098. This amount would be determined by adding the 12 observed closing values for the S&P 500 Index and dividing that amount by 12 (24,611.75/12), which is equal to 2050.98 (when rounded). As a result, this 2000 call option would be $5,098 in-the-money (50.98 x $100).

If, in the above example, the strike price for the Asian FLEX call option was 2060, that contract would have expired out-of-the-money. This is because the exercise settlement value for this 2060 call option is equal to 2050.98 (when rounded). Since the strike price of 2060 is more than the 2050.98 exercise settlement value, this option would not be exercised and would expire worthless.

Cliquet Style Settlement

FLEX Broad-Based Index options with Cliquet style settlement will be cash-settled call [8] option contracts for which the final payout will be based on the sum of monthly returns (*i.e.,* percent changes in the closing value of the underlying broad-based index from one monthly observation date to the next monthly observation date), subject to a monthly return ''cap'' (*e.g.,* 2%) applied over 12 monthly observation dates (''Cliquet option''). Premium quotations for Cliquet options will be expressed and governed as provided for in CBOE Rules 24A.4(b)(2) and 24B.(b)(2). Cliquet options will have a term of approximately one year and will expire anytime from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier for a Cliquet option will be $100.[9]

The parties to a Cliquet option will designate a set of monthly observation dates for each contract and an expiration date for each contract. The monthly observation date will be the date each month on which the price of the underlying broad-based index will be observed for the purpose of calculating the exercise settlement value for Cliquet FLEX options. Each Cliquet FLEX option will have 12 consecutive monthly observation dates (which includes an observation on the expiration date) and each observation will be based on the closing price of the underlying broad-based index. The specific monthly observation dates will be determined working backward from the farther out observation date prior to the expiration date. If a given monthly observation date falls on a non CBOE business day (*e.g.,* holiday or weekend), the monthly observation will be on the immediately preceding business day (''preceding business day convention''). The parties may not designate a subsequent business day convention for Cliquet options.

The parties to a Cliquet option will designate a capped monthly return (percent change in the closing values of the underlying broad-based index from one month to the next month) for the contract, which will be the maximum monthly return that will be included in the calculation of the exercise settlement value for the contract. On each monthly observation date, the Exchange will determine the actual monthly return (the percent change of the underlying broad-based index) using the closing value of the broad-based index on the current monthly observation date and the closing value of the broad-based index on the previous monthly observation date. The Exchange will then compare the actual monthly return to the capped monthly return. The value to be included as the monthly return for a Cliquet option will be the lesser of the actual monthly return or the capped monthly return.

For example, if the actual monthly return of the underlying broad-based index was 1.75% and the designated capped monthly return for a Cliquet option was 2%, the 1.75% value would be included (and not the 2%) as the value for the observation date to determine the exercise settlement value. Using this same example, if the actual monthly return of the underlying broad-based index was 3.30%, the 2% value would be included (and not the 3.30%) as the value of the observation date to determine the exercise settlement value. This latter example illustrates that Cliquet options have a capped upside. Cliquet options do not, however, have a capped downside for the monthly return that would be included in determining the exercise settlement value. Drawing on this same example, if the actual monthly return of the underlying broad-based index was -4.07%, the -4.07% value would be included as the value for the observation date to determine the exercise settlement value. There would be, however, be a global floor for Cliquet options so that if the sum of the monthly returns is negative, a Cliquet option would expire worthless.

Unlike other options, Cliquet options will not have a traditional exercise (strike) price. Rather, the exercise (strike) price field for a Cliquet option will represent the designated capped monthly return for the contract and would be expressed in dollars and cents. For example, a capped monthly return of 2.25% would be represented by the dollar amount of $2.25. The ''strike'' price for a Cliquet option may only be expressed in a dollar and cents amount and the ''strike'' price for a Cliquet option may only span a range between $0.05 and $25.95. In addition, the ''strike'' price for a Cliquet option may only be designated in $0.05 increments, *e.g.,* $1.75, $2.50, $4.15. Increments of $0.01 in the ''strike'' price field (representing the capped monthly return) will not be permitted.

The first ''monthly'' return for a Cliquet option will be based on the initial reference value, which will be the closing value of the underlying broad-based index on the date a new Cliquet option is listed. The time period measured for the first ''monthly'' return will be between the initial listing date

[8] Puts will not be permitted.

[9] *See* CBOE Rules 24A.1(i) and 24B.1(m).

and the first monthly observation date. For example, if a Cliquet option was opened on January 1 and the parties designated the 31st of each month as the monthly observation date, the measurement period for the first monthly return would span the time period from January 1 to January 31. The time period measured for the second monthly return, and all subsequent monthly returns, would run from the 31st of one month to the 31st of the next month (or the last CBOE business day of each month depending on the actual number of calendar days in each month covered by the contract).

Cliquet options will have European-style exercise and may not be exercised prior to the expiration date. The exercise settlement value for Cliquet options will be equal to the initial reference price of the underlying broad-based index multiplied by the sum of the monthly returns (with the cap applied) on the 12 consecutive monthly observation dates, which include the expiration date of the option, provided that the sum is greater than 0. If the sum of the monthly returns (with the applied cap) is 0 or a less, the option will expire worthless.[10] Mathematically this is expressed as:

1. $S_0 \times (1+ \sum_{i=1}^{12} CMR_i)$; and

2. S_0

Where: S_0 = Initial Reference Price

CMR_i = MIN (Actual Monthly Return$_i$, Capped Monthly Return)

$$\textit{Monthly Return}_i = \frac{(S_i - S_{i-1})}{S_{i-1}}$$

S_i = Closing Price of the Underlying Broad-Based Index on Monthly Observation Date (i).

An example of a Cliquet option follows. On January 21, 2015, an investor hedging the value of the S&P 500 Index over a year purchases a Cliquet FLEX call option expiring on January 22, 2016 with a capped monthly return of 2% and a contract multiplier of $100. The initial reference price of the S&P 500 Index (closing value) on January 21, 2015 is 2000. The option has monthly observation dates occurring on the 23rd of each month.

Monthly observation date	S&P 500 Index closing value (S_i)	Actual monthly return (%)	Capped monthly return (CMR_i) (%)	Sum of monthly returns (%)
23–Feb–15	2025.36	1.27	1.27	1.27
23–Mar–15	2049.34	1.18	1.18	2.45
23–Apr–15	2019.77	−1.44	−1.44	1.01
*22–May–15**	1989.65	−1.49	−1.49	−0.48
23–Jun–15	2005.64	0.80	0.80	0.32
23–Jul–15	2035.10	1.47	1.47	1.79
*21–Aug–15**	2032.15	−0.14	−0.14	1.65
23–Sep–15	2076.18	2.17	***2.00*	3.65
23–Oct–15	2099.01	1.10	1.10	4.75
23–Nov–15	2109.32	0.49	0.49	5.24
23–Dec–15	2085.42	−1.13	−1.13	4.11
22–Jan–16	2084.81	−0.03	−0.03	4.08
Exercise Settlement Value	[(4.08% * 2000.00)] + 2 = 83.60			

* Because Cliquet FLEX options use the "preceding business day convention," the dates of May 23, 2015, and August 23, 2015, were not used in the above example because those dates will fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation dates.

** Monthly capped return applied.

[10] Prior to expiration, it is possible that the accumulated monthly returns could become negative to a point at which it is known that the value of the contract at expiration would be zero. The holder or writer of such a position may choose to exit the position prior to expiration for a negligible credit or debit amount, respectively.

The exercise settlement amount for this January 22, 2016 Cliquet option, with a capped monthly 2% return (''strike price'') and a contract multiplier of $100 would be equal to $8,360. This value would be calculated by summing the monthly capped returns (equal to 4.08%) and multiplying that amount by the initial reference price (equal to 2000), which equals 81.60. The ''strike price'' (2%) amount would then be added to that amount (81.60) to arrive at an exercise settlement value of 83.60. Because the ''strike price'' field for a Cliquet option would be the manner in which the designated capped monthly return would be identified for the contract and because the designated monthly return for the contract would have been already substantively applied to determine the exercise settlement value, the ''strike price'' of 2.0 would be subtracted from the exercise settlement value before the contract multiplier ($100) would be applied [(83.60 − 2) * 100]. Accordingly, resulting payout for this contract would be $8,160.

If the sum of the monthly capped returns had been negative, this option would have expired worthless.

Margin

The Exchange will margin Asian and Cliquet FLEX Broad-Based Index options as ''broad-based index'' options under CBOE's existing rules.[11] Thus, under current Rule 12.3(c)(5)(A), the margin requirement for a short call will be 100% of the current market value of the contract plus up to 15% of the ''product of the current index group value and the applicable index multiplier.'' Additional margin may be required pursuant to Rules 12.3(h) and 12.10.

Exchange Rules Applicable

Except as modified by this proposal, the rules in chapters I through XIX, XXIV, XXIVA and XXIVB will equally apply to Asian and Cliquet options. For example, per CBOE Rule 6.1A (Extended Trading Hours), Asian and Cliquet options will not be eligible for trading during Extended Trading Hours. Also, for example, CBOE Rules 24A.7 and 24A.8 set forth the position limits and reporting requirements applicable to FLEX Broad-Based Index options and Rules 24A.7 and 24B.7 set forth the exercise limits applicable to FLEX Broad-Based Index options. Respecting positions and exercise limits, these provisions set forth general rules and carve-outs for certain broad-based FLEX Broad-Based Index options, which will apply with equal force to Asian and Cliquet options.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for the Exchange's other FLEX Broad-Based Index options to monitor trading in Asian and Cliquet options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest. The Commission believes that the Asian and Cliquet settlement styles for FLEX Broad-Based Index options may provide investors with additional trading and hedging tools. The Commission also believes that CBOE's proposal to allow Asian and Cliquet style settlement for FLEX Broad-Based Index options may give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options. Further, the Commission believes that the Exchange's proposal with respect to Asian and Cliquet style settlement, contract specifications, margin, and other aspects of the proposed rule are appropriate and consistent with the Act.

The Exchange has represented that the launch of Asian and Cliquet style settlement would be permitted subject to the Commission's approval of an Options Clearing Corporation (''OCC'') rule filing to make risk model changes necessary to accommodate the clearance and settlement of the proposed options. The Exchange will issue a circular to Trading Permit Holders to announce a specific launch date for the proposed options.

The Commission notes that the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Broad-Based Index options to monitor trading in those options with Asian and Cliquet style settlement. The Exchange has represented that these surveillance procedures shall be adequate to monitor trading in options on these option products. The Exchange has also stated that for surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public

[11] *See* Exhibit 3 to Amendment No. 1.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

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 CBOE. 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–CBOE–2015–044 and should be submitted on or before August 6, 2015.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amendment in the **Federal Register**. Amendment No. 1 modifies the proposed rule change by removing proposed amendments to the strategy-based customer margin requirements in CBOE Rule 12.3 and removing references to portfolio margining. The Commission believes that the removal of the proposed margin requirements for Asian and Cliquet FLEX Broad-Based Index options, set forth in Amendment No. 1, simply clarify that the Exchange would apply the existing strategy-based customer margin requirements for broad-based index options to Asian and Cliquet options. In addition, the Commission notes that the Exchange has represented that it will monitor trading in the proposed products and would continue to evaluate the strategy-based customer margin levels.[14] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2015–044), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17398 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75424; File No. SR–Phlx–2015–56]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Midpoint Peg Post-Only Order Under Rule 3301A(b)

July 10, 2015.

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 June 26, 2015, 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt a Midpoint Peg Post-Only Order under Rule 3301A(b).

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 any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a Midpoint Peg Post-Only Order[3] for use on the Exchange's NASDAQ OMX PSX System (''PSX System'' or ''PSX''), which is based on the Midpoint Peg Post-Only Order of the NASDAQ Stock Market (''NASDAQ'').[4] A Midpoint Peg Post-Only Order is a Non-Displayed[5] Order that is priced at the midpoint between the National Best Bid and Offer (''NBBO'') and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Midpoint Peg Post-Only Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the PSX book. The Midpoint Peg Post-Only Order will be available during regular market hours (9:30 a.m. until 4:00 p.m. ET) only.

A Midpoint Peg Post-Only Order must be assigned a limit price. When a Midpoint Peg Post-Only Order is entered, it will be priced at the midpoint between the NBBO, unless such midpoint is higher than (lower than) the limit price of an Order to buy (sell), in which case the Midpoint Peg Post-Only Order will be priced at its limit price. If the NBBO is locked, the Midpoint Peg Post-Only Order will be priced at the locking price, if the NBBO is crossed, it will nevertheless be priced at the midpoint between the NBBO (provided, however, that the Order may execute as described below), and if there is no NBBO,[6] the Midpoint Peg Post-Only Order will be rejected. The Midpoint Peg Post-Only Order will post to the PSX book unless it is a buy (sell) Order that is priced higher than (lower than) a sell (buy) Order on the PSX book, in which case it will execute at the price of the Order on the PSX book; provided, however, that if the Order has

[14] *See* Amendment No. 1.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Order'' is defined in Rule 3301(e).

[4] The Exchange notes that the proposed rule text is based on newly-amended NASDAQ rule text, which provides a clearer and more detailed description of its Midpoint Peg Post-Only Order functionality than its prior rule. *See* Securities Exchange Act Release No. 75252 (June 22, 2015) (not yet published in the **Federal Register**) (Order approving SR–NASDAQ–2015–024).

[5] *See* Rule 3301B(k).

[6] That is, if no market center is disseminating a displayed bid or a displayed offer, such that it is impossible to determine a midpoint price.

a Time-in-Force of IOC, the Order will be cancelled after determining whether it can be executed. For example, if the Best Bid was $11 and the Best Offer was $11.06, the price of the Midpoint Peg Post-Only Order to buy would be $11.03. If there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the PSX book to sell at $11.02, the incoming Midpoint Peg Post-Only Order to buy would execute against it at $11.02. However, if there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) to sell at $11.03, the Midpoint Peg Post-Only Order to buy would post at $11.03. While a Midpoint Peg Post-Only Order that posts to the PSX book is locking a preexisting Order, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the price of the preexisting Order. Thus, in the previous example, if the incoming Midpoint Peg Post-Only Order locked the preexisting Non-Displayed Order at $11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than $11.03.

A Midpoint Peg Post-Only Order that would be assigned a price of $1 or less per share will be rejected or canceled, as applicable.

If a Midpoint Peg Post-Only Order is entered through RASH or FIX, the Midpoint Peg Post-Only Order may be repriced in the following manner after initial entry and posting to the PSX book:

- The price of the Midpoint Peg Post-Only Order will be updated repeatedly to equal the midpoint between the NBBO; provided, however, that the Order will not be priced higher (lower) than the limit price of an Order to buy (sell). In the event that the midpoint between the NBBO becomes higher than (lower than) the limit price of an Order to buy (sell), the price of the Order will stop updating and the Order will post (with a Non-Display Order Attribute) at its limit price, but will resume updating if the midpoint becomes lower than (higher than) the limit price of an Order to buy (sell). Similarly, if a Midpoint Peg Post-Only Order is on the PSX book and subsequently there is no NBBO, the Order will be cancelled. The Midpoint Peg Post-Only Order receives a new timestamp each time its price is changed.

If a Midpoint Peg Post-Only Order is entered through OUCH or FLITE, the Midpoint Peg Post-Only Order may be repriced in the following manner after initial entry and posting to the PSX book:

- The price at which the Midpoint Peg Post-Only Order is ranked on the PSX book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the PSX book at its limit price and will be available for potential execution at its limit price. The price of the Order will not thereafter be repriced based on changes to the NBBO. If, after being posted to the PSX book, the NBBO changes such that the midpoint of the NBBO is no longer equal to the price at which the Midpoint Peg Post-Only Order is posted, the Order will be cancelled back to the Participant. For example, if the Best Bid is $11 and the Best Offer is $11.06, a Midpoint Peg Post-Only Order to buy would post at $11.03. If, thereafter, the Best Offer is reduced to $11.05, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

The following Order Attributes may be assigned to a Midpoint Peg Post-Only Order:

- Price of more than $1 per share.
- Size.[7]
- Time-in-Force; [8] provided, however, that a Midpoint Peg Post-Only Order with a Time-in-Force of IOC may not be entered through RASH or FIX, and provided further, that regardless of the Time-in-Force entered, a Midpoint Post-Only Order may not be active outside of the Regular Market Session. A Midpoint Peg Post-Only Order entered prior to the beginning of the Regular Market Session will be rejected. A Midpoint Peg Post-Only Order remaining on the System book at 4:00 p.m. ET will be cancelled by the System.
- Pegging [9] to the midpoint is required for Midpoint Peg Post-Only Orders entered through RASH or FIX. As discussed above, the price of a Midpoint Peg Post-Only Order entered through OUCH or FLITE will be pegged to the midpoint upon entry and not repriced thereafter.
- Minimum Quantity.[10]
- Non-Displayed. All Midpoint Peg Post-Only Orders are Non-Displayed.

The Exchange is proposing to implement the new Midpoint Peg Post-Only Order on July 1, 2015. The Exchange notes that it has completed the development and testing needed to implement the change. Moreover, Exchange participants are interested in utilizing the new order type. As such, the Exchange believes it is appropriate to implement the change at the earliest time possible.

2. Statutory Basis

PHLX believes that the proposed rule changes are consistent with the provisions of section 6 of the Act,[11] in general, and with section 6(b)(5) of the Act,[12] in particular, in that the proposal 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 also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that offering market participants with an additional Order Type, which is currently available to NASDAQ market participants, will allow PSX market participants greater control over their executions and is indicative of the Exchange's maturation as an equities market. Allowing PSX market participants the ability to more precisely select the conditions in which their Order may be executed removes impediments to and perfects the mechanism of a free and open market and a national market system because it benefits all market participants and ensures that PHLX is able to compete with other market venues by providing similar tools and functionality. This functionality is nearly identical to the Midpoint Peg Post-Only Order of NASDAQ [13] that has been available on NASDAQ since 2011 [14] and is well known to its market participants. As noted above, the Exchange is copying newly-amended NASDAQ rule text, which provides a clearer and more detailed description of its Midpoint Peg Post-Only Order functionality than its prior rule.[15] Lastly, offering Midpoint Peg Post-Only Order to PSX market participants raises no issues concerning unfair discrimination as the new Order

[7] *See* Rule 3301B(b).

[8] *See* Rule 3301B(a).

[9] *See* Rule 3301B(d).

[10] *See* Rule 3301B(e).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] The Exchange notes that NASDAQ uses a cross in its opening, closing and halt processes, which is accounted for in its Midpoint Peg Post-Only Order rule. PSX does not have such processes.

[14] *See* Securities Exchange Act Release No. 64430 (May 6, 2011), 76 FR 27699 (May 12, 2011) (SR–NASDAQ–2011–059).

[15] *Supra* note 4.

Type is available to all PSX market participants.

The Exchange notes that, like a Post-Only Order, a Midpoint Peg Post-Only Order allows a market participant to control its trading costs by executing upon entry when receiving price improvement but otherwise posting to the PSX book pegged to the midpoint subject to its limit price. Thereafter, the Order Type serves to provide price improvement to other incoming Orders by executing a price between the NBBO. As such, the Exchange believes the Midpoint Peg Post-Only Order further perfects the mechanism of a free and open market and promotes the public interest by both providing greater control to a market participant and improving market quality for all 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. Specifically, the Exchange believes that the proposal will enhance Phlx's competitiveness by providing its market participants with an additional control over the circumstances in which their Orders may be executed. As discussed above, the Midpoint Peg Post-Only Order is available on NASDAQ, and providing it on PSX will allow Phlx to compete with NASDAQ and any other market venue that provides a similar Order Type. This may, in turn, increase the extent of liquidity available on PSX and increase its ability to compete with other execution venues to attract Orders to PSX. The Exchange further believes that the introduction of the Midpoint Peg Post-Only Order will not impair in any manner the ability of market participants or other execution venues to compete.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] 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. The Exchange believes that waiver of the operative delay would provide PSX market participants with an additional option to designate the circumstances in which their Orders may be executed, thus giving them more control over the nature of their Orders. The Exchange stated that the programming changes needed to implement the proposed rule change are now ready and market participants have been provided notice of the change. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[20]

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–Phlx–2015–56 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–2015–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–56, and should be submitted on or before August 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–17397 Filed 7–15–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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, or such shorter time as designated by the Commission.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority No. 386]

Delegation by the Deputy Secretary of State to the Under Secretary for Management of the Authority To Waive Inclusion of Sensitive Compartmented Information Facilities in United States Diplomatic Facilities in the Russian Federation and Adjacent Countries

By virtue of the authority vested in the Secretary of State by section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and the Intelligence Authorization Act for Fiscal Year 2015 (P.L. 113–293) (the Act), and delegated to me by Delegation of Authority No. 245–1, dated February 13, 2009, I hereby delegate to the Under Secretary of State for Management, to the extent authorized by law, the waiver authority vested in the Secretary of State by section 314(b) of the Act.

The Under Secretary for Management may re-delegate this authority, to the extent authorized by law.

Notwithstanding this delegation of authority, the Secretary of State, the Deputy Secretary, and the Deputy Secretary for Management and Resources may at any time exercise the functions herein delegated.

This document will be published in the **Federal Register**.

Dated: May 28, 2015.

Heather Higginbottom,

Deputy Secretary of State.

[FR Doc. 2015–17448 Filed 7–15–15; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 9194]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Tuesday, August 4, 2015 at 12:30 a.m. and last until approximately 2:30 p.m. The meeting location is Room 1105 of the U.S. Department of State, Harry S Truman Building, 2201 C Street NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2014 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Chair and members of the committee, and, within the committee, discussion of grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines contained in the call for applications published in Grants.gov and GrantSolutions.gov on March 30, 2015. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however attendance will be limited to the seating available. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Office at the U.S. Department of State on (202) 647–0243 by Tuesday, July 28, 2015. All attendees must use the 2201 C Street entrance and must arrive no later than 11:30 a.m. to pass through security before entering the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

The identifying data from the public is requested pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Dated: July 6, 2015.

Christina Condrey,

Executive Director, Advisory Committee for Study of Eastern Europe and Eurasia (the Independent States of the Former Soviet Union).

[FR Doc. 2015–17447 Filed 7–15–15; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice: 9192]

Culturally Significant Objects Imported for Exhibition Determinations: ''Walid Raad'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition **''Walid Raad,''** imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at **The Museum of Modern Art**, New York, New York, from on or about October 12, 2015, until on or about January 31, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 9, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–17454 Filed 7–15–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9193]

Culturally Significant Object Imported for Exhibition Determinations: ''Museum of Stones'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby

determine that the object to be included in the exhibition **''Museum of Stones,''** imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at **The Noguchi Museum**, Long Island City, New York, from on or about October 7, 2015, until on or about January 10, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the imported object, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated; July 9, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–17453 Filed 7–15–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-First Meeting: Special Committee 206 (SC 206)

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

ACTION: Forty-First Meeting Notice of Special Committee 206.

SUMMARY: The FAA is issuing this notice to advise the public of the forty-first meeting of the Special Committee 206.

DATES: The meeting will be held September 14th–18th from 8:30 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at United Airlines, 233 S. Wacker Drive, Chicago, IL 60606, Tel: (202) 330–0663.

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* or Sophie Bousquet, Program Director, RTCA, Inc., *sbousquet@rtca.org,* (202) 330–0663.

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 meeting of the Special Committee 206. The agenda will include the following:

Monday, September 14, 2015 (08:30 a.m.–5:00 p.m.)

1. Opening Plenary
   a. Opening remarks: DFO, RTCA, Chairman, and Hosts
   b. Attendees' introductions
   c. Review and approval of meeting agenda
   d. Approval of previous meeting minutes (Hampton, VA)
   e. Action item review
   f. Sub-Groups' reports (SG1/6: MASPS, SG4: EDR, & SG7: Winds)
   g. Industry presentations
   i. Time Based Separation (TBS) System at London Heathrow
2. Sub-Groups meetings

Tuesday, September 15, 2015 (08:30 a.m.–5:00 p.m.)

1. Sub-Group Meetings

Wednesday, September 16, 2015 (08:30 a.m.–5:00 p.m.)

1. Sub-Group Meetings

Thursday, September 17, 2015 (08:30 a.m.–5:00 p.m.)

1. Sub-Group Meetings

Friday, September 15, 2015 (08:30 a.m.–11:00 a.m.)

1. Closing Plenary
   a. Sub-Groups' reports
   b. Future meetings plans and dates
   c. Industry coordination
   d. SC–206 action item review
   e. Other business
2. Adjourn

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 July 14, 2015.

Latasha Robinson,

Management & Program Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–17515 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: Special Committee 230 (SC 230)

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

ACTION: Fifth Meeting Notice of Special Committee 230.

SUMMARY: The FAA is issuing this notice to advise the public of the fifth meeting of the Special Committee 230.

DATES: The meeting will be held September 29th–October 1st from 10:00 a.m.–1:00 p.m.

ADDRESSES: The meeting will be held at RTCA Headquarters—WEBEX Meeting, 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0663.

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* or Sophie Bousquet, Program Director, RTCA, Inc., *sbousquet@rtca.org,* (202) 330–0663.

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 meeting of the Special Committee 230. This Plenary will be a WebEx meeting. For those wishing to attend in person at RTCA, a room will be reserved. The agenda will include the following:

Tuesday, September 29, 2015

1. Welcome/Introductions/ Administrative Remarks
2. Agenda Overview
3. Meeting #4 Minutes approval
4. Review of final findings from DO–220

Wednesday, September 30, 2015

1. Review findings from DO–213 draft

Thursday, October 1, 2015

1. Review findings from DO–213 draft
2. Action item review
3. Approval/release of Revisions to DO–220 and DO–213 for Final Review and Comments (FRAC)
4. Date and Place of Next Meeting
5. Adjourn

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 July 14, 2015.

Latasha Robinson,

Management & Program Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–17508 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty-Fourth Meeting: Special Committee 224 (SC 224)

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

ACTION: Thirty-Fourth Meeting Notice of Special Committee 224.

SUMMARY: The FAA is issuing this notice to advise the public of the thirty-fourth meeting of the Special Committee 224.

DATES: The meeting will be held August 6th from 10:00 a.m.–3:00 p.m.

ADDRESSES: The meeting will be held at RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0654.

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* or Harold Moses, Program Director, RTCA, Inc., *hmoses@rtca.org,* (202) 330–0654.

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 meeting of the Special Committee 224. The agenda will include the following:

Thursday, August 6, 2015

1. Welcome/Introductions/ Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. Report from the TSA
4. Report on Safe Skies on Document Distribution
5. Review of the Credentialing Section
6. Review of Other DO–230 ''G'' Sections
7. Action Items for Next Meeting
8. Time and Place of Next Meeting
9. Any Other Business
10. Adjourn

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 July 14, 2015.

Latasha Robinson,

Management & Program Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–17511 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2014–0342 and FMCSA–2014–0407]

Hours of Service (HOS) of Drivers; Applications for Exemption From the 14-Hour Rule

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final dispositions; denial of applications for exemption.

SUMMARY: FMCSA announces its denial of the applications of the American Moving & Storage Association (AMSA) and the International Association of Movers (IAM) for an exemption that would allow a driver to operate a commercial motor vehicle (CMV) after the 14th hour since coming on duty. AMSA and IAM are engaged in the movement of household goods by CMV. They requested the exemption for their drivers who are delayed at a residence beyond the 14th hour and need to move the vehicle to a secure location for overnight parking. FMCSA concluded that AMSA and IAM did not demonstrate how CMV operations under such an exemption would be likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: FMCSA denied the applications for exemption by letters dated April 16 (IAM) and June 8 (AMSA).

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Application for Exemption

AMSA and IAM are trade associations representing entities engaged in the movement of household goods by CMV. By separate applications, they sought exemption from the ''14-hour rule'' in 49 CFR 395.3(a)(2), which prohibits a CMV driver from driving a property-carrying CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. They proposed that the exemption would be used solely by drivers who need to drive a moving van from a customer's residence to a safe place for overnight parking after the 14th hour of their duty day has elapsed. AMSA and IAM stated that unexpected delays during the day result in this predicament. They further stated that movement of CMVs from residential areas to overnight parking eliminates the safety hazard created when vans are parked in residential neighborhoods, and ensures the security of household goods in the moving vans. AMSA and IAM proposed that the exemption limit CMV driving after the 14th hour to 75 miles or 90 minutes.

Public Comments

On September 9, 2014, FMCSA published notice of the AMSA application and asked for public

comment (79 FR 53510). Four individuals and Advocates for Highway and Auto Safety submitted comments. All opposed the application for exemption. On November 19, 2014, FMCSA published notice of the IAM application and asked for public comment (79 FR 68958). Ten commenters supported the application and five opposed it.

Agency Decision

The Agency's decision is based upon the information provided by the applicants, review of the comments received in response to the **Federal Register** notices, and the substantial body of HOS research the FMCSA relied upon to implement the 14-hour rule (68 FR 22473, April 28, 2003). The applicants for exemption did not offer any measures to offset the excessive fatigue to which CMV drivers operating beyond the 14th hour would be subjected. Furthermore, the applications did not limit how often the proposed exemption could be used. The FMCSA must therefore deny the applications for exemption.

The Agency denied the IAM and AMSA applications by letters dated April 16, 2015, and June 8, 2015, respectively. In each case, the Agency concluded that CMV operations under the exemption were not likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved in the absence of the exemption [49 CFR 381.310(c)(5)]. Copies of the denial letters are in the respective dockets.

Issued on: July 9, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–17433 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. USCG–2015–0472]

Deepwater Port License Application: Delfin LNG, LLC, Delfin LNG Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of application.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce they have received an application for the licensing of a liquefied natural gas (LNG) export deepwater port and that the application contains all required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: The Deepwater Port Act of 1974, as amended, requires any public hearing(s) on this application to be held not later than 240 days after publication of this notice, and a decision on the application not later than 90 days after the final public hearing.

ADDRESSES: The public docket for USCG–2015–0472 is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management Facility's telephone number is 202–366–9329, the fax number is 202–493–2251 and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.* keyword search ''USCG–2015–0472''.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil* or

Ms. Yvette M. Fields, Maritime Administration, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9826.

SUPPLEMENTARY INFORMATION:

Receipt of Application

On May 8, 2015, MARAD and USCG received an application from Delfin LNG, LLC (Delfin LNG) for all Federal authorizations required for a license to own, construct, and operate a deepwater port (DWP) for the export of natural gas authorized under the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act), and implemented under 33 CFR parts 148, 149, and 150. After a coordinated completeness review by MARAD and other cooperating Federal agencies, it was determined that the application required supplemental information, and, by letter of May 29, 2015 to Delfin LNG, the USCG deemed the application incomplete. On June 22, 2015, in response to the USCG letter, Delfin LNG submitted the requested supplemental information entitled ''Deepwater Port License Application Delfin LNG Project May 8, 2015—Supplemented June 19, 2015.'' It has now been determined that the application contains all information necessary to initiate processing of the application. The USCG deemed the application complete on June 29, 2015.

Also on May 8, 2015, Delfin LNG filed an application with the Federal Energy Regulatory Commission (FERC) requesting authorizations pursuant to the Natural Gas Act and 18 CFR part 157. This application was noticed on FERC's Docket No. CP15–490–000 on May 20, 2015 and in the **Federal Register** (80 FR 30266–01). The following is an excerpt from that **Federal Register** Notice:

> Take notice that on May 8, 2015 Delfin LNG LLC (Delfin LNG), 1100 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP15–490–000, an Application pursuant to section 7(c) of the Commission's Regulations under the Natural Gas Act and Parts 157 of the Federal Energy Regulatory Commission's (Commission) regulations requesting authorization to (1) reactivate approximately 1.1 miles of existing 42-inch pipeline formerly owned by U–T Offshore System (UTOS), which runs from Transcontinental Gas Pipeline Company Station No. 44 (Transco Station 44) to the mean highwater mark along the Cameron Parish Coast; (2) install 74,000 horsepower of new compression; (3) construct 0.25 miles of 42-inch pipeline to connect the former UTOS line to the new meter station; and (4) construct 0.6 miles of twin 30-inch pipelines between Transco Station 44 and the new compressor station in Cameron Parrish, Louisiana that comprise the onshore portion of Delfin LNG's proposed deepwater port (DWP), an offshore liquefied natural gas facility located off the coast of Louisiana in the Gulf of Mexico, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. Additionally, Delfin LNG requests a blanket construction certificate under Part 17, Subpart F of the Commission's regulations. 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. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.
>
> . . . .
>
> Delfin LNG's onshore facilities will connect with the DWP facilities that are subject to jurisdiction of the Maritime Authority [sic] (MARAD) and the United States Coast Guard (USCG). Additionally, as part of Delfin LNG's DWP, Delfin LNG proposes to lease a segment of pipeline from High Island Offshore System, LLC (HIOS) that extends from the terminus of the UTOS pipeline offshore. Delfin LNG states in its application that HIOS will submit a separate application with the Commission seeking authorization to abandon by lease its facilities to Delfin LNG.
>
> Because the review of the DWP proposal is the jurisdiction of MARAD and USCG, the Commission acknowledges Delfin LNG's application in Docket No. CP15–490–000 on May 8, 2015. However, the Commission will

not begin processing Delfin LNG's application until such time that MARAD and USCG accept Delfin LNG's DWP application, and HIOS submits an abandonment application with the Commission.

Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, including all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed as part of a deepwater port, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to, or from, any State.[1]

The Secretary of Transportation delegated to the Maritime Administrator authorities related to licensing deepwater ports (49 CFR 1.93(h)). Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 *et seq.* and 33 CFR part 148. Under delegations from, and agreements between, the Secretary of Transportation and the Secretary of Homeland Security, applications are jointly processed by MARAD and USCG. Each application is considered on its merits.

In accordance with 33 U.S.C. 1504(f) for all applications, MARAD and the USCG, working in cooperation with other Federal agencies and departments considering a DWP application shall comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). The U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (USACE), the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Pipeline and Hazardous Materials Safety Administration (PHMSA), among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6.; may participate in scoping meeting(s); and will incorporate the Environmental Impact Statement (EIS) into their permitting processes. Comments addressed to the EPA, USACE, or other federal cooperating agencies will be incorporated into the Department of Transportation (DOT) docket and considered as the EIS is developed to ensure consistency with the NEPA process.

All connected actions, permits, approvals and authorizations will be considered in the deepwater port license application review. FERC has jurisdiction over the onshore components of the proposed deepwater port as well as the change in service of the offshore HIOS pipeline. As noted above, these matters will be addressed by FERC through a separate application process. FERC has also noted they cannot participate until such time as HIOS submits a pipeline abandonment application with the Commission. For purposes of the Delfin LNG DWP license application, MARAD and the USCG consider both the DWP application and the FERC application to be included in this review. For your convenience, we have included the Delfin LNG application to FERC under Docket Number USCG–2015–0472.

MARAD, in issuing this Notice of Application pursuant to section 1504(c) of the Act, must designate as an ''Adjacent Coastal State'' any coastal state which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port (see 33 U.S.C. 1508(a)(1)). On April 30, 2013, MARAD issued a Notice of Policy Clarification advising the public that nautical miles shall be used when determining Adjacent Coastal State status (78 FR 25349). Pursuant to the criteria provided in the Act, Louisiana and Texas are the Adjacent Coastal States for this application. Other states may apply for Adjacent Coastal State status in accordance with 33 U.S.C. 1508(a)(2).

The Act directs that at least one public hearing take place in each Adjacent Coastal State, in this case, Louisiana and Texas. Additional public meetings may be conducted to solicit comments for the environmental analysis to include public scoping meetings, or meetings to discuss the Draft EIS and the Final EIS.

MARAD and USCG will publish additional **Federal Register** notices with information regarding these public meeting(s) and hearing(s) and other procedural milestones, including the NEPA environmental review. The Maritime Administrator's decision, and other key documents, will be filed in the public docket.

The Deepwater Port Act imposes a strict timeline for processing an application. When MARAD and USCG determine that an application contains the required information, the Act directs that all public hearings on the application be concluded within 240 days after publication of this Notice of Application.

Within 45 days after the final hearing, the Governor(s) of the Adjacent Coastal State(s), in this case the Governors of Louisiana and Texas, may notify MARAD of their approval, approval with conditions, or disapproval of the application. MARAD may not issue a license without the explicit or presumptive approval of the Governor(s) of the Adjacent Coastal State(s). During this 45 day time period, the Governor(s) may also notify MARAD of inconsistencies between the application and State programs relating to environmental protection, land and water use, and coastal zone management. In this case, MARAD may condition the license to make it consistent with such state programs (33 U.S.C. 1508(b)(1)). MARAD will not consider written approvals or disapprovals of the application from Governors of Adjacent Coastal States until the 45-day period after the final public hearing.

The Maritime Administrator must render a decision on the application within 90 days after the final hearing.

Should a favorable record of decision be rendered and license be issued, MARAD may include specific conditions related to design, construction, operations, environmental permitting, monitoring and mitigations, and financial responsibilities. If a license is issued, USCG would oversee the review and approval of the deepwater port's Floating Liquefied Natural Gas Vessels (FLNGVs) and in coordination with other agencies as appropriate review of engineering design and construction; operations/security procedures; waterways management and regulated navigation areas; maritime safety and security requirements; risk assessment; and compliance with domestic and international laws and regulations for vessels that may call on the port. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards.

In addition, installation of pipelines and other structures, such as the Tower Yoke Mooring Systems (TYMSs), may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, which are administered by USACE.

Permits from the EPA may also be required pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

[1] On December 20, 2012, the Coast Guard and Maritime Transportation Act of 2012 (Title III, Sec. 312) amended Section 3(9)(A) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(9)(A)) to insert the words ''or from'' before the words ''any State'' in the definition of Deepwater Port. This amendment grants MARAD the authority to license the construction of Deepwater Ports for the export of oil and natural gas from domestic sources within the United States to foreign markets abroad.

As mentioned above, Delfin LNG has filed an application with FERC for a Certificate of Public Convenience and Necessity for the Delfin LNG Project Onshore Facilities as described in the FERC **Federal Register** notice (80 FR 30266–01). In order to achieve the goals of NEPA, this application to operate onshore facilities is included as a connected action for the proposed deepwater port and the environmental impact of its construction and operation will be included in the MARAD/USCG NEPA review. However, to reiterate, FERC has stated it will not be able to commence processing Delfin LNG's application for the proposed onshore facility until such time as the HIOS abandonment application is filed.

The Department of Energy (DOE) is also a cooperating agency. On February 20, 2014, DOE approved Delfin LNG's application to export LNG by vessel from its proposed deepwater port to Free Trade Agreement (FTA) nations. On November 12, 2013, Delfin LNG applied to the DOE for a long-term multi-contract authorization to export domestically produced LNG to non-FTA nations. Pursuant to DOE's revised procedures for LNG export decisions (79 FR 48132), the DOE will act on applications to export LNG to non-FTA nations only after the NEPA review is completed by the lead Federal agency, in this case the USCG and MARAD.

Summary of the Application

Delfin LNG is proposing to construct, own, and operate a DWP terminal (referred to herein as the Delfin Terminal) in the Gulf of Mexico to liquefy natural gas for export to FTA and non-FTA nations.

The proposed Project has both onshore and offshore components. The proposed DWP would be located in Federal waters within the Outer Continental Shelf (OCS) West Cameron Area, West Addition Protraction Area (Gulf of Mexico), approximately 37.4 to 40.8 nautical miles (or 43 to 47 statute miles) off the coast of Cameron Parish, Louisiana, in water depths ranging from approximately 64 to 72 feet (19.5 to 21.9 meters). The DWP would consist of four semi-permanently moored FLNGVs located as follows: #1 (29°8′13.1″ N./ 93°32′2.2″ W.), #2 (29°6′13.6″ N./ 93°32′42.4″ W.), #3 (29°6′40.7″ N./ 93°30′10.1″ W.), and #4 (29°4′40.9″ N./ 93°30′51.8″ W.), located in WC 319, 327, 328, and 334 blocks, respectively. It would reuse and repurpose two existing offshore natural gas pipelines: The former U–T Operating System (UTOS) pipeline, and the High Island Operating System (HIOS) pipeline. Four new pipeline laterals connecting the HIOS pipeline to each of the FLNGVs would be constructed. The feed gas would be supplied through these new pipeline laterals to each of the FLNGVs where it would be super cooled to produce LNG. The LNG would be stored onboard the FLNGV and transferred via ship-to-shop transfer to properly certified LNG trading carriers. Each of the FLNGVs would be semi-permanently moored to four new weather-vaning TYMSs.

The onshore components in Cameron Parish, Louisiana consist of engineering, constructing, and operating a new natural gas compressor station, gas supply header and metering station at an existing gas facility. The proposal would require: (1) Reactivation of approximately 1.1 miles of existing 42-inch pipeline, formerly owned by UTOS, which runs from Transcontinental Gas Pipeline Company Station No. 44 (Transco Station 44) to the mean high water mark along the Cameron Parish Coast; (2) installation of 74,000 horsepower of new compression; (3) construction of 0.25 miles of 42-inch pipeline to connect the former UTOS line to the new meter station; and (4) construction of 0.6 miles of twin 30-inch pipelines between Transco Station 44 and the new compressor station.

Onshore pipeline quality natural gas from the interstate grid would be compressed and sent to the existing, but currently idled, 42-inch UTOS pipeline. The gas would be transported through the UTOS pipeline and would bypass the existing manifold platform located at West Cameron (WC) 167 approximately 24.7 nautical miles (28.4 statute miles) offshore in the Gulf of Mexico. The bypass of WC 167 would be a newly installed pipeline segment, 700 feet in length, connecting to the existing 42-inch HIOS pipeline.

The bypass of the WC 167 platform would be trenched so that the top of the pipe is a minimum of 3 feet below the seafloor. From the bypass, the feed gas would then be transported further offshore using the HIOS pipeline portion leased by the Applicant between WC 167 and High Island A264. The existing UTOS and HIOS pipelines transect OCS Lease Blocks WC 314, 318, 319, 327, and 335, and would transport feed gas from onshore to offshore (one-directional flow). Delfin LNG proposes to install four new lateral pipelines along the HIOS pipeline, starting approximately 16.0 nautical miles (18.4 statute miles) south of the WC 167 platform. Each subsea lateral pipeline would be 30 inches in diameter and approximately 6,400 feet in length, extending from the HIOS pipeline to the Delfin Terminal.

The FLNGVs would receive pipeline quality natural gas via the laterals and TYMS where it would be cooled sufficiently to totally condense the gas to produce LNG. The produced LNG would be stored in International Maritime Organization (IMO) type B, prismatic, independent LNG storage tanks aboard each of the FLNGVs. Each vessel would have a total LNG storage capacity of 165,000 cubic meters (m^3).

An offloading mooring system would be provided on each FLNGV to moor an LNG trading carrier side-by-side for cargo transfer of LNG through loading arms or cryogenic hoses using ship-to-ship transfer procedures. LNG carriers would be moored with pilot and tug assist. The FLNGV would be equipped with fenders and quick-release hooks to facilitate mooring operations. The offloading system would be capable of accommodating standard LNG trading carriers with nominal cargo capacities up to 170,000 m^3. It is expected that the typical LNG cargo transfer operation would be carried out within 24 hours, including LNG trading carrier berthing, cargo transfer and sail-away.

The FLNGVs would be self-propelled vessels and have the ability to disconnect from the TYMS and set sail to avoid hurricanes or to facilitate required inspections, maintenance, and repairs.

In the nominal design case, each of the four FLNGVs would process approximately 330 million standard cubic feet per day (MMscfd), which would total 1.32 billion standard cubic feet per day (Bscf/d) of input feed gas for all four of the FLNGVs. Based on an estimated availability of 92 percent and allowance for consumption of feed gas during the liquefaction process, each FLNGV would produce approximately 97.5 billion standard cubic feet per year (Bscf/y) of gas (or approximately 2.0 million metric tonnes per annum (MMtpa)) for export in the form of LNG. Together, the four FLNGVs are designed to have the capability to export 390.1 Bscf/y of gas (or approximately 8.0 MMtpa) in the form of LNG.

As detailed engineering and equipment specification advances during the design process, and operating efficiencies are gained post-commissioning, the liquefaction process could perform better than this nominal design case. It is therefore anticipated that LNG output, based on the high-side design case of 375 MMscfd of input feed gas, would be as much as approximately 110.8 Bscf/y of gas (or approximately 2.3 MMtpa) for each FLNGV. Taken together, the four FLNGVs would be capable of exporting the equivalent of 443.3 Bscf/y of natural gas in the form

of LNG. Therefore, Delfin LNG is requesting authorization to construct and operate facilities capable of exporting up to 443.3 Bscf/y of natural gas in the form of LNG (which equates to approximately 9.2 MMtpa).

The proposed Project would take a modular implementation approach to allow for early market entry and accommodate market shifts. Offshore construction activities are proposed to begin first quarter (Q1) of 2018 and would be completed in four stages. Each stage corresponds to the commissioning and operation of an FLNGV. The anticipated commissioning of FLNGV 1 is Q3 of 2019 with start-up of commercial operation of FLNGV 1 by the end of 2019. It is anticipated that FLNGVs 2 through 4 would be commissioned 12 months apart. The Delfin Terminal would be completed and all four FLNGVs would be fully operational by the summer of 2022.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or by visiting *http://www.regulations.gov.*

Authority: 33 U.S.C. 1501, *et seq.;* 49 CFR 1.93(h).

Dated: July 13, 2015.

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2015–17465 Filed 7–15–15; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35942]

Tunnel Hill Partners, LP—Acquisition of Control Exemption—Hainesport Industrial Railroad, LLC

Tunnel Hill Partners, LP (Tunnel), a noncarrier, and two Class III carriers (Hainesport Industrial Railroad, LLC (HIRR) and New Amsterdam & Seneca Railroad Company (NAS) (collectively, Applicants)) have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for Tunnel, which currently owns NAS, to acquire control of HIRR.

According to Applicants, Tunnel is an integrated waste management firm. It currently owns NAS, a carrier with authority to operate a rail line in Fostoria, Ohio.[1] Darryl Caplan and Ronald W. Bridges currently own HIRR, a carrier that holds authority to operate approximately one mile of track in Hainesport Industrial Park in Burlington County, NJ.[2] Tunnel proposes to acquire from these individuals their ownership interest in HIRR to serve a waste transfer facility located on that line. Tunnel notes that it may also use NAS to serve a waste transfer facility it owns on that line. Tunnel states that there are no plans to connect the two railroads.

The transaction is expected to be consummated on or after July 30, 2015, the effective date of the exemption.

Applicants state that: (i) The carrier to be controlled pursuant to this notice of exemption (HIRR) does not connect with Tunnel's existing carrier (NAS); (ii) the subject acquisition of control proceeding is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than July 23, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings referring to Docket No. FD 35942, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 13, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–17562 Filed 7–15–15; 8:45 am]

BILLING CODE 4915–01–P

[1] *See New Amsterdam & Seneca R.R.—Lease & Operation Exemption—Line in Fostoria, Ohio,* FD 34811 (STB served Jan. 20, 2006).

[2] *See Hainesport Indus. R.R.—Acquis. & Operation Exemption—Hainesport Indus. Park R.R. Ass'n,* FD 34695 (STB served May 18, 2005).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1128X]

Energy Solutions, LLC, d.b.a. Heritage Railroad Corporation—Abandonment Exemption—in Anderson and Roane Counties, Tenn.

On April 3, 2015, as supplemented on June 26, 2015, Energy Solutions, LLC (ES), d.b.a. Heritage Railroad Corporation, filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad, known as the Blair-Oak Ridge Line, which extends between a point of connection to Norfolk Southern Railway Company at or near Blair, Tenn. (milepost 0.0) and the end of track at East Tennessee Technology Center at or near Oak Ridge, Tenn. (milepost 7.0), including approximately three miles of spur tracks in Anderson and Roane Counties, Tenn. (the Line). The Line includes the stations of Blair and Oak Ridge and traverses United States Postal Service Zip Codes 37830 and 37190.

According to ES, it owns the Line's track materials, and the United States Department of Energy (DOE) owns the real estate underlying the Line. ES states that it operates over the Line pursuant to an easement for right-of-way granted by DOE to Heritage Railroad Corporation, Inc. (HRC) in 2002, which was assigned by HRC to ES in 2009.[1] ES proposes to abandon the Line (thus ending its obligation to provide common carrier service to shippers on the Line upon reasonable request) but continue to provide contract carriage over it outside the Board's jurisdiction. ES asserts that all the shippers on the

[1] *See Heritage R.R.—Lease & Operation Exemption—Rail Line of U.S. Dep't of Energy,* FD 34372 (STB served July 23, 2003); *Energy Solutions—Acquis. & Operation Exemption—Heritage R.R.,* FD 35288 (STB served Sept. 3, 2009).

Line would continue to be served by ES pursuant to contract.

According to ES, the Line does not contain federally granted rights-of-way.[2] Any documentation in ES's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 14, 2015.

Any OFA under 49 CFR 1152.27(b)(2) will be due by October 23, 2015, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 5, 2015. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1128X and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112. Replies to the petition are due on or before August 5, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 10, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–17458 Filed 7–15–15; 8:45 am]

BILLING CODE 4915–01–P

[2] ES's statement that the Line includes no federally granted rights-of-way may be inconsistent with its statement that it operates over the Line pursuant to an easement granted by DOE.

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

AGENCY: United States Institute of Peace.

DATES: Friday, July 24, 2015 (10 a.m.–1:45 p.m.).

ADDRESSES: 2301 Constitution Avenue NW., Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection I706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: July 24, 2015 Board Meeting; Approval of Minutes of the One Hundred Fifty-fourth Meeting (April 24, 2015) of the Board of Directors; Chairman's Report; Vice Chairman's Report; President's Report; Reports from USIP Board Committees; Update on West Bank Security Sector Project, US1P Iraq Programming, and Preventing Electoral Violence (PEV) review.

Contact: Nick Rogacki, Special Assistant to the President, Email: *nrogacki@usip.org.*

Dated: July 9, 2015.

Nicholas Rogacki,

Special Assistant to the President, United States Institute of Peace.

[FR Doc. 2015–17336 Filed 7–15–15; 8:45 am]

BILLING CODE 6820–AR–M

FEDERAL REGISTER

Vol. 80 Thursday,
No. 136 July 16, 2015

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 431, 447, *et al.*
Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 431, 447, 482, 483, 485, and 488

[CMS–3260–P]

RIN 0938–AR61

Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the requirements that Long-Term Care facilities must meet to participate in the Medicare and Medicaid programs. These proposed changes are necessary to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety. These proposals are also an integral part of our efforts to achieve broad-based improvements both in the quality of health care furnished through federal programs, and in patient safety, while at the same time reducing procedural burdens on providers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 14, 2015.

ADDRESSES: In commenting, please refer to file code CMS–3260–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–3260–P, P.O. Box 8010, Baltimore, MD 21244.

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–3260–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) 786–9994 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:

Sheila Blackstock, (410) 786–6633, for issues related to Care transitions, QAPI.

Ronisha Blackstone, (410) 786–6633, for issues related to Comprehensive care planning, training.

Diane Corning, (410) 786–6633, for issues related to Behavioral health, infection control, facility assessment.

Lisa Parker, (410) 786–6633, for issues related to the Regulatory Impact Analysis.

Jeannie Miller, (410) 786–6633, for General information.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

AAA Area Agencies on Aging
ACL Administration for Community Living
ADL Activities of Daily Living
ADRCS Aging and Disability Resource Center
AHCA American Health Care Association
AHLA American Health Lawyers Association
ANSI American National Standards Institute
ASPE Assistant Secretary for Planning and Evaluation
BPSD Behavioral and Psychological Symptoms of Dementia
CARIE Center for Advocacy Rights and Interests
CASPER Certification and Survey Provider Enhanced Reports
CIL Centers for Independent Living
CLIA Clinical Laboratory Improvement Amendment
CMS Centers for Medicare & Medicaid Services
CNS Clinical Nurse Specialist
CPR Cardiopulmonary Resuscitation
DON Director of Nursing
EHR Electronic Health Records
FDA Food and Drug Administration
GAO Government Accountability Office
HACCP Hazard Analysis and Critical Control Point
HAI Healthcare-Associated Infection
HHS U.S. Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996
ICN International Council of Nurses
IDT Interdisciplinary Team
IG Interpretive Guidance
IPCO Infection Prevention and Control Officer
IPCP Infection Prevention and Control Program
LSC Life Safety Code
LTC Long-Term Care
NATCEP Nurse Aide Training Competency Evaluation Program
NCEA National Center on Elder Abuse
MAR Medication Administration Record
MDS Minimum Data Set
NA Nurse Aide
NF Nursing Facility
NP Nurse Practitioner
OIG Office of the Inspector General
OMB Office of Management and Budget

ONC Office of the National Coordinator
PA Physician Assistant
PASARR Preadmission Screening and Resident Review
PIPs Performance Improvement Projects
PEU Protein-Energy under Nutrition
QA Quality Assurance
QAA Quality Assessment and Assurance
QAPI Quality Assurance and Performance Improvement
QIO Quality Improvement Organization
RFA Regulatory Flexibility Act
RN Registered Nurse
SMA State Medicaid Agency
SNF Skilled Nursing Facility
WHO World Health Organization

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I. Background

A. Executive Summary

1. Purpose

Consolidated Medicare and Medicaid requirements for participation (requirements) for long term care (LTC) facilities (42 CFR part 483, subpart B) were first published in the **Federal Register** on February 2, 1989 (54 FR 5316). These regulations have been revised and added to since that time, principally as a result of legislation or a need to address a specific issue. However, they have not been comprehensively reviewed and updated since 1991 (56 FR 48826, September 26, 1991), despite substantial changes in service delivery in this setting.

Since the current requirements were developed, significant innovations in resident care and quality assessment practices have emerged. In addition, the population of nursing homes has changed, and has become more diverse and more clinically complex. Over the last two to three decades, extensive, evidence-based research has been conducted and has enhanced our knowledge about resident safety, health outcomes, individual choice, and quality assurance and performance improvement. In light of these changes, we recognized the need to evaluate the regulations on a comprehensive basis, from both a structural and a content perspective. Therefore, we are reviewing regulations in an effort to improve the quality of life, care, and services in LTC facilities, optimize resident safety, reflect current professional standards, and improve the logical flow of the regulations. Specifically, we are proposing to add new requirements where necessary, eliminate duplicative or unnecessary provisions, and reorganize the regulations as appropriate. Many of the revisions are aimed at aligning requirements with current clinical practice standards to improve resident safety along with the quality and effectiveness of care and services delivered to residents. Additionally, we believe that these proposed revisions may eliminate or significantly reduce those instances where the requirements are duplicative, unnecessary, and/or burdensome.

2. Summary of the Major Provisions

Basis and Scope (§ 483.1)

- The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively known as the Affordable Care Act) provisions: We propose to add the statutory authority citations for sections 1128I(b) and (c) and section 1150B of the Act to include the compliance and ethics program, quality assurance and performance improvement (QAPI), and reporting of suspicion of a crime requirements.

Definitions (§ 483.5)

- Expanded Definitions: We propose to add the definitions for ''adverse event'', ''documentation'', ''posting/displaying'', ''resident representative'', ''abuse'', ''sexual abuse'', ''neglect'', ''exploitation'', ''misappropriation of resident property'', and ''person-centered care''.

Resident Rights (§ 483.10)

- Comprehensive Restructuring: We propose to retain all existing residents' rights but update the language and organization of the resident rights provisions to improve logical order and readability, clarify aspects of the regulation where necessary, and to update provisions to include advances such as electronic communications. This includes—
  - Eliminating language, such as ''interested family member'' and replacing the term ''legal representative'' with ''resident representative.''
  - Addressing roommate choice.
  - Adding language regarding physician credentialing to specify that the physician chosen by the resident must be licensed to practice medicine in the state where the resident resides, and must meet professional credentialing requirements of the facility.

Facility Responsibilities (§ 483.11) *New Section*

- New Section: We propose to add a new section to subpart B that focuses on the responsibilities of the facility (that is, protecting the rights of their residents, enhancing a resident's quality of life) and brings together many of the facility responsibilities currently dispersed throughout existing regulations. This section parallels many residents' rights provisions.
- Visitation: We propose to revise visitation requirements to establish open visitation, similar to the hospital conditions of participation (CoPs).
- Re-designation of Requirements: We propose to—
  - Relocate provisions from existing Resident's Rights (§ 483.10) section that pertain to the responsibilities of the facility into this section.
  - Relocate the existing requirements in Quality of Life (§ 483.15) into this section.

Freedom From Abuse, Neglect, and Exploitation (§ 483.12)

- Revised Title: Formerly ''Resident behavior and facility practices,'' we propose to revise the title to ''Freedom from abuse, neglect, and exploitation.''

• Prohibiting abuse, neglect, and exploitation: We propose to—

○ Specify that facilities cannot employ individuals who have had a disciplinary action taken against their professional license by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of their property.

○ Require facilities to develop and implement written policies and procedures that prohibit and prevent abuse, neglect, and mistreatment of residents or misappropriation of their property.

Transitions of Care (§ 483.15)

• Revised Title: Formerly ''Admission, transfer and discharge rights,'' we propose to revise the title to reflect current terminology that applies to all instances where care of a resident is transferred.

• Transfers or Discharge: We propose to require not only that a transfer or discharge be documented in the clinical record, but also that specific information, such as history of present illness, reason for transfer and past medical/surgical history, be exchanged with the receiving provider or facility when a resident is transferred. We are not proposing to require a specific form, format, or methodology for this communication.

Resident Assessments (§ 483.20)

• Preadmission Screening and Resident Review (PASARR): We propose to clarify what constitutes appropriate coordination of a resident's assessment with the PASARR program under Medicaid.

• Technical Corrections:

○ We propose to add references to statutory requirements that were inadvertently omitted from the regulation when we first implemented sections 1819 and 1919 of the Act.

▪ Section 1919(e)(7)(A)(ii) and (iii) of the Act: We propose to add exceptions to the preadmission screening requirements for individuals with mental illness and individuals with intellectual disabilities for admittance into a nursing facility, with respect to transfer to or from a hospital.

▪ Section 1919(e)(7)(B)(iii) of the Act: We propose to add a requirement that a nursing facility must notify the state mental health authority or intellectual disability authority for resident evaluation promptly after a significant change in the mental or physical condition of a resident with a mental illness or intellectual disability.

○ We propose to replace the term ''mental retardation'' with ''intellectual disability'' throughout the section, as appropriate.

Comprehensive Person-Centered Care Planning (§ 483.21) *New Section*

• Baseline Care Plan: We propose to require facilities to develop a baseline care plan for each resident, within 48 hours of their admission, which includes the instructions needed to provide effective and person-centered care that meets professional standards of quality care.

• PASARR: We propose to add a requirement to include as part of a resident's care plan any specialized services or specialized rehabilitation services the nursing facility will provide as a result of PASARR recommendations. If a facility disagrees with the findings of the PASARR, it must indicate its rationale in the resident's medical record.

• Interdisciplinary Team (IDT):

○ We propose to add a nurse aide, a member of the food and nutrition services staff, and a social worker to the required members of the interdisciplinary team that develops the comprehensive care plan.

○ We propose to require facilities to provide a written explanation in a resident's medical record if the participation of the resident and their resident representative is determined to not be practicable for the development of the resident's care plan.

• Discharge Planning:

○ The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185) amended Title XVIII of the Social Security Act by, among other things, adding Section 1899B to the Social Security Act. Section 1899B(i) requires that certain providers, including long term care facilities, take into account, quality, resource use, and other measures to inform and assist with the discharge planning process, while also accounting for the treatment preferences and goals of care of residents. We propose to implement the discharge planning requirements mandated by the IMPACT Act by revising, or adding where appropriate, discharge planning requirements for LTC facilities.

○ We propose to require facilities to document in a resident's care plan the resident's goals for admission, assess the resident's potential for future discharge, and include discharge planning in the comprehensive care plan, as appropriate.

○ We propose to require that the resident's discharge summary include a reconciliation of all discharge medications with the resident's pre-admission medications (both prescribed and over-the-counter).

○ We propose to add to the post discharge plan of care a summary of what arrangements have been made for the resident's follow up care and any post-discharge medical and non-medical services.

Quality of Care and Quality of Life (§ 483.25)

• Overarching Principles: We propose to clarify that quality of care and quality of life are overarching principles in the delivery of care to residents of nursing homes and should be applied to every service provided.

• Activities of Daily Living (ADLs): We propose to clarify the requirements regarding a resident's ability to perform ADLs.

• Director of Activities Qualifications: We propose to solicit comments on whether the requirements for the director of the activities program remain appropriate and what should serve as minimum requirements for this position. We are not proposing specific changes at this time.

• Updating Current Practices: We propose to modify existing requirements for nasogastric tubes to reflect current clinical practice, and to include enteral fluids in the requirements for assisted nutrition and hydration.

• Special Need Issues: We propose to add a new requirement that facilities must ensure that residents receive necessary and appropriate pain management.

• Re-designation of Requirements: We propose to relocate the provisions regarding unnecessary drugs, antipsychotic drugs, medication errors, and influenza and pneumococcal immunizations to § 483.45 Pharmacy services.

Physician Services (§ 483.30)

• In-person Evaluation: We propose to require an in-person evaluation of a resident by a physician, a physician assistant, nurse practitioner, or clinical nurse specialist before an unscheduled transfer to a hospital.

• Delegation of Orders: We propose to allow physicians to delegate dietary orders to dietitians and therapy orders to therapists.

Nursing Services (§ 483.35)

• Sufficient Staffing: We propose to add a competency requirement for determining sufficient nursing staff based on a facility assessment, which includes but is not limited to the number of residents, resident acuity, range of diagnoses, and the content of care plans.

Behavioral Health Services (§ 483.40) *New Section*

- New Section: We propose to add a new section to subpart B that focuses on the requirement to provide the necessary behavioral health care and services to residents in accordance with their comprehensive assessment and plan of care.
- Staffing:
  - *Facility Assessment:* We propose to require facilities to determine their direct care staff needs, based on the facility's assessment.
  - *Competency Approach:* We propose to require that staff must have the appropriate competencies and skills to provide behavioral health care and services, which include caring for residents with mental and psychosocial illnesses and implementing non-pharmacological interventions.
  - *Social Worker:* We propose to add ''gerontology'' to the list of possible human services fields from which a bachelor degree could provide the minimum educational requirement for a social worker.

Pharmacy Services (§ 483.45)

- Drug Regimen Review:
  - We propose to add the requirement that a pharmacist review a resident's medical chart at least every 6 months and when the resident is new to the facility, a prior resident returns or is transferred from a hospital or other facility, and during each monthly drug regimen review when the resident has been prescribed or is taking a psychotropic drug, an antibiotic or any drug the QAA Committee has requested be included in the pharmacist's monthly drug review.
  - We propose to require the pharmacist to document in a written report any irregularities noted during the drug regimen review that lists at a minimum, the resident's name, the relevant drug, and the irregularity identified, to be sent to the attending physician and the facility's medical director and director of nursing.
  - We propose to require that the attending physician document in the resident's medical record that he or she has reviewed the identified irregularity and what, if any, action they have taken to address it. If there is to be no change in the medication, the attending physician should document his or her rationale in the resident's medical record.
- Irregularities: We propose to add a definition of ''irregularities'' that would include, but not be limited to, the definition of ''unnecessary drugs.''
- Psychotropic Drugs: We propose to revise existing requirements regarding ''antipsychotic'' drugs to refer to ''psychotropic'' drugs.
  - We propose to require that facilities ensure residents who have not used psychotropic drugs not be given these drugs unless medically necessary.
  - We propose that residents who use psychotropic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue use of these psychotropic drugs.
  - We propose to define ''psychotropic drug'' as any drug that affects brain activities associated with mental processes and behavior.
  - We propose that PRN (Pro re nata or as needed) orders for psychotropic drugs be limited to 48 hours. Orders could not be continued beyond that time unless the primary care provider (for example, the resident's physician) reviewed the need for the medications prior to renewal of the order, and documented the rationale for the order in the resident's clinical record.
- Re-designation of Requirements: We propose to relocate provisions in § 483.25 ''Quality of Care'' regarding unnecessary drugs, antipsychotic drugs, medication errors, and influenza and pneumococcal immunizations into this section.

Laboratory, Radiology, and Other Diagnostic Services (§ 483.50) *New Section*

- Ordering Services: We propose to clarify that a physician assistant, nurse practitioner or clinical nurse specialist may order laboratory, radiology, and other diagnostic services for a resident in accordance with state law, including scope of practice laws.
- Laboratory Services: We propose to clarify that the ordering physician; physician assistant; nurse practitioner or clinical nurse specialist, be notified of abnormal laboratory results when they fall outside of clinical reference ranges, in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's, physician assistant's; nurse practitioner's or clinical nurse specialist's orders.

Dental Services (§ 483.55)

- For Skilled Nursing Facilities (SNFs): We propose to prohibit SNFs from charging a Medicare resident for the loss or damage of dentures determined in accordance with facility policy to be the facility's responsibility.
- For Nursing Facilities (NFs): We propose to require NFs to assist residents who are eligible to apply for reimbursement of dental services as an incurred medical expense under the Medicaid state plan.
- For both SNFs and NFs: We propose to clarify that with regard to a referral for lost or damaged dentures ''promptly'' means within 3 business days unless there is documentation of extenuating circumstances.

Food and Nutrition Services (§ 483.60)

- Staffing: We propose to require facilities to employ sufficient staff with the appropriate competencies and skills sets to carry out the functions of the dietary service while taking into consideration resident assessments, and individual plans of care, including diagnoses and acuity, as well as the facility's resident census..
- Dietitian Qualification: We propose to clarify that a ''qualified dietitian'' is one who is registered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics or who meets state licensure or certification requirements. For dietitians hired or contracted with prior to the effective date of these regulations, we propose to allow up to 5 years to meet the new requirements.
- Director of Food Service: We propose to add to the requirement for the designation of a director of food and nutrition service that the person serving in this position be a certified dietary manager, certified food service manager, or have a certification for food service management and safety from a national certifying body or have an associate's or higher degree in food service management or hospitality from an accredited institution of higher learning. In states that have established standards for food service managers, this person must meet state requirements for food service managers.
- Menus and Nutritional Adequacy: We propose to add to the requirements that menus reflect the religious, cultural and ethnic needs and preferences of the residents, be updated periodically, and be reviewed by the facility's qualified dietitian or other clinically qualified nutrition professional for nutritional adequacy while not limiting the resident's right to make personal dietary choices.
- Providing Food and Drink: We propose to add to the requirements that facilities provide food and drink that take into consideration resident allergies, intolerances, and preferences and ensure adequate hydration.
- Ordering Therapeutic Diets: We propose to allow the attending physician to delegate to a registered or licensed dietitian the task of prescribing a resident's diet, including a therapeutic diet, to the extent allowed by state law.

- Frequency of Meals: We propose to require facilities to have available suitable and nourishing alternative meals and snacks for residents who want to eat at non-traditional times or outside of scheduled meal times in accordance with the resident's plan of care.
- Use of Feeding Assistants: We propose to require that facilities document the clinical need of a feeding assistant and the extent to which dining assistance is needed in the resident's comprehensive care plan.
- Food Safety: We propose to—
  - Clarify that facilities may procure food items obtained directly from local producers and are not prohibited from using produce grown in facility gardens, subject to compliance with applicable safe growing and food-handling practices.
  - Clarify that residents are not prohibited from consuming foods that are not procured by the facility.
  - Require facilities to have a policy regarding the use and storage of foods brought to residents by family and other visitors.

Specialized Rehabilitative Services (§ 483.65)

- Provision of Services. We propose to—
  - Add respiratory services to those services identified as specialized rehabilitative services.
  - Clarify what constitutes as rehabilitative services for mental illness and intellectual disability.

Outpatient Rehabilitative Services (§ 483.67)

- Providing Services: We propose to establish new health and safety standards for facilities that choose to provide outpatient rehabilitative therapy services.

Administration (§ 483.70)

- Organization: We propose to largely relocate various portions of this section into other sections of subpart B as deemed appropriate.
- Facility Assessment: We propose to require facilities to—
  - Conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. The facility must review and update that assessment, as necessary, and at least annually.
  - Review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment.
  - Address in the facility assessment the facility's resident population (that is, number of residents, overall types of care and staff competencies required by the residents, and cultural aspects), resources (for example, equipment, and overall personnel), and a facility-based and community-based risk assessment.
- Clinical Records: We propose to establish requirements that mirror some of those found in the HIPAA Privacy Rule (45 CFR part 160, and subparts A and E of part 164).
- Binding Arbitration Agreements: We propose specific requirements for the facility and the agreement itself to ensure that if a facility presents binding arbitration agreements to its residents that the agreements be explained to the residents and they acknowledge that they understand the agreement; the agreements be entered into voluntarily; and arbitration sessions be conducted by a neutral arbitrator in a location that is convenient to both parties. Admission to the facility could not be contingent upon the resident or the resident representative signing a binding arbitration agreement. Moreover, the agreement could not prohibit or discourage the resident or anyone else from communicating with federal, state, or local health care or health-related officials, including representatives of the Office of the State Long-Term Care Ombudsman.

Quality Assurance and Performance Improvement (QAPI) (§ 483.75) *New Section*

- QAPI Program: In accordance with the statute, we propose to require all LTC facilities to develop, implement, and maintain an effective comprehensive, data-driven QAPI program that focuses on systems of care, outcomes of care and quality of life.

Infection Control (§ 483.80)

- Infection Prevention and Control Program (IPCP): We propose to require facilities to have a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under an arrangement based upon its facility and resident assessments that is reviewed and updated annually.
- Infection Prevention and Control Officer (IPCO): We propose to require facilities to designate an IPCO for whom the IPCP is their major responsibility and who would serve as a member of the facility's quality assessment and assurance (QAA) committee.

Compliance and Ethics Program (§ 483.85) *New Section*

- Compliance and Ethics Program: We propose to require the operating organization for each facility to have in operation a compliance and ethics program that has established written compliance and ethics standards, policies and procedures that are capable of reducing the prospect of criminal, civil, and administrative violations in accordance with section 1128I(b) of the Act.

Physical Environment (§ 483.90)

- Resident Rooms: We propose to require facilities initially certified after the effective date of this regulation to accommodate no more than two residents in a bedroom.
- Toilet Facilities: We propose to require facilities initially certified after the effective date of this regulation to have a bathroom equipped with at least a toilet, sink and shower in each room.
- Smoking: We propose to require facilities to establish policies, in accordance with applicable federal, state and local laws and regulations, regarding smoking, including tobacco cessation, smoking areas and safety.

Training Requirements (§ 483.95) *New Section*

- We propose to add a new section to subpart B that sets forth all the requirements of an effective training program that facilities must develop, implement, and maintain for all new and existing staff, individuals providing services under a contractual arrangement, and volunteers, consistent with their expected roles. We propose that training topics must include—
  - Communication: We propose to require facilities to include effective communications as a mandatory training for direct care personnel.
  - Resident Rights and Facility Responsibilities: We propose to require facilities to ensure that staff members are educated on the rights of the resident and the responsibilities of a facility to properly care for its residents as set forth in the regulations.
  - Abuse, Neglect, and Exploitation: We propose to require facilities, at a minimum, to educate staff on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property, and procedures for reporting these incidents.
  - QAPI & Infection Control: We propose to require facilities to include mandatory training as a part of their QAPI and infection prevention and control programs that educate staff on the written standards, policies, and procedures for each program.

○ Compliance and Ethics: In accordance with section 1128I of the Act, as added by the Affordable Care Act, we would require the operating organization for each facility to include training as a part of their compliance and ethics program. We propose to require annual training if the operating organization operates five or more facilities.

○ In-Service Training for Nurse Aides: In accordance with sections 1819(f)(2)(A)(i)(I) and 1919(f)(2)(A)(i)(I) of the Act, as amended by the Affordable Care Act, we propose to require dementia management and resident abuse prevention training to be a part of 12 hours per year in-service training for nurse aides.

○ Behavioral Health Training: We propose to require that facilities provide behavioral health training to its entire staff, based on the facility assessment at § 483.70(e).

3. Summary of Costs and Benefits

a. Overall Impact

We estimate the total projected cost of this rule would be $729,495,614 in the first year. This results in an estimated first-year cost of approximately $46,491 per facility and a subsequent-year cost of $40,685 per facility on 15,691 LTC facilities.

b. Section-by-Section Economic Impact Estimates

ESTIMATED COST TO COMPLY WITH ALL THE REQUIREMENTS OF THE PROPOSED RULE

Regulatory area	Section	First year total cost	Total cost in year 2 and thereafter
Resident Rights	483.10	$10,436,051	$10,436,051
Facility Obligations	483.11	1,935,785	999,345
Transitions of Care	483.15	3,331,225	3,331,225
Comprehensive Resident Centered Care Planning	483.21	118,184,092	118,184,092
Physician Services	483.30	35,660,786	35,660,786
Nursing Services	483.35	3,640,312	3,640,312
Food and Nutrition Services	483.60	1,788,774	1,663,246
QAPI	483.75	118,419,977	47,402,511
Infection Control	483.80	283,944,336	283,944,336
Compliance and Ethics Program	483.85	139,356,716	120,327,296
Training	483.95	.....	.....
General Training Topics	483.95(a)	7,280,624	7,280,624
Compliance and Ethics Training	483.95(f)	1,876,624	1,876,624
Dementia Management and Abuse Training	483.95(g)	3,640,312	3,640,312
Total	.....	729,495,614	638,386,760

B. Statutory and Regulatory Authority of the Requirements for Long-Term Care Facilities

In addition to specific statutory requirements set out in sections 1819 and 1919 and elsewhere in the Social Security Act, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act permit the Secretary of the Department of Health and Human Services (the Secretary) to establish any additional requirements relating to the health, safety, and well-being of SNF and NF residents respectively as the Secretary finds necessary.

Under sections 1866 and 1902 of the Act, providers of services seeking to participate in the Medicare or Medicaid program, or both, must enter into an agreement with the Secretary or the state Medicaid agency, as appropriate. LTC facilities seeking to be Medicare and Medicaid providers of services must be certified as meeting federal participation requirements. LTC facilities include SNFs for Medicare and NFs for Medicaid. The federal participation requirements for SNFs, NFs, or dually certified facilities, are set forth in sections 1819 and 1919 of the Act and codified in the implementing regulations at 42 CFR part 483, subpart B. Sections 1819(b)(1)(A) and 1919(b)(1)(A) of the Act provide that a SNF or NF must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident. In addition, the IMPACT Act (Pub. L. 113–185) amended Title XVIII of the Act by, among other things, adding Section 1899B to the Act. Section 1899B(i) requires that certain providers, including long term care facilities, take into account, quality, resource use, and other measures to inform and assist with the discharge planning process, while also accounting for the treatment preferences and goals of care of residents.

The Affordable Care Act made a number of changes to the Medicare and Medicaid programs. For instance, in an effort to increase accountability for SNFs and NFs, section 6102 of the Affordable Care Act established a new section 1128I of the Act. In general, section 1128I(b) of the Act requires LTC facilities to have in operation an effective compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations and in promoting quality of care. Section 1128I(b)(2) of the Act specifies that the Secretary, working jointly with the Inspector General of the Department of Health and Human Services (HHS), shall promulgate regulations for an effective compliance and ethics program for operating organizations, which may include a model compliance program. Further, section 1128I(c) of the Act adds a requirement for a quality assurance and performance improvement program (QAPI). Lastly, in an effort to promote dementia management and prevent abuse, section 6121 of the Affordable Care Act amended section 1819(f)(2)(A)(i)(I) and section 1919(f)(2)(A)(i)(I) of the Act by requiring dementia and abuse prevention training to be included as part of training requirements for nurse aides.

C. Summary of Stakeholder Comments

In order to evaluate the need to update the requirements for long term care facilities, CMS provided LTC stakeholders and members of the general public with opportunities to provide suggestions and recommendations for our revision of the requirements. Specifically, we reached out to industry groups, advocates and other stakeholders by announcing our intention to conduct a comprehensive review of the requirements during CMS open door forums and other regularly scheduled stakeholder calls. We established an email box to receive

comments and feedback. In response to our outreach, we received more than 20 comments from a variety of stakeholder organizations and individuals. Comments ranged from those who were concerned that burden-reducing changes would weaken important protections for vulnerable seniors to those who believe the existing regulations are working well and no changes were necessary. We also received a number of comments that included very detailed and comprehensive recommendations for changes to our regulations. One consistent theme of the comments was the need to address staffing levels. Most comments suggested that we increase the required number of registered nurse (RN) hours of onsite duty per resident day. They also suggested that we strengthen our training requirements for staff and require trainings for specific skills and procedures. Another common theme in the comments was the need to revise the regulations so that they reflect a person-centered care approach and improve the quality of care and life for the residents. For example, commenters requested that residents be included in the care planning process and given complete control over their meal choices. Commenters also requested that we ensure the regulations are current and consistent with federal privacy legislation and the associated implementing regulations, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule (45 CFR part 160 and subparts A and E of part 164).

We have reviewed all of the stakeholder's comments and have taken them into consideration while drafting this proposed rule. We note that some commenters requested changes that conflicted directly with statute. Moreover, some of the comments we received were outside the scope of our review (that is, comments related to the LTC facility survey process or the interpretive guidance (IG)). However, we have shared all of the stakeholder's comments with appropriate CMS staff for their review and consideration. We appreciate all of the stakeholders input and responses to our outreach efforts thus far and believe that this proposed rule reflects our desire to promote person-centered care and improve the quality of care and services, while further protecting resident's safety, choice and well-being.

D. Why revise the LTC requirements?

Although there have been many discrete changes to specific provisions, the requirements for LTC facilities have not been comprehensively reviewed and updated since 1991. The number of Medicare beneficiaries who accessed care in a SNF increased from 636,000 (or 19 per 1,000 enrollees) in 1989 to 1,839,000 (or 52 per 1,000 enrollees) in 2010, not including managed care enrollees (Data Compendium. 2002 edition. Centers for Medicare & Medicaid Services [on-line]. *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/DataCompendium/index.html*).

In addition to the increase in the number of individuals accessing SNF care, the health concerns of individuals residing in LTC facilities have become more clinically complex. The LTC population includes a mix of elderly individuals, younger residents with intellectual or developmental disabilities who are chronically ill, and residents in need of post-acute rehabilitation services. Since the 1980's, the nursing home resident population has had some significant changes. Some of these changes have resulted in nursing homes having to care for many residents that generally have a higher acuity. One change has been a dramatic increase in the number of residents who are recuperating from an acute episode of an illness or injury and who would have usually been discharged from a hospital to their homes. In 1983, Medicare implemented the prospective payment system for hospitals (Decker, FH. Nursing homes, 1977–99: What has changed, what has not? Hyattsville, Maryland Center for Health Statistics. 2005, p. 3). In the subsequent years, there have been shorter hospital stays for Medicare beneficiaries and increased Medicare-funding for post-acute stays in nursing homes. Decker noted that while the discharge rate for individuals who had nursing home stays of 3 months or more had not changed significantly, the discharge rate for individuals who were discharged after a nursing home stay of 90 days or less accounted for virtually all of the increase. Thus, Decker used this as a benchmark for short versus long stays. The number of discharges per 100 nursing home beds in 1977 and 1985 were 86 and 77, respectively. However, by 1999, the discharge rate per 100 nursing home beds had increased by about 56 percent to 134 (Decker, p. 2). In addition, the percentage of these stays in which Medicare was the primary payer had more than tripled from 11 percent in 1985 to 39 percent in 1999. Medicare generally only covers the first 100 days of a stay in a skilled nursing facility (*https://www.medicare.gov/Pubs/pdf/10153.pdf*).

Another factor that has resulted in a higher acuity in the nursing home resident population has been the increase in assisted-living facilities and other alternatives to nursing home care, such as home care (Decker, p. 5 and Harris-Kojetin, L., Sengupta, M., Park-Lee, E., and Valverde, R. Long-term care services in the United States: 2013 overview. National health care statistics reports; no 1. Hyattsville, MD: National Center for Health Statistics, 2013). This has resulted in nursing homes caring for residents that require more medical care and rehabilitation services. This is supported by the significant decrease in the percentage of residents that could perform their ADLs independently. In 1977, almost 67 percent of residents could eat independently (Decker, p. 5, Figure 6). However, by 1999, that percentage had decreased to almost 53 percent and by 2004 it was down to only about 41 percent (Decker and Jones, AL, Dwyer, LL, Bercovitz, AR, Strahan, GW. The National Nursing Home Survey: 2004 Overview. National Center for Health Statistics. Vital Health Stat 13(167). 2009, Figure 5.). In 1977, almost 30 percent of residents were independent in dressing; however, by 1999, that percent was down to almost 13 percent and by 2004 it was down to about 10 percent (Decker and Jones). By 2004, more than 50 percent of all nursing home residents either required extensive assistance with bathing, dressing, toileting, and transferring or were totally dependent for these ADLs (Jones, Figure 5 and Harris-Kojetin, Figure 24). Only 1.6 percent of all nursing home residents received no assistance for any ADL (Jones, Figure 4).

Nursing homes are also caring for a significant number of residents who require behavioral health services. In 2004, over 16 percent of nursing home residents received a primary diagnosis of a mental disorder upon admission (Jones, Figure 7). By the time residents were interviewed for the National Nursing Home Survey that percentage increased to almost 22 percent. The 1999 estimate was about 18 percent. In addition, nursing homes are caring for a significant number of patients with dementia and depression. By 2012, over 48 percent of nursing home residents had a diagnosis of Alzheimer's disease or another dementia and/or depression (Harris-Kojetin, p. 35, Figure 23). Similiarly, in looking at the prevalence of four mental health conditions (depression, anxiety disorders, bipolar disorder, and schizophrenia) in nursing home residents 65 and older, the Institute of Medicine (IOM) found almost 50 percent had depression and almost 57 percent had one or more of those conditions (IOM (Institute of

Medicine) 2012. *The mental health and substance use workforce for older adults: In whose hands?* Washington, DC: The National Academies Press). In addition, substance abuse disorders are also increasing in the nursing home population. Substance abuse disorders are described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5)* (*http://www.dsm5.org/Documents/Substance%20Use%20Disorder%20Fact%20Sheet.pdf* Accessed on June 17, 2015). Thus, in this rule, when we discuss behavioral health or mental illness, we are also discussing substance abuse disorders.

To accommodate a more diverse population, the current care and service delivery practices of LTC facilities have changed to meet these changing service needs. These factors not only demonstrated a need to comprehensively review the regulations, but also informed our approach for revising the regulations. The following discussion highlights our approach to proposing revisions as well as some of the most significant revisions set forth in this proposed rule.

Facility Assessment and Competency-Based Approach

One of our goals in revising our minimum health and safety requirements for LTC facilities is to ensure that our regulations align with current clinical practice and allow flexibility to accommodate multiple care delivery models to meet the needs of the diverse populations that are provided services in these facilities. We considered prescriptive approaches, such as requiring specific numbers and types of staff based on facility size and acuity of residents, but were concerned that such an approach would conflict with requirements already established in many states, and would limit flexibility and innovation in designing new models of person-centered care delivery for residents. Thus, we are instead taking a competency-based approach that focuses on achieving the statutorily mandated outcome of ensuring that each resident is provided care that allows the resident to maintain or attain their highest practicable physical, mental, and psychosocial well-being. Under this competency-based approach, we are proposing requirements that are compatible with existing state requirements and consistent with what we believe are already common practices by facilities. As discussed in further detail in this proposed rule in section II, ''Provisions of the Proposed Rule,'' we propose to require facilities to assess their facility capabilities and their resident population. Using the information from that assessment, facilities would be required to provide sufficient staff with the necessary competencies and skills to meet each resident's needs based on acuity, diagnosis, and the resident's person-centered comprehensive care plan. Based on our experience with LTC facilities, we believe most facilities already make these assessments, at least informally, in order to determine staffing needs; our revisions will ensure it is consistently performed and documented in all SNFs and NFs.

Application of facility assessments and competence-based staffing decisions would involve every service provided by a NF or SNF and apply to all members of the staff, including the interdisciplinary team. For example, a facility that provides dementia care would need to ensure it has sufficient numbers of staff and that the staff has the necessary training, education, and/or experience to care for individuals with dementia. These staff may be nursing service staff, behavioral health staff, or other appropriate care providers. Similarly, adding a competence-based requirement would ensure that a facility serving residents requiring post-acute rehabilitation care had sufficient staff with the required training, education and/or experience to care for individuals requiring those services. We propose that the focus be on the competencies and skill sets of the individuals delivering care and services rather than just on the overall number of care givers available. This competence-based approach is compatible with existing state requirements and business practices, and promotes both efficiency and effectiveness in care delivery. In addition to a competence-based approach, this proposed rule is intended to meet the spirit of current HHS quality initiatives that cut across various providers.

Current HHS Quality Initiatives

As an effective steward of public funds, CMS is committed to strengthening and modernizing the nation's health care system to provide access to high quality care and improved health at lower cost. This includes improving the patient experience of care, both quality and satisfaction, improving the health of populations, and reducing the per capita cost of health care. In drafting the proposed rule, we considered current initiatives underway to support these aims and improve care across providers as well as initiatives targeted specifically at nursing home residents. As discussed below, we are proposing several revisions consistent with these efforts.

- Reducing Avoidable Hospitalization

Nearly two-thirds of nursing home residents are enrolled in Medicaid, and most are also enrolled in Medicare. These Medicare-Medicaid enrollees are among the most fragile and chronically ill individuals served by both programs. Although estimates vary, CMS research found that approximately 45 percent of hospitalizations among Medicare-Medicaid enrollees receiving either Medicare skilled nursing facility services or Medicaid nursing facility services could have been avoided (*http://innovation.cms.gov/initiatives/rahnfr/*). One goal of the HHS Partnership for Patients Initiative is to reduce the number of individuals who experience a preventable complication requiring rehospitalization. This effort aims to improve the quality of care and services for individuals cared for in LTC facilities. In support of this initiative, CMS has launched the ''Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents'' (*http://innovation.cms.gov/initiatives/rahnfr/*). CMS is supporting organizations that partner with nursing facilities to implement evidence-based interventions that both improve care and lower costs. The initiative is focused on long-stay nursing facility residents who are enrolled in the Medicare and Medicaid programs. Additional information and resources are available at *http://innovation.cms.gov/initiatives/rahnfr/index.html*.

Consistent with the HHS focus on reducing unnecessary hospitalization, in drafting this proposed rule, we looked at what, if any, minimum health and safety standards could be developed or strengthened that would contribute to a reduction in unnecessary hospital admissions of nursing home residents. First, we considered many factors that contribute to a decision to transfer a nursing home resident to a hospital. This is primarily a clinical decision, but it may be impacted by environmental or financial factors that are not amenable to change based on regulatory requirements. These concerns include family and resident preferences and demands, concern regarding the LTC facility's liability, and payment incentives. We believe, however, that there are some regulatory changes that would help reduce avoidable hospitalization of nursing home residents. We discuss those changes in section II, ''Provisions of the Proposed Rule''.

• Healthcare Associated Infections

HHS is also working to reduce the incidence of healthcare associated infections (HAIs) across providers. In recognition of HAIs as an important public health and patient safety issue, HHS is sponsoring the ''National Action Plan to Prevent HAIs''. This initiative seeks to coordinate and maximize the efficiency of prevention efforts across the federal government (*http://www.hhs.gov/ash/initiatives/hai/actionplan/*). Given the growing number of individuals receiving care in LTC settings and the presence of more complex medical care, these individuals are at an increased risk for HAIs. Therefore, to advance these initiatives, we have proposed revisions that we believe will provide more opportunities to achieve broad based improvement and contribute to reduced healthcare costs. We also believe this approach would be flexible enough to be adapted to any business model and would allow for targeted interventions specific to the facility.

• Behavioral Health

On March 29, 2012, CMS launched an initiative aimed at improving behavioral healthcare and safeguarding nursing home residents from the use of unnecessary antipsychotic medications. As part of the initiative, CMS has developed a national action plan that uses a multidimensional approach including public reporting, raising public awareness, regulatory oversight, and technical assistance/training and research. This plan is targeted at enhancing person-centered care for nursing home residents, particularly those with dementia-related behaviors (*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Spotlight/html*).

Similarly, with regard to minimum health and safety standards, we looked at possible regulatory changes that could lead to a reduction in the unnecessary use of antipsychotic medication and improvements in the quality of behavioral healthcare. After conducting a review of literature, stakeholder comments, and available Office of Inspector General (OIG) reports we found that many residents are not receiving the individualized quality of care mandated by the current requirements. We address this issue further in section II, ''Provisions of the Proposed Rule''.

• Health Information Technology

HHS also has a number of initiatives designed to encourage and support the adoption of health information technology and to promote nationwide health information exchange to improve health care. HHS believes all patients, their families, and their healthcare providers should have consistent and timely access to their health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the patient's care (HHS August 2013 Statement, ''Principles and Strategies for Accelerating Health Information Exchange.''). The Department is committed to accelerating health information exchange (HIE) through initiatives including: (1) Establishing a coordinated governance framework and process for nationwide health IT interoperability; (2) improving technical standards and implementation guidance for sharing and using a common clinical data set; (3) enhancing incentives for sharing electronic health information according to common technical standards, starting with a common clinical data set; and (4) clarifying privacy and security requirements that enable interoperability. Ensuring that individuals and care providers can send, receive, find, and use a basic set of essential health information across the health care continuum will enhance care coordination and enable health system reform to improve care quality. This strategy is described in greater detail in ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap, available at *http://www.healthit.gov/sites/default/files/nationwide-interoperability-roadmap-draft-version-1.0.pdf*. Developed with significant stakeholder input, this 10-year Roadmap describes barriers to interoperability across the current health IT landscape, the desired future state that the industry believes will be necessary to enable a learning health system, and a suggested path for moving from the current state to the desired future state. In addition, ONC has released the 2015 Interoperability Standards Advisory (available at *http://www.healthit.gov/standards-advisory*), which provides a list of the best available standards and implementation specifications to enable priority health information exchange functions. ONC expects to annually update the Advisory through a transparent and structured process that includes advice from the Health IT Standards Committee (ONC's federal advisory committee) and the public at large.

HHS is committed to encouraging HIE among all health care providers, including those who are not eligible for the EHR Incentive Programs, to improve care delivery and coordination across the entire care continuum. Our revisions to this rule are intended to recognize the advent of electronic health information technology and to accommodate and support adoption of ONC certified health IT and interoperable standards. We believe that the use of such technology can effectively and efficiently help facilities and other providers improve internal care delivery practices, support the exchange of important information across care team members (including patients and caregivers) during transitions of care, and enable reporting of electronically specified clinical quality measures (eCQMs). For more information, we direct stakeholders to the ONC guidance for EHR technology developers serving providers ineligible for the Medicare and Medicaid EHR Incentive Programs titled, ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments,'' which addresses use of the 2014 Edition of ONC certification criteria (available at *http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9–9–13.pdf*). ONC anticipates updating the 2014 Edition Certification Guidance once the ONC 2015 Edition Certification becomes final. Information on the development of standards applicable to the long-term care setting can be found at: *http://wiki.siframework.org/LCC+LTPAC+Care+Transition+SWG* and *http://wiki.siframework.org/Longitudinal+Coordination+of+Care*.

• Trauma-Informed Care

HHS has also undertaken broad-based activities to support Americans that have specific needs to be considered in delivering health care and other services. Activities include raising awareness about the special care needs of trauma survivors, including a targeted effort to support the needs of Holocaust survivors living in the United States. Trauma survivors, including veterans, survivors of large-scale natural and human-caused disasters, Holocaust survivors and survivors of abuse, are among those who may be residents of long-term care facilities. For these individuals, the utilization of trauma-informed approaches is an essential part of person-centered care. For many trauma survivors, the transition to living in an institutional setting (and the associated loss of independence) can trigger profound re-traumatization. In addition, aspects of institutional settings can be significant triggers. While these triggers are highly individualized, some common triggers include: Experiencing

a lack of privacy or confinement in a crowded or small space; or being exposed to certain loud noises, or bright/flashing lights. It is also important to note that cognitive impairment, such as dementia, may worsen or further complicate a trauma survivor's response to triggers and may also introduce additional language barriers as individuals return to their first (non-English) languages. Culturally-competent, trauma-informed approaches that help to minimize triggers and re-traumatization, including those that address the unique care needs of Holocaust survivors and survivors of war, disasters, and other profound trauma are an important aspect of person-centered care for these individuals. Person-centered care that reflects the principles set forth in SAMSHA's Concept of Trauma and Guidance for a Trauma-Informed Approach, HHS Publication No. (SMA) 14–4884, available at *http://store.samhsa.gov/shin/content/SMA14=4884/SMA14-4884.pdf*, would help advance the quality of care that a resident receives and, in turn, can substantially improve a resident's quality of life.

• Requirements for Long Stay Residents

Ninety five percent of nursing homes in the United States are dually certified as SNF/NFs. That is, they provide both the Medicare SNF benefit, and the Medicaid NF benefit. Both benefits cover skilled nursing care and rehabilitation services, with a few minor differences, as noted in these proposed regulations. In addition, Medicaid NFs provide long term care for residents who require support for activities of daily living. Some residents covered by long term care insurance or paying privately may also be receiving long-term care in the nursing home indefinitely. For these residents, the facility is their home. For both residents and facilities, making the nursing facility a home is a different experience and undertaking than is a course of rehabilitation followed by discharge to the individual's residence in the community. The requirements have not reflected this distinction.

We received some comments that would apply primarily to serving long term residents. Some of the ideas and practices, known collectively as ''Culture Change,'' are of benefit to all nursing home residents by making services and supports more person-centered, but are particularly crucial to the quality of life of long stay facility residents. Person-centered care is an aspect of culture change that focuses on the resident as the locus of control, supported in making their own choices and having control over their daily lives. According to the authors of the ''Long-Term Care Improvement Guide,'' ''culture change'' refers to the progression from institutional or traditional models of care to more individualized, consumer-directed practices that embrace choice and autonomy for care providers and recipients (Frampton, Susan, et al. ''Making the Case for Change'' Long-Term Care Improvement Guide 2010, retrieved from *http://www.residentcenteredcare.org/Pages/About%20the%20guide.html*). The authors go on to explain that this kind of care not only enhances quality for consumers and staff but also creates opportunities for the organization to improve operational benchmarks in areas such as quality of care, efficiency of operation, revenue generation and stabilized staffing. CMS has participated in the culture change movement and we are familiar with both the goals and challenges of this effort. We note that the many present efforts to serve individuals in the community rather than in an institution, for example, in compliance with the Supreme Court *Olmstead* decision (*Olmstead* v. *L.C ex rel. Zimring,* 527 U.S. 581, 119 S. Ct. 2176 (1999)), are primarily directed at long-stay nursing home residents rather than those receiving rehabilitation or skilled nursing care, and this characteristic may be relevant to facility requirements.

While CMS is engaged in the issues around long stay nursing home residents, we do not have enough verifiable information to propose specific changes to the regulations specifically applicable to long-stay situations at this time. We solicit comments on how the requirements could acknowledge the special needs of the long stay resident. In addition, because we also received comments regarding the need to specifically address the needs of short stay residents, we solicit comments on how the requirements could acknowledge the special needs of short stay residents. Nursing facility providers describe the challenges of serving these two rather different populations in a single model of care. We are particularly interested in any suggestions to improve existing requirements, within the authority of existing statute, where they make serving one or the other population difficult or less effective. The most useful comments will be those that offer suggestions to amend specific sections of the existing requirements or offer particular additions. For example, should new construction or capitalized renovations be based on models of effective long term residence?

In addition to the requirements for participation, CMS is seeking comment on a number of issues related to the finalization and implementation of the proposed rule: Unintended consequences and unanticipated risks to SNF and NF residents, the involvement of stakeholders in developing sub-regulatory requirements and in implementing changes, and the timeline for proposed implementation following finalization of the rule.

The requirements for participation have not been substantially updated since the regulations implementing the Omnibus Budget Reconciliation Act of 1987 were finalized. As such, the intent of the proposed rule is modernization of the regulation, harmonization with other federal laws, and implementation of certain provisions of the Affordable Care Act. CMS is seeking comments on the scope and type of changes proposed here. Given the comprehensive nature of our proposed revisions, we are soliciting comments regarding potential unintended consequences or unanticipated risks to SNF and NF residents, either related to a specific proposal or in general, and what those concerns might be. In addition, we are interested in stakeholder comments related to an appropriate timeframe for nursing homes to implement these regulations. CMS generally implements changes to regulatory requirements for the survey and certification process within 12 months of a final rule. Following finalization of this proposed rule, CMS anticipates that it may require a longer period of time to implement the changes outlined in the final rule. The additional time may be needed to develop revised interpretive guidance and survey processes, conduct surveyor training on the changes, and implement the software changes in the Quality Indicator Survey (QIS) system, which would include changing the underlying framework of the QIS system as many of the existing requirements have been re-organized. We also expect that it may take a longer period for nursing facilities to implement these changes and seek stakeholder suggestions regarding an appropriate implementation timeframes. Lastly, we seek comment on additional streamlining and reduction of outdated policies as a means of balancing the new policies being proposed.

Implementation of the Affordable Care Act Provisions

We are proposing to implement several provisions required by the Affordable Care Act. First, section 6102 of the Affordable Care Act, which added

new section 1128I to the Act requires the operating organizations for facilities (both SNFs and NFs as defined in sections 1819(a) and 1919(a) of the Act) to have in operation a compliance and ethics program. The compliance and ethics programs must be effective in preventing and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care consistent with regulations that are promulgated under this new section.

Second, section 1128I of the Act requires the Secretary to establish and implement Quality Assurance and Performance Improvement (QAPI) program requirements for facilities, including multi-unit chains of facilities. Under this requirement, the Secretary must establish and implement standards relating to QAPI and provide technical assistance to facilities on the development of best practices in order to meet these standards. A facility must submit to the Secretary a plan for the facility to meet such standards and implement the best practices, including how to coordinate the implementation of a plan with quality assessment and assurance (QAA) activities already required under sections 1819(b)(1)(B) and 1919(b)(1)(B) of the Act as implemented at 42 CFR 483.75(o). This proposed rule would establish standards relating to QAPI for SNFs and NFs, as required by the Affordable Care Act.

Finally, section 6121 of the Affordable Care Act, amending sections 1819(f)(2)(A)(i)(I) and 1919(f)(2)(A)(i)(I) of the Act, requires dementia management and abuse prevention to be included as part of training requirements for nurse aides. We are proposing to amend the requirements that an institution must meet in order to participate as a SNF/NF in the Medicare and Medicaid programs, by requiring that the current mandatory on-going training requirements for nurse aides (NAs) include dementia management and resident abuse prevention training. This proposed rule would also clarify that the definition of NA includes an individual who provides NA services through an agency or under contract with a LTC facility, as provided in sections 6121(a)(2) and (b)(2) of the Affordable Care Act.

Executive Order 13563

In January 2011 the President issued Executive Order 13563 ''Improving Regulation and Regulatory Review,'' which directs agencies to select the least burdensome approaches, to minimize cumulative costs, to simplify and harmonize overlapping regulations, and to identify and consider flexible approaches that maintain freedom of choice for the American public. Executive Order 13563 also requires agencies to engage in a process of reviewing existing regulations to see if those rules make sense and continue to be justified. The provisions of this proposed rule are intended to meet the letter and spirit of Executive Order 13563, for reviewing existing regulations to see if those rules make sense and continue to be justified. The provisions of this proposed rule also meet the objectives of section 610 of the Regulatory Flexibility Act (RFA), which also requires agencies to review the impact of existing rules on small businesses or other small entities for possible reforms to reduce burden and costs. We conducted a general review of the regulations for outdated, confusing, and unnecessarily burdensome requirements and considered areas for improvement.

II. Provisions of the Proposed Regulation

Reorganization of Part 483 Subpart B

In our comprehensive review of part 483 subpart B, we felt that improvements could be made to the overall readability and logical order of the regulatory provisions. Therefore, we propose to revise the order of the regulatory provisions. As in the existing subpart B, required sections including basis and scope and definitions, would come first. Similar to the existing regulations, we propose to follow these sections with provisions assuring resident-centered care, including resident rights, facility responsibilities, freedom from abuse, neglect and exploitation, transitions of care, and individualized resident assessment and care planning. We propose to then include service-specific provisions, including quality of care, starting with physician services and concluding with administration. We propose to conclude subpart B with requirements for facility-wide programs such as infection control, compliance and ethics, training, and facility physical environment. We believe our proposed revised order significantly improves the readability and logical order of the regulations and would allow individuals less familiar with the regulations to find information they are seeking more easily. A crosswalk of the current provisions to the proposed provisions is included as Table A in section III of this proposed rule.

Cross Cutting Proposals

While some proposed changes require revisions that are contained in one specific section of the requirements, other issues apply across multiple sections and thus would require changes in several sections of the regulations. These cross-cutting topics include proposals regarding unnecessary hospitalization, HAIs, antipsychotic medications, care planning, and QAPI. Below is a general discussion of our approach to revising the regulations to address these issues. Specific changes to the regulatory text are discussed in detail in the relevant requirements.

- Unnecessary Hospitalization

The transfer to an acute care hospital is a stressful event for a resident of a SNF or NF. As noted by The Office of the Assistant Secretary for Planning and Evaluation (ASPE) in its June 2011 report on Hospitalizations of Nursing Home Residents, such hospitalizations impose a high personal cost on nursing home residents, causing disruption, risk of complications and infections, and likelihood of reduced functioning on return to the nursing home (Ouslander, J.G., Lamb, G., Perloe, M., Givens, J.H., Kluge, L., Rutland, T., et al. (2010). *Potentially avoidable hospitalizations of nursing home residents: Frequency, causes, and costs.* Journal of the American Geriatrics Society, 58, 627–635.). Nursing home residents are especially vulnerable to the risks that accompany hospitalizations and transitions of care, including medication errors and hospital-acquired infections. Hospital episodes are even more difficult for residents with dementia, who become disoriented in new, unfamiliar settings. Preventing potentially avoidable hospitalizations of nursing home residents is an important quality-improvement initiative from the standpoint of the residents and their families, and also may yield cost reductions (Polniaszek, Susan, Walsh, Edith G. and Wiener, Joshua M. (2011) *Hospitalizations of Nursing Home Residents: Background and Options.* U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-Term Care Policy).

In order to decrease unnecessary hospitalizations, the June 2011 report from ASPE gives options such as reporting potentially avoidable hospitalization rates on the CMS Nursing Home Compare Web site, increasing registered nurse (RN) staffing and the use of nurse practitioners (NPs), modifying the Medicare 3-day qualifying stay requirement, providing education and care tools, and changing Medicaid coverage policy to direct incentives to reduce avoidable

hospitalization of nursing home residents (''Hospitalizations of Nursing Home Residents: Background and Options'' U.S. DHHS, Assistant Secretary for Planning and Evaluation, Office of Disability, Aging and Long-Term Care Policy. June 2011). Of these options, we believe education is one of the areas that is most amenable to addressing through revising the requirements. Young *et al.* conclude, based on a cross-sectional survey of randomly selected nursing homes in New York State, that contributing factors to unnecessary hospitalizations amenable to change include communication effectiveness training, ensuring adequate access to prior medical history, laboratory results and ECGs, and encouraging physicians who practice at nursing homes to treat residents within the nursing home whenever possible (Journal of the American Geriatric Society, 58:901–907, May 2010). The availability of patient information, including resident medical history, assessment of current condition including recent laboratory and radiology results, availability of physicians or other practitioners to evaluate the patient if needed, and effective interdisciplinary team communication are areas we can impact through the requirements.

In this proposed rule, we propose to take a multifaceted approach to reducing unnecessary hospitalization which includes:

- Requiring that a facility notify the resident's physician when there is a change in a resident's status, including any pertinent information specified in § 483.15(b)(2)–(§ 483.11(e)(7)(ii))
- Addressing communication through a robust interdisciplinary team, comprehensive person-centered care planning process and through training requirements (§ 483.21).
- Proposing a requirement for practitioner assessment prior to transfer to a hospital, except in an emergency situation (§ 483.30(e)).
- Enhancing nursing care through a competency-based approach (§ 483.35).
- Strengthening the clinical record requirements to ensure adequate and appropriate information is available to evaluating practitioners (§ 483.70(i)).
- Ensuring ongoing evaluation of care process through implementation of a robust QAPI plan (§ 483.75)

This multifaceted approach would build on existing requirements and standard business practices through incremental change. We also believe that this approach would not only have a positive impact on reducing unnecessary readmissions, but may also improve other quality areas as well and is intended to be flexible enough to encompass any care model and all facility populations.

- Reduction in Inappropriate Use of Antipsychotic Medications

Antipsychotic medications are frequently prescribed off-label, which means that the drug is being prescribed for a use that is not approved by the U.S. Food and Drug Administration (FDA), to residents with behavioral and psychological symptoms of dementia (BPSD). This has led to increased attention to the behavioral health management of nursing home residents with dementia and the potentially inappropriate use of antipsychotics in this population. Evidence suggests that antipsychotics have limited benefits in this population, and the potential to lead to adverse consequences such as the risk of movement disorders, falls, hip fractures, cerebrovascular accidents, and death. Additionally, the health profiles of this population are often medically complex and residents may take multiple medications that increase their risk of adverse effects and drug interactions. A previous OIG study found that when this population received these drugs, about half of the drugs were not given for medically accepted indications as required for Medicare coverage or recorded as being administered to the resident and one-fifth of the drugs were not given in accordance with federal safeguards to protect nursing facility residents from unnecessary antipsychotic drug use (OEI–07–08–00150). The potential overuse of antipsychotic agents is a symptom of a much larger problem—namely, that many nursing facilities may not have a systematic plan to provide comprehensive behavioral health care to residents with diagnoses such as dementia and BPSD.

In this proposed rule, we would take a multifaceted approach to reducing the unnecessary use of antipsychotic medications which would include:

- Requiring that each nursing home conduct a comprehensive assessment, including its physical characteristics (that is, size, location, and number of residents), its resident population (including both a psychosocial and mental health assessment), the competencies and knowledge of its staff, and the identification of any resources or support, including training and additional staff, that the facility would need to ensure the appropriate care and treatment for all residents (§ 483.70)
- Revising the current requirements that apply to antipsychotic drugs to also apply to any psychotropic drug; that is, any drug that affects brain activities associated with mental processes and behavior (§ 483.45)
- Including a requirement that once the facility's consultant pharmacist has identified an irregularity (such as, a drug given for an excessive duration of time or prescribed without adequate indications documented in the resident's medical record), or has recommended a gradual dose reduction for one or more medication, the attending physician would be required to document in the resident's medical record that he or she has reviewed the identified irregularity and what, if any, action they took to address it. If there is to be no change in the medication, the attending physician should document his or her rationale in the resident's medical record (§ 483.45)

Similar to our proposals for reducing unnecessary hospitalizations, this multifaceted approach would build on existing requirements and standard health care practices through incremental change. We believe that this approach would provide the best opportunity for a broad-based improvement in the areas of mental, behavioral, and psychosocial-related health care concerns, while also providing facilities with flexibility regarding how to address the type of staff and training or other resources and support they need to provide care and services in these areas.

- Healthcare Associated Infections (HAIs)

Although estimates vary widely, there are between 1.6 and 3.8 million HAIs in nursing homes every year. Annually, these infections result in an estimated 150,000 hospitalizations, 388,000 deaths, and between $673 million and $2 billion dollars in additional healthcare costs (Castle, et al. Nursing home deficiency citations for infection control, American Journal of Infection Control, May 2011; 39, 4). In some ways, the resident population in nursing homes presents unique regulatory challenges, particularly with respect to infection control. Residents in nursing homes not only receive skilled nursing care in these facilities, but for many individuals, these facilities are also their homes. In addition, nursing homes are required to provide social activities for residents which may include group activities or functions. These activities or functions, such as dining, social events, and religious services, may increase the risk of transmission and exposure to communicable diseases and infections. The diversity of the nursing home community presents each facility with unique challenges to meet the needs and choices of all of the

individuals they serve, creating a much harder task of regulating and managing infection control and prevention activities. Nursing home residents are often frail, elderly individuals and individuals with disabilities who have increased susceptibility to infections from malnutrition, dehydration, comorbidities, or functional impairments (for example, urinary and fecal incontinence), and medications that diminish immunity or immobility. In addition, as patients are discharged from hospitals to nursing homes sooner, the nursing home population increasingly has more residents with greater medical needs, which not only increases the acuity level but also likely results in higher invasive device use (for example, mechanical ventilators, central venous catheters, and enteral feeding tubes). Therefore, when developing our approach to promote prevention and control of HAIs, we took into consideration this diverse resident population, as well as the interaction residents will have with staff, visitors, and each other.

Similar to our approach to address unnecessary hospitalizations, we identified the following areas to consider addressing HAIs when revising the nursing home infection control requirements:

- Requirements for the facility to perform a facility-specific assessment of their resident population and facility (§ 483.70)
- Integration of the infection prevention and control program (IPCP) with the facility's QAPI processes (§ 483.75)
- Revising the description of the infection control program and adding a requirement to periodically review and update the program (§ 483.80)
- Requiring an antibiotic stewardship program that includes antibiotic use protocols and a system for monitoring antibiotic use (§ 483.80)
- Designation of specific infection prevention and control officers (IPCOs) (§ 483.80)
- Written policies and procedures for the IPCP (§ 483.80)
- Education or training related to the infection control program (§ 483.80)

Likewise, with the other cross-cutting provisions, we believe that taking a multifaceted approach when revising the infection control requirements would provide the best opportunity to achieve broad-based improvement while also being flexible enough to be adapted to any health care delivery model. These revisions may also result in positive impacts in the care and services to residents, reducing unnecessary hospitalizations and overall lowered healthcare costs.

In the following sections we detail our proposed revisions to the requirements. The discussion follows our proposed reorganization of subpart B.

A. Basis and Scope (§ 483.1)

We propose to revise § 483.1 ''Basis and Scope'' to include references to sections 1819(f), 1919(f), 1128I (b) and (c), and 1150B of the Act. Sections 1819(f) and 1919(f) of the Act require that the current mandatory on-going training for NAs include dementia management and resident abuse prevention training. New section 1128I (b) of the Act requires the operating organizations for SNFs and NFs to have a compliance and ethics program and new section 1128I(c) of the Act requires the Secretary to establish and implement a QAPI program for facilities. New section 1150B of the Act establishes requirements for reporting to law enforcement suspicion of crimes occurring in federally funded LTC facilities. In addition, we propose to spell out the term ''skilled nursing facility''.

B. Definitions (§ 483.5)

Current regulations at § 483.5 provide definitions for terms commonly used in the LTC requirements. We propose to revise some of the existing terms for clarity and define new terms that we believe are widely used within the LTC setting, and that we believe would add value to the LTC requirements while promoting resident choice and safety.

We have retained the existing definitions for ''facility'' and ''distinct part''. We are aware of stakeholder concerns that defining ''distinct part'' and ''composite distinct part'' possibly allow facilities to segregate residents by payment source. On August 4, 2003, we published a final rule entitled, ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update'' (68 FR 46036). Through this final rule, the definitions of ''distinct part'' and ''composite distinct part'' were added to this section and we believe the rationale for the addition at that time remains valid. While some SNFs function as separate, independent entities, we have recognized since the inception of the Medicare program that it is also possible for a SNF to operate as a component, or ''distinct part'' or ''composite distinct part'' of a larger organization. While we do not agree that ''distinct part'' and ''composite distinct part'' should be removed from the current regulations, based on concerns raised by some stakeholders, we have modified the definition of ''composite distinct part'' to make it clear that a composite distinct part designation cannot be used as a means to segregate residents by payment status or on any basis other than care needs. Such segregation may violate a patient's privacy by implicitly revealing their payment source and lends itself to creating inequitable care situations. In addition, we have retained the definition of ''major modification'', which was added to the LTC regulations in the May 12, 2014 final rule, ''Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II'' (79 FR 27106). We also propose to make minor revisions to the definition of ''common area'' to recognize that some facilities have living rooms or other areas where residents gather.

As discussed in detail below, based on our internal review and feedback from stakeholders, we propose to expand this section to include the following definitions: ''abuse,'' ''adverse event,'' ''exploitation,'' ''misappropriation of resident property,'' ''neglect,'' ''person-centered care,'' ''resident representative,'' and ''sexual abuse''. In addition, we propose to relocate the definitions for ''licensed health professional'' and ''nurse aide'' to this section from the ''Administration'' section at § 483.75(e)(1). We believe that these definitions apply broadly to the regulations and would more appropriately be defined in this section of definitions. In addition, we propose to revise the definition of ''nurse aide'' in accordance with amendments to sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act made by sections 6121(a)(2) and (b)(2) of the Affordable Care Act. ''Nurse aide'' is currently defined as any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide these services without pay. ''Nurse aides'' do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301. Section 6121 of the Affordable Care Act added the following clarification to the definition of ''nurse aide'': ''Such term includes an individual who provides such services through an agency or under a contract with the facility.'' We propose to amend the regulatory definition accordingly.

We propose to add the term ''adverse event'' to ensure clarity in our requirements relating to proposed requirements for QAPI. We discuss this definition further in section II.T. of the preamble and welcome comment on our

proposed definition. We also propose the addition of the term ''resident representative'' because the use of a representative is often common practice within the nursing home setting. We believe a resident can designate an individual to have certain rights and/or responsibilities, such as the ability to make decisions about a resident's care, the ability to manage a resident's finances, or the ability to participate in discussions about the residents care and the ability to access a resident's medical information. For purposes of this regulation, we would define the term ''resident representative'' broadly to include both an individual of the resident's choice who has access to information and participates in healthcare discussions as well as personal representative with legal standing, such as a power of attorney for healthcare, legal guardian, or health care surrogate or proxy appointed in accordance with state law to act in whole or in part on the resident's behalf. One individual may or may not fulfill both of these roles. We also note that the same-sex spouse of a resident would be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. Throughout this proposed regulation, where we use the term resident, it includes, as applicable, the resident representative. In addition, we propose to add a definition of ''person-centered care''. For purposes of this subpart, we would define person-centered care as focusing on the resident as the locus of control and supporting the resident in making their own choices and having control over their daily lives.

The addition of the definitions of ''abuse'', ''sexual abuse'', ''neglect'', ''exploitation'', and ''misappropriation of resident's property'' are being proposed to achieve clarity within the current regulations and eliminate confusion regarding what actions or circumstances rise to the level of these terms. For purposes of these regulations, ''abuse'' would include actions such as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. As used in this definition of ''abuse'', ''willful'' means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm. ''Abuse'' would also include the deprivation by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. The term ''sexual abuse'' would extend the meaning of ''abuse'' to include non-consensual sexual contact of any type with a resident. We propose to define the term ''neglect'' as ''the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or mental illness.'' We would define ''exploitation'' as ''the unfair treatment or use of a resident or the taking of a selfish or unfair advantage of a resident for personal gain, through manipulation, intimidation, threats, or coercion.'' Based on internal discussions and stakeholder input, we are aware of industry concerns regarding certain incidents that can take place within a nursing home that are not easily classified as abuse or neglect, but nonetheless are inappropriate and harmful. For example, there has been a substantial increase in the use of technology to exploit the elderly since these regulations were first implemented. When these regulations were originally implemented, social media and the wide use of cellular and personal electronic devices were not a major concern or topic of consideration in the protection of residents. These advances in technology have made it easier to invade someone's privacy and therefore increase the risk of exploitation. We feel that there is a need to account for these technological changes to ensure that all nursing home residents are protected. We believe the addition of the terms ''abuse'', ''sexual abuse'', ''neglect'', and ''exploitation'' would help to eliminate confusion as to what behaviors rise to the level of these terms and promote resident safety and would clarify that abuse includes abuse facilitated or enabled through the use of technology.

We also propose to add the term ''misappropriation of resident property'' to provide clarity. The term ''misappropriation of resident property'' is widely used throughout the regulations and in our interpretive guidance for surveyors of nursing homes; therefore, we felt that there was a need to ensure that the term was clearly defined as ''the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.''

Finally, we move the existing definition of ''transfer and discharge'' from § 483.12(a)(1) to § 483.5(p).

C. Resident Rights (§ 483.10)

Current regulations at § 483.10 address a number of resident rights and facility requirements, including those establishing a resident's right to exercise his or her rights, including rights associated with a dignified existence, self-determination, planning and implementing care, access to information, privacy and confidentiality. Resident rights are also addressed in existing § 483.15. Based on a review of these regulations, we propose to retain all existing residents' rights but update the language and organization of the resident rights provisions to improve logical order and readability, to clarify aspects of the regulation that warrant it, and to update provisions to include technological advances such as electronic communications. In order to achieve these objectives, we propose to revise existing § 483.10 to include only those provisions specifying resident rights, including a number of provisions that are currently included in § 483.15. We further propose to add a new § 483.11, which would focus on the responsibilities of the facility, including relevant provisions currently included in § 483.10 and § 483.15. We propose multiple re-designations and revisions to improve logical order and readability, clarify aspects of the regulation that warrant it, and reflect technological advances such as electronic communications. Under our proposal, some existing provisions will have components in both § 483.10 and § 483.11. A detailed crosswalk of all of the proposed re-designations is provided in Table A in section III of this proposed rule. Re-designations without substantive changes are not discussed in detail below. We discuss below our proposed revisions to those provisions retained in or moved to § 483.10. Regulatory citations have been updated throughout to reflect the proposed new structure.

We propose to revise § 483.10 to focus specifically on resident rights. In proposed § 483.10(a)(2), we would clarify the resident's right to be supported in his or her exercise of rights under this subpart. In proposed § 483.10(a)(3), we would clarify the resident's right to designate a representative, the resident representative's limitation to those rights delegated by the resident, and the resident's retention of those rights not delegated, including the right to revoke a delegation. We have heard concerns that resident representatives may be accorded more decision making authority than their appointment or delegation permits. Our proposed clarification is intended to ensure that facilities do not afford more decision making authority to a resident representative than is intended by the

resident or permitted under applicable law. We note that resident representatives fall into three categories: court-ordered or otherwise designated under applicable law (*e.g.,* state law), supported by documentation (that is, an advance directive), and informal/oral. The scope of resident representative authority may vary based on how they are designated.

In § 483.10(a)(4) we would address those residents who have been adjudged incompetent under the laws of a state. We would clarify the resident representative's limitation to exercising only the rights delegated, and the resident's retention of rights not delegated. Specifically, we would clarify that the resident who has been adjudged incompetent under the laws of a state retains the right to exercise those rights not addressed by a court order, that the resident representative can only exercise the rights that devolve to them as a result of the court order, that the resident's wishes and preferences should continue to be considered, and that the resident should continue to be involved in the care planning process to the extent practicable, as the resident is at the center of the care team. We believe that it is important for a resident who has been adjudicated incompetent to be treated with respect and dignity and to continue to make those decisions that are appropriate for him or her to make. Continuing to honor these residents' preferences and involving them in care planning will improve both quality of life and quality of care, resulting in better outcomes. Lastly, in our proposed rule ''Medicare and Medicaid Programs; Revisions to Certain Patient's Rights Conditions of Participation and Conditions for Coverage'' (CMS–3302–P) (79 FR 73873), published on December 12, 2014, at § 483.10(a)(4), we proposed to require that the same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. In this regulation, we are proposing to redesignate this requirement from § 483.10(a)(4) (as set out in the December 2014 proposed rule at 79 FR 73811) to § 483.10(a)(5). We believe that this revision is necessary to implement the Supreme Court decision in *United States* v. *Windsor,* 570 U.S.12, 133 S.Ct. 2675 (2013).

In proposed § 483.10(b), we have included resident rights related to planning and implementing care. It is important for each resident to understand his or her health conditions and the care and services he or she will receive and to be able to participate in the care planning process. These rights are already included for the most part in the regulations, but we would update the language and co-locate related provisions. Thus, we propose to re-designate and revise in this provision current § 483.10(b)(3), § 483.10(b)(4) and § 483.10(b)(8), relating to the resident's right to be informed of his or her total health status, including medical conditions; the right to be informed in advance of the risks and benefits of proposed care, including treatment and treatment alternatives or treatment options so that the resident can choose the alternative or option he or she prefers; the right to request, refuse and/or discontinue treatment, including participating in or refusing to participate in experimental research; and the right to formulate advance directives. We propose to add new requirements in § 483.10(b)(5) to specify that the resident has the right to participate in the care planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person-centered plan of care. These requirements support the standards set forth by the Secretary in the ''Guidance for Implementing Standards for Person-Centered Planning and Self-Direction in Home and Community-Based Services Programs'' on June 6, 2014 (see *http://www.acl.gov/Programs/CDAP/OIP/docs/2402-a-Guidance.pdf*). We further specify in § 483.10(b)(5)(iv) that the resident has the right to receive the services and items included in the plan of care. We also propose to re-designate and revise existing § 483.10(d)(2) to specify that the resident has the right, in advance, to be informed of and to participate in, his or her care and treatment, including the right to be informed, in advance, of the care to be furnished and the disciplines that will furnish care. In addition, we propose to specify the resident's right to participate in the development of his or her comprehensive care plan. We also propose at § 483.10(b)(6) to include the resident's right to self-administer medication if the interdisciplinary team has determined that doing so would be clinically appropriate. Finally, we propose to add a new section at § 483.10(b)(7) to specify that these rights cannot be construed as a right to receive medical care that is not medically necessary or appropriate.

The ability of the resident to select his or her attending physician remains an important right. However, it is also important that the selected physician meet licensure requirements and be willing and able to comply with the requirements of this subpart. Therefore, we propose to require that the facility ensure that the attending physician is appropriately licensed and credentialed to provide care and meet the requirements of applicable regulations. In proposed § 483.10(c), we would add new § 483.10(c)(1), (2) and (3) to specify that the physician chosen by the resident must be licensed to practice medicine, and must meet professional credentialing requirements of the facility. If the physician chosen by the resident refuses or is unable to meet requirements specified in this part, we specify that the facility has the right, after informing and discussing with the resident, to seek alternate physician participation to assure the provision of appropriate and adequate care and treatment. If the resident chooses a new physician that meets the necessary requirements, the facility must respect that choice.

As indicated earlier, NFs not only provide medical care, but may also serve as a resident's home. This makes issues of respect and dignity particularly important. In § 483.10(d), we propose to re-designate a number of provisions relating to resident respect and dignity, based on existing § 483.13(a) and § 483.15. We further propose to add a new § 483.10(d)(5) to specify that a resident has the right to share a room with his or her roommate of choice, when both residents live in the same facility, both residents consent to the arrangement, and the facility can reasonably accommodate the arrangement. We note that married couples, whether opposite or same sex, are addressed by § 483.10(d)(5). Our proposed provision would provide for a rooming arrangement that could include a same-sex couple, siblings, other relatives, long term friends or any other combination as long as the requirements above are met. We recognize that in some instances, specific roommates requests cannot be accommodated by a facility for clinical, safety, or logistical reasons. However, we believe it is an important aspect of respect and dignity, as well as self-determination, for individuals to be able to choose who they live with, especially for long-term residents.

Self-determination is a critical element in the care and treatment of nursing home residents. In proposed § 483.10(e), we propose to revise a number of provisions relating to resident self-determination. We propose to revise § 483.10(e)(3) to ensure not only that specified individuals and/or organizations have access to the resident, but also to ensure that the

resident can receive his or her visitors of choice at the time of his or her choosing. We discuss our rationale further in our discussion of proposed § 483.11(d)(2). We propose to revise § 483.10(e)(4) and (5), clarifying that it is the resident's right to participate in family groups and have his or her family members or resident representatives participate in family groups in the facility.

The ability to have access to information such as personal medical records and facility-specific information has changed significantly since the promulgation of the original requirements for long-term care facilities. We propose to co-locate provisions related to the resident's right to access facility specific information, medical records, information about advocacy and fraud control organizations, Medicare and Medicaid coverage, and notices that the facility is required to provide to the resident. These notices include, but are not limited to a written description of legal rights, a written description of the facility's policies to implement advance directives and applicable state law pertaining to advance directives, and information on how to apply for and use Medicare and Medicaid benefits. In addition, we will update the provisions as appropriate to take into account electronic medical records and other electronic communications. Specifically, in proposed § 483.10(f), we propose to re-designate and revise a number of provisions relating to resident access to information. First, we propose to specify in § 483.10(f)(2) that the resident has the right to receive notices verbally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands. We note that effective communication for some residents requires the use of auxiliary aids and services and have revised this provision to reflect that. Next, we propose to add a new § 483.10(f)(2)(i) to reference required notices and a new § 483.10(f)(2)(iv) to ensure residents are aware of and can contact an Aging and Disability Resource Center or other No Wrong Door program. The Aging and Disability Resource Center Program (ADRC), established under Section 202(20)(B)(iii) of the Older Americans Act; is a collaborative effort of the U.S. Administration on Community Living and the Centers for Medicare & Medicaid Services (CMS). ADRCs serve as single points of entry into the long-term supports and services system for older adults and people with disabilities. Sometimes referred to as a ''one-stop shops'' or ''no wrong door'' systems, ADRCs address many of the frustrations consumers and their families experience when trying to find needed information, services, and supports. Through integration or coordination of existing aging and disability service systems, ADRC programs raise visibility about the full range of options that are available, provide objective information, advice, counseling and assistance, empower people to make informed decisions about their long term supports, and help people more easily access public and private long term supports and services programs. Additional information on ADRC programs is available at *http://www.adrc-tae.acl.gov/tiki-index.php?page_ref_id=1325*.

Federal requirements and expectations related to the privacy and confidentiality of patient records, especially with regard to protected health information, changed substantially with the enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and subsequent promulgation of the HIPAA Privacy and Security Rules (see 45 CFR part 160 and subparts A, C, and E of part 164) as well as the subsequent enactment of the Health Information Technology for Economic and Clinical (HITECH) Act as title XIII of division A and title IV of division B of the American Recovery and Reinvestment Act of 2009 (ARRA) and the promulgation of the Omnibus HIPAA Final Rule (78 FR 5566). For simplicity, we will hereinafter collectively refer to these laws and their implementing regulations as ''HIPAA.'' We note that administration and enforcement of the privacy and security-related portions of the HIPAA regulatory scheme are delegated to the HHS Office for Civil Rights (OCR) and more detailed information related to these provisions can be accessed through the OCR Web site at *http://www.hhs.gov/ocr/privacy*.

We propose to retain the requirements of current § 483.10(b)(2)(i) and (ii), subject to the clarifying revisions described below, at new § 483.10(f)(3). In doing so, we recognize that the HIPAA Rules establish a federal floor of privacy and security protections and individual rights with respect to protected health information held by covered entities (and their business associates), and the rights granted in this proposed regulation are not intended to conflict in any way with those HIPAA regulations. In addition, to the extent that HIPAA provides additional rights to individuals (that is, residents, in the long-term care context) beyond what is provided in this proposal, this proposed regulation would not diminish those rights. Therefore, we propose revisions that would clarify the relationship between the requirements of 45 CFR 164.524 and the revised version of § 483.10(f)(3)(i) and (ii). We propose to specify in paragraph (f)(3) that the resident has the right to access medical records pertaining to him or herself and to further specify in proposed (f)(3)(i) that the resident, upon oral or written request, has the right to receive requested medical records in the form and format requested by the resident, if it is readily producible in such form and format (including in an electronic form or format when such records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual. This is consistent with the requirements of 45 CFR 164.524(c)(2). Finally, we propose to specify in paragraph (f)(3)(ii) that the facility may impose a reasonable, cost-based fee for providing copies of the medical records, provided that the fee includes only the cost of labor for copying the health information requested by the individual, whether in paper or electronic form; the supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and postage, when the individual has requested the copy be mailed. This is consistent with 45 CFR 164.524(c)(4).This proposal does not address the creation or provision of summary reports, which may be provided in accordance with applicable law.

In § 483.10(g)(1) we propose to revise a number of provisions related to resident privacy and confidentiality to update the language to accommodate electronic communications. We propose to retain existing § 483.10(c)(1) at proposed § 483.10(g)(2), reiterate the residents' right to a secure and confidential medical record at proposed § 483.10(g)(3) and, in proposed § 483.10(g)(4), we would retain the provisions of existing § 483.10(e)(2) and (3).

Today, individuals have a number of electronic options for communicating with others that are not addressed in the existing regulations for LTC facilities. Thus, we propose to update these regulations to take into consideration widespread advances in electronic communications technologies. In proposed § 483.10(h), we propose to re-designate and revise a number of provisions relating to resident communications. Specifically, we propose a new § 483.10(h)

Communications, with § 483.10(h)(1) revised to include TTY and TDD services and cellular telephones; and a new § 483.10(h)(2) to provide reasonable access and privacy for electronic communications such as email or internet-based interpersonal video communications. We also include internet access, which can serve as a communications medium as well as a means for residents to interact with entities and persons outside of the facility or to use various programs and tools for entertainment, shopping, conducting research and obtaining information.

In proposed § 483.10(i), we propose to revise the language to state that the resident has a right to a safe, clean, comfortable, homelike environment, and a right to receive treatment safely. In proposed § 483.10(j), we propose to revise language relating to resident grievances to add that a resident cannot be deterred from voicing a grievance for fear of reprisal or discrimination. This clarifies that even when no actual reprisal or discrimination occurs, intimidation and threats of reprisal or discrimination are not permissible.

D. Facility Responsibilities (§ 483.11)

We propose a new § 483.11 ''Facility Responsibilities,'' in which we combine many of the regulations addressing facility responsibilities which are currently dispersed throughout the existing provisions regarding resident rights and quality of life. This proposed revision is consistent with our overall objectives of updating the language and organization of the resident rights provisions to improve the logical order and readability, clarifying aspects of the regulation, and updating provisions to include advances such as electronic communications.

Consistent with § 483.10, the introductory language for proposed § 483.11 would establish, based on existing requirements, that the facility must treat its residents with respect and dignity and provide care and services for its residents in a manner and in an environment that promotes maintenance or enhancement of the resident's quality of life and must protect and promote the resident's rights as specified in § 483.10. Further, the facility must recognize each resident's individuality and provide services in a person-centered manner. We propose to establish sections similar to those proposed in § 483.10. The proposed sections are ''Exercise of Rights,'' ''Planning and Implementing Care,'' ''Attending Physician,'' ''Self-Determination,'' ''Information and Communication,'' ''Privacy and Confidentiality,'' ''Safe Environment,'' and Grievances.''

In a new section proposed at § 483.11(a), ''Exercise of Rights,'' we establish our expectation that the facility promote and protect the rights of the resident. These expectations are not new requirements, and are already set out in our regulations as resident's rights. In order to ensure clarity, we have restated them clearly in this provision as the responsibility of the facility to recognize and effectuate those rights. Proposed § 483.11(a)(1) would provide that the facility ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility. We propose to re-designate current § 483.12(c)(1) as new § 483.11(a)(2) and move to this section the requirement that the facility provide equal access to quality care regardless of diagnosis, severity of condition, or payment source and establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all residents regardless of source of payment. In proposed § 483.11(a)(3) and (4), we would specify that the facility must treat the decisions of a resident representative as the decisions of the resident to the extent required by the court or as delegated by the resident, with the condition that the facility could not extend greater authority to the resident representative than is permitted under applicable law. We reiterate this point in the proposed regulation as we respect the need to establish alternative decision makers under certain circumstances. However, we received and are concerned by external input suggesting that some facilities or staff members defer to resident representatives for decisions that exceed the scope of a court order, resident delegation, or other applicable law. Proposed § 483.11(a)(3) and (4) would clarify our expectations. In addition, we propose to add a new § 483.11(a)(5) that would clarify for facilities that if facility staff believed that a resident representative was making decisions or taking actions that are not in the best interest of the resident, we would expect the facility to comply with any state reporting requirements that might apply. We understand that there is the potential for abuse and neglect in this relationship and want to ensure that facilities recognize their role in appropriately identifying and reporting concerns that rise to the level of abuse, neglect or exploitation. The United States Government Accountability Office (GAO) has published two reports related to abuses that occur specifically in the context of guardianships. In September 2010, the GAO published ''Guardianships: Cases of Financial Exploitation, Neglect and Abuse of Seniors'' (GAO–10–1046). In July 2011, the GAO published ''Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement'' (GAO–11–678). While these reports focus on the need for improved screening and monitoring of guardians, they also highlight the potential for abuse and neglect in this relationship. According to the National Center on Elder Abuse in the Administration on Aging, ''the laws in most states require helping professions in the front lines—such as doctors and home health providers—to report suspected abuse or neglect. . . . Under the laws of eight states, 'any person' is required to report a suspicion of mistreatment'' (*http://www.ncea.aoa.gov/Stop_Abuse/Get_Help/Report/index.aspx*). These reporting requirements may apply to abuse, neglect or exploitation by resident representatives.

In proposed § 483.11(b), facility responsibilities include ensuring that the resident is informed of, and participates in, his or her treatment to the extent practicable, consistent with § 483.10(b), and that the resident participates in care planning, making informed decisions, and self-administering drugs when appropriate. In addition to the self-administration of drugs, residents may also self-administer or take part in other health care practices, such as dialysis. We also expect that the facility, through the IDT and the care planning process, would determine if, and under what circumstances, this is appropriate. We also propose new requirements in § 483.11(b)(1) to require that the facility ensures that the care planning process facilitates the inclusion of the resident or resident representative, includes an assessment of the resident's strengths and needs, and incorporates the resident's personal and cultural preferences in developing goals of care. We note that person-centered planning involves providing those services and supports that assist individuals to live with dignity and to support their goals (including, but not limited to, goals to potentially return to a community setting). The Department of Health and Human Services has issued guidance for implementing person-centered planning and self-direction in home and community-based services programs, as set forth in section 2402(a) of the Affordable Care Act. The principles in

that guidance regarding dignity and self-direction apply equally to individuals who reside in a nursing facility. *http://www.acl.gov/Programs/CDAP/OIP/docs/2402-a-Guidance.pdf*. Our proposed requirements support those principles.

We propose to re-designate § 483.10(b)(9) as § 483.11(c)(1) and revise it to add other primary care providers to ensure that the resident knows the name, specialty and means of contacting the professionals officially responsible for his or her care, whether that provider is a physician, nurse practitioner, physician assistant, or clinical nurse specialist. We further propose to add a new § 483.11(c)(2), consistent with our proposed § 483.10(c)(1), (2) and (3), to clarify that the facility has a responsibility to ensure that the resident's attending physician has appropriate professional credentials and meets the requirements of this subpart. If the physician was not appropriately credentialed or was unwilling or unable to meet the requirements of this subpart, the facility could seek an alternate physician after informing and discussing this matter with the resident. In order to ensure that the resident could seek out a suitable alternative, we propose to add a new § 483.11(c)(3) to specify that if the resident subsequently finds a new physician who meets the necessary requirements, the facility would be required to honor that selection.

We propose a new § 483.11(d) to address the facility's responsibilities related to resident self-determination. We propose to re-designate § 483.10(j), regarding access to the resident, as § 483.11(d)(1), and revise it to include visitors as specified in our ''Resident Rights'' provision, including immediate access to the resident by the resident representative, and to update the languages and references for the Office of the State long term care ombudsman and the protection and advocacy system. This would be an addition to the current requirement which provides a right of access to any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. This is consistent with our approach in other settings such as acute care hospitals, and in keeping with the person-centered focus of this proposed rule. In addition, we propose to add a new § 483.11(d)(2) to require that the facility have written policies and procedures regarding visitation rights of residents. This requirement would support resident self-determination, consistent with the person-centered focus of this proposed rule, and would follow the requirements established for inpatient hospitals. As noted in the November 19, 2010 final rule (75 FR 70831 at 70832), regarding hospital visitation rights, physicians, nurses, and other staff caring for the resident might miss an opportunity to gain valuable information from those who may know the resident best with respect to the resident's medical history, conditions, medications, and allergies, particularly if the resident had difficulties recalling or articulating, or is totally unable to recall or articulate, this vital personal information. Many times, these individuals who may know the resident best can act as an intermediary for the resident, helping to communicate the resident's needs to facility staff. As stated in that November 19, 2010 final rule, we believe that restrictive visitation policies can effectively eliminate these advocates for many residents, potentially to the detriment of the resident's health and safety. Further, given that the facility is often the resident's home, we suggest that, as in hospitals, the hazards and challenges regarding open visitation are manageable. In fact, we believe an open visitation policy helps residents by providing a better support system and a more homelike environment. Moreover, this policy may create more trust and a better working relationship between facility staff, the resident, and the resident's support system. Thus, we believe it is vital to establish open visitation in SNFs and NFs.

We propose to re-designate § 483.15(c)(5) as § 483.11(d)(3)(ii) and revise it to clarify that the facility-designated staff person who participates in a resident or family group must be approved by the resident or family group and the facility. It is important that the facility representative be an individual who the group can work with and who does not have a chilling effect on the function of the group. We further clarify that this provision does not require a facility to implement every recommendation of a resident or family group, but that the facility should be able to provide the rationale for their response. We propose a new § 483.11(d)(4), which would incorporate requirements currently specified in § 483.10(h) and would specify that the facility is responsible for ensuring that a resident is not required to perform services for the facility.

We propose a new § 483.11(d)(5), which would incorporate requirements from § 483.10(c) that focus on the facility's responsibility related to the protection of resident funds. Specifically, we propose in § 483.11(d)(5)(ii) to reflect the different dollar threshold requirements of sections 1819(c)(6)(B)(i) and 1919(c)(6)(B)(i) of the Act and establish the statutory requirement for deposit of resident funds in excess of $100 in an interest-bearing account for Medicare and other non-Medicaid SNF residents, consistent with section 1819(c)(6)(B)(i) of the Act, and funds in excess of $50 for Medicaid beneficiaries, consistent with section 1919(c)(6)(B)(i) of the Act. We propose in § 483.11(d)(5)(v) to include the return of funds to residents upon discharge or eviction, in accordance with state law in addition to the already existing regulatory requirement for conveyance to the estate upon death. We received suggestions to reduce the time frame for these conveyances. We researched common time frames for the return of security deposits and found that most states (at least 33) allow 30-days, and sometimes longer for the return of security deposits. Therefore, we determined the current time frame is reasonable and we do not propose to make any changes to this section.

We propose to add a new § 483.11(d)(6)(i)(G) to indicate that the facility may not charge the resident for hospice services elected by the resident and paid for under the Medicare Hospice Benefit or paid for by Medicaid under a state plan, whether provided directly by the SNF/NF or by a hospice provider under agreement with the SNF/NF.

We propose in § 483.11(d)(6)(ii), re-designated from § 483.10(c)(8)(ii), to add to the limitations on charges to residents' funds. This provision currently provides general categories and examples of items and services that the facility may charge to residents' funds if the items are requested by a resident, and are not required to achieve the goals stated in the resident's care plan. In these instances, the resident is informed that there will be a charge and that the items are not paid for by Medicare or under a state plan. We propose to add new § 483.11(d)(6)(ii)(L)(*1*) and (*2*) to clarify that the facility may not charge for special food and meals ordered for a resident by a physician, physician assistant, nurse practitioner, clinical nurse specialist, dietitian or other clinically qualified nutrition professional and to cross-reference to provisions regarding the expectation that the foods and meals a facility generally prepares should be developed taking into consideration residents' needs and individual preferences in addition to the overall cultural and religious make-up of the facility's population. Refer to our discussion in

Section II. P. ''Food and Nutrition Services for additional information. We propose a clarification in proposed § 483.11(d)(6)(iii) by adding the term ''non-covered'' before ''item or service,'' as this provision would only apply to non-covered items or services.

We propose to establish a new § 483.11(e) to incorporate multiple provisions related to information and communication. With the exception of medical records, we propose in § 483.11(e)(1) to specify that the facility is responsible for ensuring that information provided to the resident is provided in a form and manner that the resident can access and understand, including in a language that the resident can understand. Medical records are addressed in proposed § 483.11(e)(2), As noted earlier, this proposal does not address the creation or provision of summary reports of medical records. Summary reports of medical records may be provided in accordance with applicable law. The language requirement is already a requirement for specific types of notices and information (see § 483.10(b)(1), § 483.10(b)(3), and § 483.12(a)(4)(i)). However, language is not the only barrier to effective communication and it is important for the resident to have the opportunity to understand all information that is provided. We also hope to provide facilities with some flexibility to implement this requirement. For example, in some cases, a resident representative may prefer to access information on the internet rather than receive a paper copy, or it may be more effective and efficient for a resident who is blind or visually impaired to listen to an audio file explaining resident rights. Some residents may require assistive technology or alternative formats. The key to this provision is ensuring that when there is a requirement to provide information, it is provided in a way to ensure both resident access and understanding.

We propose in § 483.11(e)(2) to revise facility requirements currently in § 483.10(b)(2)(i) through (ii), consistent with our proposal at § 483.10(f)(3). Proposed (e)(2)(i) would require that facilities provide residents with access to his or her medical records in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such medical records are maintained electronically); or, if it is not readily producible in such form and format, in a readable hard copy form or other form and format as may be agreed to by the facility and the individual. This provision would include the existing requirement that access be provided upon oral or written request, redesignated from § 483.10(b)(2)(i), and that this access be provided within 24 hours, excluding weekends and holidays, as required by sections 1819(c)(1)(A)(iv) and 1919(c)(1)(A)(iv) of the Act. We believe in some circumstances an electronic copy may be a preferable and more efficient option for both the facility and the resident or resident's representative, particularly where the record already exists in an electronic format. We propose at (e)(2)(i) to require that the facility allow the resident, after receipt of his or her medical records for inspection, to purchase a copy of the medical records or any portion thereof upon request and with 2 working days advance notice to the facility. We further propose at § 483.11(e)(2)(iii) to revise the standard for the fee a facility may charge for the requested information from a community standard to a cost-based standard under which the fee includes only the cost of labor for copying the requested health information, whether in paper or electronic form; the supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media, postage when the individual requested the copy be mailed. This is consistent with the requirements of 45 CFR 164.524(c)(4).

We propose to add a new § 483.11(e)(3), incorporating and re-designating part of existing § 483.10(g)(1), with revisions required by section 6103(c) of the Affordable Care Act, which added new sections 1819(d)(1)(C) and 1919(d)(1)(V). Those provisions require that individuals have access to surveys of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility for the preceding 3 years. We note that this provision does not require a specific format, but consistent with our proposed § 483.11(e)(1), it must be in a form and manner accessible to and understandable by the resident.

We propose to add a new § 483.11(e)(4)(i) and (ii) to require the facility to post, in a form and manner easily accessible and understandable to residents, resident representatives and support persons, information that would allow individuals to contact pertinent client advocacy groups, including the state survey and certification agency, the state licensure office, the State Long-Term Care Ombudsman Program, the Protection and Advocacy Network, and the Medicaid Fraud Control Unit. We also propose to require that the facility post a statement that a resident may file a complaint with the state survey and certification agency. The facility is already required at existing § 483.10(b)(7), which would be re-designated at proposed § 483.11(e)(12), to provide this information in the written description of legal rights provided to the resident. However, we believe that posting this information will ensure that resident representatives as well as other support persons and residents continue to have access to updated and readily understandable information.

We propose to add a new paragraph § 483.11(e)(7)(i) to specify that when a facility notifies a physician of a change in a resident's status, the facility must ensure that certain pertinent information is available and is provided to the physician upon request. The required information would be the same information we propose to require under new § 483.15(b)(2) (information in transfer or discharge). This requirement, in concert with proposals to improve transitions of care, communications among and between practitioners, appropriate exchange of information, and quality assessment activities, will help ensure that the physician's decisions relating to treatment or transfer of a resident to an acute care facility are made on the basis of the best information available. Widely available methodologies and tools may assist facilities in ensuring that effective information exchanges occur. For example, Situation, Background, Assessment, Recommendation (SBAR) is a common methodology for structured communication. Information and tools relating to SBAR are widely available, including but not limited to from sources such as the Agency for Healthcare Research and Quality (*www.innovations.ahrq.gov*), The Joint Commission (*www.jointcommission.org*), the Institute for Healthcare Improvement (*www.ihi.org*), the INTERACT (Interventions to Reduce Acute Care Transfers) project (*http://interact2.net*), and others.

We propose to revise the language of § 483.10(b)(11)(i) and re-designate it as new § 483.11(e)(7)(i) to provide that the facility would be required to notify the resident representatives, rather than the current requirement that the facility notify ''. . . the resident's legal representative or an interested family member . . .''. The proposed language allows a guardian or other legal representative as well as any other individuals the resident identifies, including family members, other

relatives, close personal friends, or any other persons identified by the resident, to receive the required notifications and thus remain informed of important information about the resident.

We propose to re-designate § 483.10(b)(1), which addresses the facility requirement to provide a notice of rights and services, as § 483.11(e)(9)(i) through (iii). We propose one minor revision for clarity in § 483.11(e)(9)(ii) to state ''the State-developed notice of Medicaid rights, if any'' instead of the current language ''notice (if any) of the State developed under 1919(e) of the Act''.

We propose to revise § 483.10(b)(5)(i) and (ii) and re-designate them as § 483.11(e)(10). The revised provision would specify that the facility must inform each resident, in writing, at the time of admission to a Medicaid-participating nursing facility and when the resident becomes eligible for Medicaid—(1) Of the items and services that are included in nursing facility services under the state plan and for which the resident may not be charged; (2) of those items for which the resident may be charged, and the amount of charges for those services; and (3) inform Medicaid-eligible residents when changes are made to the items and services in proposed paragraph (e)(11)(i) of this section.

We propose to revise and re-designate § 483.10(b)(6) as new § 483.11(e)(11). In addition, we propose to add new paragraphs (i) through (v) to require the facility to provide notice to residents when changes are made to the items and services covered by Medicare and/or Medicaid or to the amount that the facility charges for items and services. It is important that residents remain informed of these issues in order to ensure their ability to make informed decisions, both financial and health-care related.

To improve clarity, we propose to re-designate § 483.10(b)(7) as new § 483.11(e)(12) and revise current paragraph (b)(7)(iii) to require that the facility provide the resident with ''a list of names, addresses (mailing and email), and telephone numbers of all pertinent state regulatory and informational agencies, resident advocacy groups such as the state survey and certification agency, the state licensure office, the state long-term care ombudsman program, the protection and advocacy agency, adult protective services, the state or local contact agencies for information about returning to the community and the Medicaid fraud control unit.'' Additionally, we propose to revise current paragraph (b)(7)(iv) to require that the facility include in the written description of legal rights ''a statement that the resident may file a complaint with the state survey and certification agency concerning any suspected violation of LTC requirements, including but not limited to resident abuse, neglect, misappropriation of resident property in the facility, non-compliance with the advance directives requirements, and requests for information regarding returning to the community.''

We propose a new § 483.11(e)(13) that would establish that the facility must protect and facilitate a resident's right to communicate with individuals and entities both inside and external to the facility, including at § 483.11(e)(13)(ii) reasonable access to the internet, to the extent it is available to the facility. Section 483.11(e)(13)((i) would revise and replace § 483.10(k) and § 483.11(e)(13)((iii) would revise and replace § 483.10(i)(2) with regard to reasonable access to a telephone, including TTY and TDD services, and to stationery, postage, writing implements and the ability to send mail, respectively.

We propose a new § 483.11(f) to include provisions related to privacy and confidentiality. Proposed § 483.11(f)(1) would require that the facility respect the resident's right to personal privacy. Proposed (f)(1)(ii) would incorporate the definition of personal privacy currently set out at § 483.10(e)(1). We propose to replace the requirements of existing § 483.10(e)(2) with new § 483.11(f)(2) which requires the facility to comply with the requirements of proposed § 483.10(g)(3). We propose to redesignate existing § 483.10(j)(3) as § 483.11(f)(3) and revise it to require that the facility allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with state law. This is consistent with the requirements of section 712(b)(1) of the Older Americans Act.

We propose a new § 483.11(g) that would include provisions related to a safe environment. Specifically, we propose to re-designate § 483.15(h)(1) through (7) as § 483.11(g)(1) through (7) and revise paragraph (g)(1) to include paragraphs (g)(1)(i) specifying that the facility must ensure an environment where care and services can be delivered safely, and (g)(1)(ii) specifying that the facility must ensure that the physical layout of the facility maximizes independence and does not pose a safety risk.

We are proposing a new § 483.11(h) Grievances, which would incorporate the facility responsibilities expressed in existing § 483.10(f) and would also require that facilities ensure that residents know how to file grievances. The proposed provision would also require that the facility establish a grievance policy to ensure the prompt resolution of grievances, and identify a Grievance Officer. Additionally, the facility would be required to provide a copy of this policy upon request, as well as make information about filing grievances available to residents. Furthermore, the facility would be required to take a number of actions in response to a grievance, including:

1. Preventing further violations of resident rights during an investigation,

2. Immediately reporting allegations of neglect, abuse (including injuries of unknown source), and/or misappropriation of resident property, by anyone furnishing services on behalf of the facility, to the administrator of the facility and as required by state law,

3. Ensuring that all written grievance decisions include the date the grievance was received, a summary statement of the resident's grievance, the steps taken to investigate the grievance, a summary of the pertinent findings or conclusions regarding the resident's concerns, a statement as to whether the grievance was confirmed or not confirmed, any corrective action taken or to be taken by the facility as a result of the grievance, and the date the written decision was issued,

4. Taking appropriate corrective action in accordance with state law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction confirms a violation of any of these residents' rights within its area of responsibility; and

5. Maintain evidence demonstrating the resolution of complaints and grievances for at least 3 years.

The right to file a grievance is an important protection for residents and an important right of residents. The proposed revisions are intended to ensure that grievances are taken seriously and processed appropriately.

Finally, we propose a new § 483.11(i) which would require that a facility not prevent or discourage a resident from communicating with Federal, State, or local officials, including but not limited to Federal and State surveyors, other Federal or State health department employees, including representatives of the Office of the State Long-Term Care Ombudsman and of the protection and advocacy system. Residents must have the ability to communicate freely with representatives of these entities when

they have concerns about quality or care and quality of life.

E. Freedom From Abuse, Neglect, and Exploitation (§ 483.12)

Currently, § 483.13 is titled ''Resident Behavior and Facility Practices.'' The focus of this section is to ensure that residents of SNFs and NFs are not subjected to abuse, neglect, misappropriate of resident property, and exploitation when they reside in a facility, to specify the facility responsibilities to prevent abuse, neglect and exploitation, and to establish requirements for the facility response to allegations that any of these has occurred. Thus, we propose to re-designate and revise this section as § 483.12, ''Freedom from Abuse, Neglect and Exploitation,'' to more accurately reflect the contents and intent. The term ''exploitation'' was not previously included in this regulatory provision. However, in reviewing available materials related to abuse such as The Joint Commission standards for accreditation of long term care facilities and language relating to ''misappropriation of resident property,'' currently defined at § 488.301, we believe it is appropriate and necessary to add this term here as well to address circumstances that may not rise to the level of abuse or neglect but nonetheless would be prohibited. Therefore, we propose in our discussion of the definitions section of this regulation to provide a definition of ''exploitation''. Although there have been significant improvements in many areas of nursing home care, abuse remains a serious issue. According to CMS Certification and Survey Provider Enhanced Reports (CASPER) data, there were 474 noncompliance deficiency citations related to freedom from abuse in Fiscal Year (FY) 2011, and 475 citations in FY 2012, affecting 2.5 percent of nursing home providers. Our proposed updates and revisions to this section are intended to both recognize that abuse continues to occur, and to provide language that will build on progress to improve conditions in nursing homes begun by the nursing home reforms of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203 (OBRA '87).

Currently, paragraph § 483.13(a) addresses the use of restraints. We propose to address restraints in both the introductory paragraph to proposed § 483.12 and in proposed § 483.25(d)(1). In the introductory paragraph to proposed § 483.12, we would continue to prohibit the inappropriate use of restraints. Restraints can be used abusively. There may be very limited circumstances where restraints would be appropriate in a nursing facility. We propose to further address restraints in proposed section § 483.25(d)(1) on Quality of Care and Quality of Life. The use of restraints has fallen significantly in the last decade and CMS continues to promote reduction in the use of physical restraints. (See CMS 2012 Nursing Home Action Plan; *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/2012-Nursing-Home-Action-Plan.pdf*). We note that many facilities have achieved a rate of zero percent restraint use (see *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/Downloads/QAPINewsBrief.pdf*).

Existing paragraph § 483.13(b) would also be included in the new introductory paragraph to revised § 483.12. The revised introductory paragraph would set out the intent of this section. We propose to re-designate existing § 483.13(c)(1) as § 483.12(a)(2) and modify the language to clarify that a facility must not employ or otherwise engage individuals who have been found guilty of abuse, neglect, or mistreatment of residents by a court of law; had a finding of abuse, neglect, mistreatment of resident or misappropriation of property reported into a state nurse aide registry, or had a disciplinary action taken against a professional license by a state licensure body as a result of a finding of abuse, neglect, or mistreatment of residents or a finding of misappropriation of property. The proposed revision makes clear that the facility is responsible for protecting residents from abuse, neglect and exploitation by a person providing services, whether the individual has an employee relationship with the facility or is ''otherwise engaged'' by the facility—that is, providing services under a different arrangement, such as a volunteer or a contractor. Currently, the regulations require that a facility must not employ an individual who has had a finding entered against them into a state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of property. We propose to add a new § 483.12(a)(2)(iii) to expand this employment prohibition to include licensed professionals who have had a disciplinary action taken against them by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of resident property. Although a licensure disciplinary action would normally prevent a licensed professional from further practice in the state of licensure for some specified period of time, we believe inclusion in the federal standards is necessary to ensure the safety of long term care facility residents. We believe that disciplinary action information is available through state licensing boards and that it is appropriate to explicitly hold licensed personnel to the same standard as nurse aides.

We propose to re-designate existing § 483.13(c) as § 483.12(b) and to revise it to also require that the facility develop and implement written policies and procedures that prohibit and prevent abuse, neglect, exploitation of residents and misappropriation of resident property. We propose to add a new § 483.12 (b)(2) to require that the facility establish policies and procedures to investigate any allegations of abuse, neglect, exploitation, or misappropriation of property, We also propose to add a new § 483.12(b)(3) to require training, including training on resident's rights, facility responsibilities, and recognition and reporting of abuse neglect and exploitation, which we would require in proposed § 483.95. Our proposals related to training are discussed in section X, ''Training requirements'' (§ 483.95) of this preamble. We believe both the requirements in proposed new § 483.12(b)(2) and (b)(3) are necessary to ensure effective and consistent investigative processes and to ensure that direct care/direct access workers are trained to recognize when treatment is abusive or constitutes neglect or exploitation. We are hopeful that training may reduce the frequency of these incidents. Finally, we propose a new § 483.12(b)(5) to require that facilities establish policies and procedures to ensure reporting of crimes in accordance with section 1150B of the Act. The policies and procedures would have to include, at a minimum, annual notification of covered individuals, posting a conspicuous notice of employee rights, and prohibiting and preventing retaliation.

Annual notification of covered individuals, as defined at sec. 1150B(a)(3), includes notification of that individual's obligation, as specified at 1150B(b)(1), to report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility. Reporting to the State Agency fulfills the statutory directive to report to the Secretary. In accordance with 1150B(b)(2), the reporting required by 1150B(b)(1) must occur not later than 2 hours after forming the suspicion, if the

events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury. A fuller discussion of these requirements was provided in a June 17, 2011 Survey and Certification Letter to State Survey Agency Directors and further addressed through a question and answers document in January, 2012. These documents are available at *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter11_30.pdf* . We propose that enforcement of these requirements would be based on the terms of that guidance. We are specifically requesting comment on these proposed provisions and our proposed implementation of Section 1150B of the Act.

We propose to re-designate existing § 483.13(c)(1)(iii) as proposed § 483.12(a)(3) and revise existing § 483.13(c)(2), (3) and (4) as proposed § 483.12(c)(1), (2), (3) and (4). Specifically, we propose to add the term ''exploitation'' in proposed paragraph (c)(1) and add adult protective services where state law provides for jurisdiction in long-term care facilities to the list of officials who must be notified in accordance with state law; otherwise the language would be unchanged from § 483.12(c)(2). We propose to divide existing § 483.13(c)(3) into two paragraphs, § 483.12(c)(2) and (3), making the investigation of alleged violations distinct from the facility's obligation to prevent further abuse of the allegedly abused resident or other residents while the investigation is in progress.

F. Transitions of Care (§ 483.15)

We propose to re-designate current § 483.12 ''Admission, transfer, and discharge rights'' as new § 483.15, and revise the general title to ''Transitions of care'' in order to reflect current terminology that applies to all instances where care of a resident is transitioned between care settings. Extensive literature speaks to quality of care concerns related to the transitions.

In proposed new paragraph (a) we would begin with requirements for admissions policies, which would be moved to the beginning of the section to reflect chronological order. We propose a new paragraph (a)(1) to require that the facility establish an admissions policy.

Additionally, we would re-designate current § 483.12(d)(1) as § 483.15(a)(2) to state that facilities cannot request or require residents or potential residents to waive their rights to Medicare or Medicaid benefits or to any rights conferred by applicable state, federal and local licensing or certification laws. We propose to add a new paragraph (a)(2)(iii) to prohibit facilities from requesting or requiring residents or potential residents to waive any potential facility liability for losses of personal property. We understand that residents are sometimes asked to waive facility responsibility for the loss of their personal property or are unable to use personal property because it is only permitted in the facility if safeguarded by the facility in a manner that makes the property usually inaccessible to the resident. These policies effectively take away the residents' right to use personal possessions and relieve facilities from their responsibility to exercise due care with respect to residents' personal property. We expect this requirement will encourage facilities to develop policies and procedures to safeguard residents' personal possessions without effectively prohibiting a resident's use of personal possessions. We further propose to add a new paragraph (a)(6) to specify that a nursing facility must disclose and provide to a resident or potential resident, prior to time of admission, notice of any special characteristics or service limitations of the facility. For example, if a facility has a religious affiliation that guides its practices, any resulting special characteristics, requirements, or limitations would have to be communicated to potential residents at admission. Similarly, if a facility did not have the capability to care for residents requiring psychiatric care, potential residents would have to be advised of this prior to admission. The potential resident or resident representative could then make an informed initial decision about admission, should the need for specific types of care or services later become necessary, the need for an appropriate transfer will be more predictable and understandable to the resident. We believe this type of disclosure is current standard business practice, however, in keeping with proposed provisions related to specifying reasons for transfer or discharge as well as to ensure informed choices on the part of the resident at the time of admission, we would add this requirement explicitly.

We also propose to relocate existing § 483.10(b)(12) to new § 483.15(a)(7). This section addresses admission disclosure requirements for composite distinct part nursing facility, and is more appropriately located in the section on admissions.

We propose to re-designate § 483.12(a) as proposed § 483.15(b) and address transfers and discharges.

§ 483.15(b)(1)(ii)(C) would revise existing § 483.12(a)(2)(iii) and we would clarify that a resident could be discharged when the safety of other individuals is endangered due to the clinical or behavioral status of that resident. In proposed § 483.15(b)(1)(ii)(E), we would revise existing § 483.12(a)(2)(v) and clarify that provisions for discharge as a result of non–payment of facility charges would not apply unless the resident did not submit the necessary paperwork for third party payment or until the third party, including Medicare or Medicaid, denied the claim and the resident refused to pay for his or her stay. This is consistent with existing guidance and would help to clarify the meaning of failure to pay. Finally, we propose a new § 483.15(b)(1)(iii) to specify that the facility may not transfer or discharge the resident while the appeal is pending, pursuant to 42 CFR 431.230 when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to 42 CFR 431.220(a)(3). ''Discharge/Eviction'' was the most frequent nursing facility complaint category processed by the Long-Term Care Ombudsman Programs nationally in FY 2013 (8,478 complaints) and has been the first or second most frequent complaint category consistently since 2006. Involuntary discharges are often traumatic for residents. Transfer or discharge from a facility prior to an appeal determination can result in an unnecessary transfer out of and back to a facility.

In the proposed revision to paragraph § 483.15(b)(2), we would make a number of revisions based on the importance of effective communication between providers during transitions of care. First, we propose to clarify that the transfer or discharge would be documented in the resident's clinical record and that appropriate information would be communicated to the receiving setting. While this type of documentation is presently required for hospitals with which the facility has a transfer agreement, such communication is important regardless of the setting to which the resident is being transferred or discharged. In addition, we propose to require that, when a facility transfers or discharges a resident because the transfer or discharge is necessary for the resident's safety and welfare, the facility would include in its documentation the specific resident needs that it cannot meet, facility attempts to meet the resident needs, and the service(s) available at the receiving facility that

will meet the resident's needs. We believe this proposal will discourage facilities from discharging residents inappropriately. We note that facilities are obligated under the Americans with Disabilities Act and the Rehabilitation Act not to discriminate against residents based on the severity of their disability. Discharging or transferring a resident without first implementing accommodations to better meet the resident's needs may be in conflict with these laws.

We propose to add a new requirement at § 483.15(b)(2)(i) that the transferring facility provide necessary information to the resident's receiving provider, whether it is an acute care hospital, a LTC hospital, a psychiatric facility, another LTC facility, a hospice, home health agency, or another community-based provider or practitioner. We note that the exchange of information ''needed for care and treatment of residents, and when the transferring facility deems it appropriate, for determining whether such residents can be safely and appropriately cared for in a less expensive setting than either the facility or the hospital'' is already required under § 483.75(n) as a component of the transfer agreement a facility must have with one or more hospitals. However, that provision only applies to hospitals with which the facility has a transfer agreement and it does not require any minimum standards for the information to be exchanged. To provide safe, effective care to residents, we believe it is critical that timely and accurate clinical information follow the resident across care settings and providers. Transitions of care represent a period of increased risk for complications and adverse events for the individual. One way to reduce this risk is to ensure effective communication between care providers. In recognition of this, in August of 2011, the State of New Jersey mandated the use of a universal transfer form. Rhode Island and Massachusetts also require a universal transfer form and the American Medical Directors Association has developed and recommends the use of a universal transfer form. Additionally, other tools and information are available from CMS (see *http://www.medicare.gov/Pubs/pdf/11376.pdf*) and AHRQ (see *http://www.innovations.ahrq.gov/content.aspx?id=3285*) as well as through a number of professional organizations, including but not limited to the National Transitions of Care Coalition (*www.ntocc.org*). Examples of resources include TeamSTEPPS® Long Term Care Version (*http://www.ahrq.gov/professionals/education/curriculum-tools/teamstepps/longtermcare/interact2.net/*), and the On-Time Quality Improvement Program (*http://www.ahrq.gov/professionals/systems/long-term-care/resources/ontime/qualityimprov/index.html*). We expect that new tools and information will be developed over time. Electronic health records could simplify the process of extracting necessary information when a resident is transferred from a nursing home and electronic summary of care documents provide a standardized way to exchange critical information between providers.

As noted earlier, HHS also has a number of initiatives designed to encourage and support the adoption of health information technology and to promote nationwide health information exchange to improve health care. While current Medicare and Medicaid EHR Incentive programs have focused on providers other than SNFs and NFs, certified health IT possesses capabilities that can assist any health care provider to improve the quality, safety and efficiency of the care they deliver. For more information about how currently available certified health IT systems can enable the electronic exchange of a summary care record, providers should review ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments,'' which addresses use of the 2014 Edition of ONC certification criteria (available at *http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9-9-13.pdf*).

The 2015 Edition of certification criteria for health IT, published on March 30, 2015 at 80 FR 16902, proposes to define a common clinical data set. As discussed in the draft Interoperability Roadmap, HHS believes a core priority for improving health and health care quality through nationwide interoperability is the ability to electronically send, receive, find and use a common clinical data set. By aligning the data elements proposed below with this proposed common clinical data set, we believe facilities will be well-positioned to engage in electronic communication of information during the transfer process. In addition, new standards supporting the exchange of a summary care record include additional information directly applicable to SNF and NF settings. The HL7 Clinical Document Architecture (CDA) Release 2.0, now identified as the best available standard for exchange of a summary care record (*http://www.healthit.gov/standards-advisory*) and proposed for inclusion in the 2015 Edition of certification criteria for health IT (80 FR 16804) makes new standards available for pressure ulcers, functional and cognitive status, advanced directives, and other clinical health information that could be used for exchange in summary records, as well as a new dedicated Transfer Summary document that could be used for exchange in summary records. These standards were developed through a public-private collaboration including an ONC-sponsored Standards and Interoperability Longitudinal Coordination of Care Workgroup and HL7 (a private sector, American National Standards Institute (ANSI)-accredited standards development organization) and will support more robust interoperable health information exchange across the care continuum, including with and by nursing homes.

We note that we are not proposing to require a specific form, format, or methodology for this communication. Instead, we propose specific data elements or a set of information that must be communicated during the transfer process. We believe that existing state-mandated forms would meet our proposed requirements. We have reviewed literature related to transitions of care and re-hospitalization as well as the available universal transfer forms and work on the development of interoperability standards for EHRs and propose to require specific information consistent with our research. This includes demographic information, including but not limited to name, sex, date of birth, race, ethnicity, and preferred language, resident representative information including contact information, advanced directive information, history of present illness/reason for transfer, including primary care team contact information, past medical/surgical history, including procedures, active diagnoses/current problem list, laboratory tests and the results of pertinent laboratory and other diagnostic testing, functional status, psychosocial assessment including cognitive status, social supports, behavioral health issues, medications, allergies including medication allergies, immunizations, smoking status, vital signs, unique identifier(s) for a resident's implantable device(s), if any, comprehensive care plan including health concerns, assessment and plan, goals, resident preferences, other interventions, efforts to meet resident needs, and resident status. We have not established a time frame for this

communication, as this may vary based on the circumstances surrounding the transfer; however, we would expect communication to occur shortly before or as close as possible to the actual time of transfer and that the facility would document that communication has occurred. We understand that limited information may initially be sent with a resident in an emergency situation; however, we would expect that if an initial communication does not include all of the required information, a subsequent communication to fill-out the missing information would occur in a timely manner. We are soliciting comment on both the information elements we are requiring and the time frame for transmission of the required information. While we are not proposing any specific form, format, or methodology for the communication of this information for all facilities, we strongly believe that those facilities that are electronically capturing this information should be doing so using certified health IT that will enable the real time electronic exchange with the receiving provider. By utilizing certified health IT, facilities can ensure that they are transmitting interoperable data that can be used by other settings, supporting more robust care coordination and higher quality care for patients.

In proposed paragraph (b)(3)(i), we would update the language currently in § 483.12(a)(4)(i) to reflect our ''resident representative'' language and propose to require that the facility send a copy of the notice of transfer or discharge to the State Long-Term Care Ombudsman with the resident's consent. If a resident does not agree to have the notice sent to the State Long-Term Care Ombudsman, we would expect the refusal to be documented in the resident's medical record. The requirement to send this notice the State Long-Term Care Ombudsman is another provision related to concerns about inappropriate discharges and was suggested by stakeholders to allow timely assistance to the resident in cases where the discharge is involuntary. In proposed paragraph (b)(3)(ii), we propose a minor revision to the language currently in § 483.12(a)(4)(ii) to clarify that the facility records the reasons for the transfer or discharge, in accordance with proposed § 483.15(b)(2).

In paragraph § 483.15(b)(5)(iii), we propose to modify language currently in § 483.12(a)(6)(iii) by adding the phrase ''expected to be'' to reflect our understanding that when a notice of transfer or discharge is issued 30 days prior to transfer, the transfer or discharge destination may subsequently change. We also propose in paragraph (b)(5)(iv) to require that the notice include the name, address (mailing and email), and telephone number of the state entity which receives discharge or transfer appeal requests; and information on how to obtain an appeal form, how to obtain assistance in completing the form, and how to submit the appeal request. We also propose to add a new paragraph § 483.15(b)(6) to require that when information in the notice changes, the facility must update the recipients of the notice as soon as practicable with the new information to ensure that residents are aware of and can respond appropriately to discharge information. We propose to re-designate § 483.12(a)(7) as § 483.15(b)(7) and revise it to require that the facility provide to the resident an orientation regarding his or her transfer or discharge in a form and manner that the resident can understand. The facility must also document this orientation, including the resident's understanding of the orientation (teach back or other methodology). To do otherwise would negate the intent of this provision. Finally, in § 483.15(b)(9), we propose to clarify that room changes in a composite distinct part are subject to the requirements of proposed § 483.10(d)(7).

Some states have requirements for facilities to reserve a resident's bed when the resident is transferred to an acute care facility. These requirements and individual facility policies may vary widely and may impact the availability of the resident's original bed or any bed when the resident is ready to return to the facility as well as have payment implications for the resident. In paragraph § 483.15(c) we propose to add language to require that the facility provide information to the resident that informs the resident of and distinguishes and explains the difference between the duration of the state bed-hold policy, if any, as well as the reserve bed payment policy in the state plan, required under 42 CFR 447.40, if any. In § 483.15(c)(1)(iv), we propose to add a new requirement that a facility's notice of its bed-hold policy and readmission must also include information on the facility's policy for readmission, as required under proposed § 483.15(c)(3), for a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the state plan. We are soliciting comments on state and facility bed-hold policies and state reserve bed payment policies, including whether the proposed notices have adequately differentiated these. Further, we are interested in the impact, if any, of reserve bed arrangements between some hospitals and some facilities. Finally, we propose to redesignate existing § 483.12(a)(3) as § 483.15(c)(3) and revise it to add a new requirement that a resident who is hospitalized or placed on therapeutic leave with an expectation of returning to the facility must be notified in writing by the facility when the facility determines that the resident cannot be readmitted to the facility, the reason the resident cannot be readmitted to the facility, and the appeal and contact information specified in § 483.15(b)(5)(iv) through (vii). As noted earlier, discharge/eviction is the most common category of complaint processed by the Long-Term Care Ombudsman Program. Residents often do not realize that there are requirements allowing them to return to a facility after a hospitalization or that they may have appeal rights. This provision is intended to ensure that residents have an opportunity to exercise an appeal right if they choose to do so.

G. Resident Assessments (§ 483.20)

Current regulations at § 483.20 require that a facility must initially and periodically conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity and sets forth the requirements a facility must meet to be in compliance. As part of the proposed restructuring of subpart B, current § 483.20(k) and § 483.20(l), which set forth requirements for care plans and discharge planning, would be removed and re-designated to proposed § 483.21(b) and § 483.21(c), respectively. Similarly § 483.20(m) would be re-designated as proposed § 483.20(k). The proposed removal and re-designation of paragraphs (k) and (l) are discussed below in the section entitled, ''§ 483.21 Comprehensive Person-Centered Care Planning.''

Existing § 483.20(b) sets forth the information that must be included in a resident's comprehensive assessment using the resident assessment instrument. Consistent with our goal of encouraging person-centered care, we propose to revise this section to clarify that the assessment is not merely for the purpose of understanding a resident needs, but also to understand their strengths, goals, life history, and preferences. We also revise the regulations to specify that CMS (not the State) prescribes the resident assessment instrument. At § 483.20(b)(1)(xvi) we propose to revise the text from ''discharge potential'' to read, ''discharge planning'' in an effort to encourage facilities to move the discussion of possible discharge away

from a facility's judgment and towards a resident's preference and expectation.

Existing regulations at § 483.20(e) require facilities to coordinate assessments with the PASARR program under Medicaid in part 483, subpart C to the maximum extent practicable to avoid duplicative testing and efforts. It is our understanding that many facilities are unclear as to what this provision requires. Our goal is to clarify for facilities what it means to coordinate resident assessments with PASARR. Therefore, we propose to add new § 483.20(e)(1) and § 483.20(e)(2). In new § 483.20(e)(1), we propose to clarify that coordination with PASARR includes incorporating the recommendations from the PASARR level II determination and the PASARR evaluation report into a resident's assessment, care planning, and transitions of care. In new § 483.20(e)(2), we propose to clarify that PASARR coordination also includes referring all level II residents and all residents with newly evident or possible serious mental illness, intellectual disability, or related conditions for level II resident review upon a significant change in status assessment (that is, a decline or improvement in a resident's status). Often facilities overlook the PASARR recommendations during a resident's assessment and the development of their care plan. The recommendations should be used as a tool by facilities to make a complete and accurate assessment of a resident with evident or possible mental illness. The addition of these two requirements would promote better coordination of a resident's assessment with the PASARR, allowing for a facility to better assess their residents with mental illness.

As mentioned earlier in this section, we are proposing to re-designate existing § 483.20(m) as § 483.20(k). In addition, we propose to make a few technical corrections at proposed § 483.20(k). First, we propose to re-designate existing § 483.20(k)(2) as (k)(3), and add a new paragraph (k)(2). Sections 1919(e)(7)(A)(ii) and (iii) of the Act provide exceptions to the preadmission screening for individuals with mental illness and individuals with intellectual disability for admittance into a nursing facility. Newly proposed § 483.20(k)(2) would add to the regulation these statutory exceptions that were inadvertently omitted when this regulation was initially written. Second, we propose to add a new paragraph at § 482.20(k)(4). Section 1919(e)(7)(B)(iii) of the Act requires a NF to notify the state mental health authority or state intellectual disability authority when there has been a significant change in the resident's physical or mental condition so that a resident review can be conducted. Proposed § 483.20(k)(4) would add to the regulation this statutory requirement that was inadvertently omitted. Lastly, we propose to replace ''mental retardation'' with the term ''intellectual disability'' throughout § 483.20(k), as appropriate.

H. Comprehensive Person-Centered Care Planning (§ 483.21)

In accordance with the proposed reorganization of part 483, subpart B, we propose to add a new § 483.21 ''Comprehensive Person-Centered Care Planning''. This section would retain certain existing provisions of current § 483.20 as well as other additions and revisions discussed in detail below. Through the care planning process a facility should establish and document the services that the facility will provide to residents to assist them in attaining or maintaining their highest quality of life. Care planning drives the type of care that a resident receives and is essentially the framework for the quality of care that a facility will provide. The diversity of the nursing home population can create challenges for facilities in meeting care planning requirements, and improper care planning or the lack of care planning by a facility can negatively impact the quality of care that a resident receives while in a nursing home.

OIG reports reveal some gaps in care planning within LTC facilities. According to a July 2012 report, ''Nursing Facility Assessments and Care Plans for Residents Receiving Atypical Antipsychotic Drugs'' ((OEI–07–08–00151), *https://oig.hhs.gov/oei/reports/oei-07-08-00151.asp*), the OIG found that nearly all records (99 percent) reviewed in their study failed to meet one or more Medicare requirements for beneficiary assessments and/or care plans. Furthermore, 9 percent of records contained care plans that were not developed or updated within the required 7 days from the completion of the Minimum Data Set (MDS), while 6 percent of records did not include care plans at all. The report also found that less than 5 percent of the records actually contained care plans that were developed by the required interdisciplinary team. Moreover, 91 percent of the records did not contain evidence that the resident, resident's family, or the resident's legal representative participated in the care planning process. Nearly two-thirds of these records lacked documentation as to why participation was not practicable.

Similarly, a February 2013 OIG report, ''Skilled Nursing Facilities Often Fail to Meet Care Planning and Discharge Planning Requirements'' ((OEI–02–09–00201), *https://oig.hhs.gov/oei/reports/oei-02-09-00201.asp*), studied the extent to which LTC facilities meet requirements for care planning. The OIG report found that for 37 percent of the stays, facilities did not meet Medicare requirements for care planning. The February 2013 OIG report also found that for 31 percent of nursing home stays, facilities did not meet requirements specific to discharge planning. However, the report noted that despite these deficiencies, Medicare paid approximately $4.5 billion for the stays that did not meet quality of care requirements and approximately $1.9 billion for those that did not meet the discharge planning requirements.

Currently, the requirements for care plans and discharge planning are set out at § 483.20 along with the requirements for conducting an assessment of each resident's health and completing the MDS. To emphasize the level of importance for care planning and to increase the visibility of the requirements, we propose to remove the requirements for care plans from current § 483.20(k) and discharge planning in current § 483.20(l) (collectively referred to here as care planning) and relocate them to a new proposed § 483.21, entitled ''Comprehensive Person-Centered Care Planning.'' This new section would contain all of the existing requirements for care planning. We believe that relocating the requirements to a new section dedicated solely to care planning would emphasize the importance of care planning as well as provide clarity to the regulations. In addition to relocating existing provisions, we are also adding new requirements as discussed in detail below.

Proposed § 483.21(a)

Currently, § 483.20(k)(2)(i) requires that a comprehensive care plan be developed for each resident within 7 days after completion of the comprehensive resident assessment. Section 1819(b)(3)(C)(i) of the Act requires that the comprehensive resident assessment be completed within 14 days after a resident is admitted. These timeframes allow a facility up to 21 days to develop a comprehensive care plan for a new resident. While we believe that most facilities are indeed developing their care plans much sooner than required, the February 2013 OIG report reveals that some facilities are not. During our dialogue with stakeholders, concerns

were expressed about the ability of a facility to delay development of a care plan for 21 days without consequence to residents. We recognize that during these 21 days facilities could use admission orders to determine a resident's care; however, we believe that there are common health concerns found in the residents of LTC facilities that need to be identified and addressed in a care plan to prevent resident decline or injury. Some of these problems include behavioral intervention in dementia care, dietary issues, fall risks, supervision, and the ability to perform activities of daily living (ADLs). These areas need to be assessed and issues identified quickly in order to prevent adverse events such as injuries, unintended weight loss and dehydration, and instances of wandering off. Without a proper interim care plan within the initial period of residency, residents could receive poor quality care simply due to the fact that staff does not receive the relevant information they need to be effective and provide high quality care and services to the resident. This could also place residents at a much higher risk of hospital readmission. Therefore, we are proposing to add a new § 483.21(a)(1) to the current care planning regulations and require that facilities complete a baseline interim care plan for each resident upon their admission to the facility. This baseline interim care plan would include the necessary instructions for the proper professional care and services to meet the immediate needs of a new resident. This proposal would increase resident safety and safeguard against adverse events that are most likely to occur right after admission.

We believe that residents are receiving initial services and care based on physician's orders within the first 24 to 48 hours of admission and therefore propose to require that the proposed baseline care plan be completed within 48 hours of a resident's admission. It is our expectation that facilities would continuously revise and update this baseline care plan as needed until the comprehensive assessment and care plan could be developed. We believe that most facilities are assessing residents as soon as possible and establishing plans of care earlier than the regulatory deadline; however this requirement would eliminate the possibility that residents could reside in a facility for 21 days without any care planning. Also, requiring facilities to complete this baseline interim care plan within 48 hours would promote continuity of care across shift changes by improving communication among nursing home staff during a period when residents are especially vulnerable to adverse health events.

At § 483.21(a)(1)(ii), we propose to list the information that would, at a minimum, be necessary for inclusion in a baseline care plan, but would not limit the contents of the care plan to only this information. Information such as initial goals based on admission orders, physician orders, dietary orders, therapy services, social services, and PASARR recommendations as appropriate would be the type of information that would be necessary to provide appropriate immediate care for a resident. However, since care plans are developed specifically for each resident, a facility could decide to include additional information as appropriate.

Finally, at § 483.21(a)(2), we propose to allow facilities to complete a comprehensive care plan instead of completing both a baseline care plan and then a comprehensive care plan. In this circumstance, the comprehensive care plan would then have to be completed within 48 hours of admission and comply with the requirements for a comprehensive care plan at proposed § 483.21(b). We discuss those requirements below.

Proposed § 483.21(b)

Current regulations at § 483.20(k) set forth the requirements for developing a comprehensive care plan. As mentioned above, we propose to re-designate this section as a new § 483.21(b). In addition, we are also proposing revisions to this section that we believe would provide clarity, promote resident safety, and encourage person-centered care. First, we propose to add a new § 483.21(b)(1)(iii), that would require any specialized services or specialized rehabilitation services that a nursing facility provided pursuant to a PASARR recommendation to be included in the resident's care plan. This inclusion would improve coordination between the nursing facilities and a resident's PASARR. In addition, we propose to require that if a facility disagrees with the findings of the PASARR, it must indicate this disagreement and the reasons for it in the resident's medical record.

We also propose to add a new § 483.21(b)(1)(iv) that would require discharge assessment and planning to be a part of developing the comprehensive care plan. We are proposing to require facilities to assess a resident's potential for future discharge, as appropriate, as early as upon admission, to ensure that residents are given every opportunity to attain their highest quality of life. This proposal seeks to improve resident satisfaction and encourage facilities to operate in a person-centered fashion that addresses resident choice and preferences. Upon a resident's request, this discharge assessment may include referral to a community transition planning agency to explore community living options, resources, and available supports and services. We propose to require at § 483.21(b)(1)(iv) that facilities document whether a resident's desire for information regarding returning to the community is assessed and any referrals that are made for this purpose. Furthermore, we also acknowledge that residents' preferences and goals of care may change throughout the length of their stay in a facility, so we also want to emphasize that there needs to be an ongoing discussion with the resident or their representatives of the goals of care.

Also in the spirit of person-centered care, we are proposing to specify additional mandatory members of the interdisciplinary team (IDT). The IDT is responsible for developing a comprehensive care plan for each resident at proposed § 483.21(b)(2)(ii). Under current § 483.20(k)(2)(ii), the attending physician, a registered nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs, and to the extent possible the resident or the resident's family/legal representative are all required to participate in the IDT. We are proposing to add the term ''other appropriate staff'', which should be determined based on the specific needs of the resident or at the request of the resident. For example, a qualified mental health professional should be involved when residents are diagnosed with mental health conditions or prescribed psychotropic drugs. Similarly, based on a resident's needs, a chaplain or other spiritual care provider could be deemed appropriate for inclusion in the development of a residents care plan. However, we believe there would be other appropriate staff in specific disciplines that all residents need to also be a part of the IDT. Therefore, we propose to also explicitly require a NA with responsibility for the resident, an appropriate member of the food and nutrition services staff, and a social worker to be a part of the IDT. Including these critical team members in the IDT and the care planning process would ensure that the individual needs of a particular resident are being assessed and appropriately addressed.

NAs spend much of their time interacting directly with the residents providing them day-to-day care. Their

knowledge of a resident care plan and medical needs directly relates to how well they can care for a resident. Dietary concerns and unplanned weight loss are major concerns for the LTC population, especially for the elderly population. Since nutrition is a fundamental part of a resident's overall health and well-being, it is important that a member of the food and nutrition services staff be knowledgeable of the resident's needs and preferences to achieve their maximum practicable well-being. Social workers serve as a critical link with families in many ways, including arranging post-discharge services and addressing mental and behavioral health care needs. The involvement of social services and food and nutrition services would also promote and enhance a resident's choice regarding their day-to-day activities and meals as well as encourage facilities to take a more comprehensive approach to providing individualized quality of care and quality of life specific to each resident.

Additionally, we propose to revise § 483.21(b)(2)(ii)(F), to provide that to the extent practicable, the IDT must include the participation of the resident and the resident representatives. We want to ensure that residents have the ability to choose who they want to be a part of making decisions about their care. This participation can incorporate many forms of communication such as conference calls or using electronic tools for video conferencing. Further, at § 483.21(b)(2)(ii)(F) we propose to add the requirement that an explanation must be included in a resident's medical record if the IDT decides not to include the resident and/or their resident representative in the development of the resident's care plan or if a resident or their representative chooses not to participate. Residents should be involved in making decisions about their care and facilities should be held accountable for their attempts to involve the resident when it is appropriate and provide an explanation when they determine that it is not feasible or appropriate. We believe the addition of these requirements would increase resident choice, but also seek to improve the communication between the facilities and the residents regarding the aspects of a resident's care, choice, and the services to be provided by facility to maintain or improve a resident's care.

Lastly, we have added a new requirement at § 483.21(b)(3)(iii) to require that the services provided or arranged by the facility be culturally-competent and trauma-informed. As discussed previously, culturally-competent (including language, culture preferences and other cultural concerns), trauma-informed approaches that help to minimize triggers and re-traumatization, and that address the unique care needs of Holocaust survivors and other trauma survivors, are an important aspect of person-centered care for these individuals.

We note that certified health IT can support efforts by LTC facilities to develop robust comprehensive care plans that can be shared with other providers across the continuum of care. We strongly believe that facilities that use certified health IT applications should seek to generate comprehensive care plans using technology solutions, in order to further improve access and communication among staff. ONC has identified the HL7 Clinical Document Architecture (CDA) Release 2.0: Consolidated CDA Templates for clinical notes as the best available standard for care plans (see the Interoperability Standards Advisory at *http://www.healthit.gov/standards-advisory*). The dedicated care plan document contained within this standard is designed to help providers reconcile and resolve conflicts between different plans of care and to help the care team prioritize goals and interventions. As part of the 2015 Edition of certification criteria for health IT, ONC proposed to certify health IT systems to their ability to generate a Care Plan document according to this standard (see 80 FR 16842).

Proposed § 483.21(c)

Current regulations at § 483.20(l) set forth the requirements for discharge planning. As mentioned above, we propose to re-designate this section as a new § 483.21(c). Transitions between settings of care are often complex for residents as well as for LTC facilities given that each facility differs greatly in its organization, practices and cultures. As mentioned earlier, the population receiving care and service in LTC facilities is diverse and includes those who have complex health and continuing care needs and rely on various services to help meet these needs. Furthermore, these individuals may have increased susceptibility to infections, malnutrition, dehydration, comorbidities, or functional impairments. All of these factors contribute to a person's increased vulnerability to receiving suboptimal care during a period of transition from one care setting to another. Older adults often receive healthcare in multiple settings thus requiring multiple transitions of care. For example, an older adult with an acute or chronic illness may receive healthcare at an inpatient hospital setting, followed by treatment at a LTC facility, possibly followed by discharge to their home to receive services from a visiting nurse or a primary care physician in an outpatient setting. The February 2013 OIG report found that for the current discharge planning requirements (summary of a resident's stay and a post-discharge plan of care), many SNF stays that did not meet the discharge planning requirements did not have a post-discharge plan of care. Results of the study also indicated that, in some instances, staff provided only verbal instructions to the beneficiary and in one example a resident did not receive specific instructions about medications. Another study found that one in five Medicare beneficiaries are re-hospitalized within 30 days, largely a result of medication errors, resident confusion about and subsequent failure to follow up on care instructions and the management of multiple chronic conditions (Parry, C., & Coleman, E. A. (2010). Active Roles for Older Adults in Navigating Care Transitions: Lessons Learned from the Care Transitions Intervention. Open Longevity Science, 43–50).

Relevant literature indicates that different priorities and organizational structures result in little coordination and lack of understanding about what occurs across settings. (McCloskey R. A Qualitative Study on the Transfer of Residents between a Nursing Home and an Emergency Department. Journal of the American Geriatrics Society [serial online]. April 2011; 59(4):717–724. Available from: Academic Search Complete, Ipswich, MA. Accessed November 14, 2012.) For example, staff in a LTC facility setting may decide that a resident's condition requires acute care services and transfer the resident to the hospital for an assessment. The physicians in the hospital setting may not believe the resident's condition warrants acute care and thus may send the resident back to the nursing home, or may admit the resident when a hospital level of care is not indicated. Proper discharge planning across all provider settings helps improve the communication regarding a resident's needs and promotes safer care transitions.

Given the heightened need to ensure safe transitions of care across all providers, we are proposing to strengthen the current LTC requirements for discharge planning. These proposals would also support CMS' initiative to safely reduce hospital readmissions and unnecessary hospitalizations by improving communication and ensuring that

residents are being empowered and educated about their care. Our proposals also emphasize that discharge planning should focus on the necessary steps to achieve discharge consistent with a resident's goals and preferences. In addition, the IMPACT Act amended title XVIII of the Act by adding Section 1899B to require that post-acute care (PAC) providers, home health agencies (HHAs), SNFs, inpatient rehabilitation facilities (IRFs), and long-term care hospitals (LTCHs) report standardized patient assessment data, data on quality measures, and data on resource use and other measures. The IMPACT Act also requires that this data be standardized and interoperable to allow for the exchange of data among PAC providers and other providers. The IMPACT Act requires the modification of PAC assessment instruments to allow for the submission of standardized patient assessment data and enable comparison of this assessment data across providers. Additionally, the IMPACT Act requires that standardized patient data, quality measures, and resource use measures along with patient treatment goals and preferences be taken into account in discharge planning.

At § 483.21(c)(1) we propose to improve the discharge planning for LTC facilities by adding a requirement that facilities must develop and implement an effective discharge planning process. The facility's discharge planning process must ensure that the discharge goals and needs of each resident are identified. This process should also result in the development of a discharge plan for each resident and any referrals to local contact agencies or other appropriate entities, should the resident have a desire to receive information about returning to the community. In addition, we propose to require that the facility's discharge planning process require the regular re-evaluation of residents to identify changes that require modification of the discharge plan. The discharge plan must also be updated, as needed, to reflect these changes. We also propose to require that the IDT responsible for the developing a resident's comprehensive care plan be involved in the ongoing process of developing the discharge plan.

Furthermore, we propose to require that the facility consider caregiver/support person availability, and the resident's or caregiver support persons' capacity and capability to perform the required care, as part of the identification of discharge needs. In order to incorporate residents and their families in the discharge planning process, we also propose to require that the discharge plan address the resident's goals of care and treatment preferences. Facilities would have to document in the discharge plan that a resident has been asked about their interest in receiving information regarding returning to the community. If the resident indicated interest in returning to the community, the facility must document any referrals to local contact agencies or other appropriate entities made for this purpose and update a resident's comprehensive care plan and discharge plan in response to information received from such referrals. Likewise, if discharge to the community were determined to not be feasible, the facility would document who made the determination and why.

As required under section 1899B(i)(1) of the Act, to help inform the discharge planning process, we propose to require LTC facilities to take into account, consistent with the applicable reporting provisions, standardized patient assessment data, quality measures and resource use measures that pertain to the IMPACT Act domains, as well as other relevant measures specified by the Secretary. For those residents who are transferred to another LTC facility or who are discharged to a HHA, IRF, or LTCH, we propose at § 483.21(c)(1)(viii) to require that the facility assist residents and their resident representatives in selecting a post-acute care provider by using data that includes, but is not limited to SNF, HHA, IRF, or LTCH standardized patient assessment data, data on quality measures, and data on resource use to the extent the data are available. Further, under the proposed regulation, the facility would have to ensure that the post-acute care standardized patient assessment data, data on quality measures, and data on resource use are relevant and applicable to the resident's goals of care and treatment preferences. In order to emphasize resident preferences, we would expect that the facility would compile the relevant data and present it to the resident and their resident representative in an accessible and understandable format and with useful content. For example, the facility could provide the aforementioned quality data on other post-acute care providers that are within the resident's desired geographic area. Facilities would then need to assist residents and their resident representative as they seek to understand the data and use it to help them choose a high quality post-acute care provider, or other setting for discharge, as appropriate.

Finally, at § 483.21(c)(1)(viii), we propose that facilities must document in the discharge plan whether a determination is made by the resident, resident representative, or interdisciplinary team that discharge to the community is not feasible. At § 483.21(c)(1)(ix), we propose to require that the evaluation of the resident's discharge needs and discharge plan must be documented, completed on a timely basis based on the resident's needs, and included in the clinical record. The results of the evaluation must be discussed with the resident or resident's representative. Furthermore, all relevant resident information must be incorporated into the discharge plan to facilitate its implementation and to avoid unnecessary delays in the resident's discharge or transfer.

At § 483.21(c)(2), we propose to set forth the existing requirements for providing a resident with a discharge summary when discharge from the facility is anticipated.

At § 483.21(c)(2)(i) we propose to revise the current requirements for the post-discharge plan of care to specify that a recapitulation of a resident's stay would include, but not be limited to, diagnoses, course of illness/treatment or therapy, and pertinent lab, radiology, and consultation results. We also propose to explicitly include a requirement for facilities to include what arrangements have been made with other providers for the resident's follow-up care and any post-discharge medical and non-medical services as needed. These arrangements should include community care options, resources, and available supports and services presented and arranged by the community care provider as needed. Some local community transition agencies include Area Agencies on Aging (AAAs), Aging and Disability Resource Centers (ADRCs), or Centers for Independent Living (CILs), which can provide information and assist the resident in arranging for available community supports and services prior to discharge. Adding this requirement would hold facilities accountable for their role in preparing residents for care transitions from one setting to another and assist in decreasing a resident's risk for complications and hospitalization.

In addition, the discharge planning process should ensure that residents receive adequate information that is understandable and prepares them to be active partners and advocates for their healthcare upon discharge. Yet residents and/or their representatives frequently are unable to understand their diagnoses, list their medications and describe their purpose and side effects, or explain their follow-up plan of care instructions, all key factors of a resident's healthcare needs. Therefore, at § 483.21(c)(2)(iii) we propose to add

a new requirement that would require facilities to reconcile all pre-discharge medications both prescribed and non-prescription, with the resident's post discharge medications. This medication reconciliation would be included as part of the discharge summary. The addition of this requirement would ensure that residents avoid unnecessary medications and prevent drug interactions. This proposal would also improve transitions across varying care settings by avoiding unnecessary situations, such as placing a resident on duplicate prescriptions leading to an adverse event and unnecessary hospitalization.

Lastly, in keeping with the theme of resident centered care, we also propose at § 483.21(c)(2)(iv) to require that the post-discharge plan be developed along with the participation of the resident and, with the resident's consent, his or her resident representative. Furthermore, upon a resident's request, facilities should also include the community transition planning agency to assist the resident and facility with housing, personal care assistance, assistive technology, and other resources.

We encourage facilities to explore how the use of certified health IT can support their efforts to electronically develop and share standardized discharge summaries. Information about how currently available certified health IT systems can enable the electronic exchange of a summary care record is available in ''Certification Guidance for EHR Technology Developers Serving Health Care Providers Ineligible for Medicare and Medicaid EHR Incentive Payments,'' which addresses the use of the 2014 Edition of ONC certification criteria (available at *http://www.healthit.gov/sites/default/files/generalcertexchangeguidance_final_9-9-13.pdf*). Facilities may also wish to review the Discharge Summary document that is included in the HL7 Clinical Document Architecture (CDA) Release 2.0, now identified as the best available standard for the summary care record (see the Interoperability Standards Advisory at *http://www.healthit.gov/standards-advisory*).

I. Quality of Care and Quality of Life (§ 483.25)

Current regulations at § 483.25 establish requirements for numerous aspects of care and special needs of nursing home residents under the general heading of ''Quality of Care.'' Quality of Care and Quality of Life are two separate and overarching principles in the delivery of care to residents of nursing homes. These principles apply to every service provided by a SNF or NF. Sections 1819(b)(1)(A) and 1919(b)(1)(A) of the Act require that a SNF or NF care for its residents in a manner and in an environment that will promote maintenance or enhancement of the quality of life of each resident. Services and care must be provided in accordance with established standards of practice, in a manner intended to support achievement of a resident's individualized goals for attaining or maintaining his or her highest practicable physical, mental, and psychosocial well-being, as set out in the plan of care. In addition, services and care must be provided in a manner intended to support each resident's overall well-being, as perceived by the resident, including emotional, social and physical aspects of his or her life. We propose to comprehensively revise and re-organize the current § 483.25 to ensure person-centered, quality care and quality of life for this vulnerable population. In this proposed revised section, we would focus on a limited set of concerns that do not clearly fit in other general sections of the regulation but which are of significant importance for each resident's health and safety and which contribute substantially to their quality of care, quality of life and person-centered issues such as dignity, respect, self-esteem and self-determination. These concerns have both medical and psychosocial aspects and include activities of daily living which are those self-care activities that an individual performs daily, including everyday routines involving functional mobility and personal care, such as bathing, dressing, toileting, and meal preparation and consumption. Diminished ability or inability to perform these activities renders an individual vulnerable and dependent on others for assistance.

First, we propose to retitle this section ''Quality of Care and Quality of Life'', reflecting the overarching application of these principles. In our proposed revised introductory paragraph, we reiterate the requirement that each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care. We focus throughout this section, as we have in other areas, on establishing person-centered requirements that acknowledge both the resident's needs and the resident's right to make choices.

Second, in § 483.25(a), we propose to address the residents' ability to perform ADLs and establish that, based on the comprehensive assessment of a resident and consistent with the resident's needs, choices, and preferences, the facility must provide the necessary care and services to maintain or improve, as practicable, the resident's abilities to perform his or her activities of daily living and to ensure that those abilities do not diminish unless the diminution is unavoidable as a result of the individual's clinical condition. This means that a resident is offered the appropriate treatment and services to improve or maintain his or her ability to carry out ADLs and, if a resident is unable to do so, he or she receives the necessary care and services from qualified staff to maintain good nutrition, functional mobility, grooming, and personal and oral hygiene. We propose to divide the requirements of existing § 483.25(a)(1) into proposed § 483.25(a) and (b). Existing (a)(2) and (a)(3) would be re-designated as § 483.25(a)(1) and (a)(2), respectively. We propose a new § 483.25(a)(3) to clarify that, in keeping with the requirement to provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, a facility must ensure that appropriate personnel provide basic life support, including cardiopulmonary resuscitation (CPR) to a resident requiring this emergency care prior to the arrival of emergency medical personnel and subject to accepted professional guidelines and the resident's advance directives. It has come to our attention that there are nursing facilities that have implemented a facility-wide policy of not initiating basic life support. They will, instead, call 911 and wait for the arrival of emergency personnel, unless the resident does not want CPR at all. We believe that the determination to provide or not provide basic life support such as CPR should be made on an individual resident basis rather than as a facility-wide policy. The determination should be based on a resident's advance directives, the presence or absence of do-not-resuscitate orders, and accepted professional standards. Further, we believe that the provision of CPR in applicable emergency situations and subject to an individual's advance directives is a generally accepted expectation in healthcare facilities.

In proposed § 483.25(b), we would establish those activities that we include as ADLs. These activities are currently listed in § 483.25(a)(1)(i) through (v). We propose to update the language of that list, although the underlying activities

remain unchanged. We would establish as ADLs (1) hygiene, such as bathing, dressing, grooming, and oral care; (2) mobility, which includes transfers and ambulation; (3) toileting and use of the bathroom; (4) dining, including eating meals and snacks; and (5) communication, including speech, language and other functional communication systems. We note that communications are not considered an ADL in standard instruments such as the Barthel Index of Activities of Daily Living or the Index of Independence in Activities of Daily Living (Katz, 1963). However, we believe that the ability to communicate is a vital aspect of an individual's daily life and a resident's ability to do so should continue to be included in our provisions relating to ADLs. We also highlight the inclusion of oral hygiene in this section. In the elderly population, periodontal disease has been linked to a wide variety of systemic diseases, including diabetes, cardiovascular disease, arthritis, neurodegenerative diseases, respiratory diseases, and nutritional deficits. One study suggests that maintaining optimal oral health may do more to reduce healthcare expenditures in an elder's remaining lifespan than any other public health measure. According to a 2000 report by HHS, 23 percent of 65- to 74-year olds have severe periodontal disease. Nursing home residents in particular are recognized as receiving inadequate oral care. Even if a resident enters a nursing facility with good oral health, that oral health is likely to decline within 6 months. Thus, we emphasize here that if a resident is unable to brush and floss his or her teeth or otherwise maintain good oral hygiene, the facility must ensure that he or she receives the necessary care and services from qualified staff to maintain good oral hygiene.

In proposed § 483.25(c), we propose to relocate the current requirements related to an activities program as required in existing § 483.15(f). An ongoing individualized activities program that incorporates an individual's interests and hobbies can and should be integral to maintaining and improving a resident's physical, mental, and psychosocial well-being and his or her independence. Thus, we propose to revise the language to include a required consideration of the comprehensive assessment, care plan and the preferences of the resident as well as potential for independence and ability to interact with the community. This reflects our focus on person-centered care as well as our recognition of the development of support programs and community resources in some areas that may allow for resident involvement or reintegration into the community setting for some nursing home residents. We received stakeholder input on the requirements for the director of a facility activities program and considered, but did not modify the requirements for the director of the activities program. However, we are soliciting comments on the current requirements to determine if they remain appropriate and, if not, what the evidence is for changing the current requirements for this position and what stakeholders would recommend as minimum requirements for this position.

We propose a new § 483.25(d), ''Special Care Issues,'' which we revise, re-locate, and add requirements for specific special concerns, including restraints; bed rails; vision and hearing; skin integrity; mobility; incontinence; colostomy, ureterostomy, or ileostomy; assisted nutrition and hydration; parenteral fluids, accidents, respiratory care, prostheses, pain management, dialysis, and trauma-informed care. Each of these special concerns is related to an ADL but has a significant medical component or is an issue that could significantly impact a resident's ability to perform or engage in ADLs. For example, there are specific medical professional standards of practice that affect when and how tube-feedings are initiated and performed. At the same time, the resident's need for tube-feeding reflects the resident's significantly diminished ability to perform or participate in ADLs related to eating. Similarly, pain management is a medical issue, but can significantly alter a resident's ability to engage in an activities program of choice, perform transfers or ambulate, impairs quality of life and can contribute to depression. As many of the concerns in this section were previously included in § 483.25, we discuss here only the provisions we propose to add or modify.

Specifically, we propose to re-designate and revise § 483.13(a), ''Restraints,'' as § 483.25(d)(1). While we would prohibit the use of any physical or chemical restraint not required to treat the resident's medical symptoms in the introductory language to proposed § 483.12, in proposed § 483.25(d)(1), we would require that the facility ensure that residents are free from restraints that are imposed for purposes of discipline or convenience, in addition to ensuring that residents are free from restraints not required to treat the resident's medical symptoms. In addition, we would add new requirements to specify that, if used, restraints must be the least restrictive alternative for the least amount of time. Further, documentation of ongoing evaluation of the need for the restraints is required. As noted in our discussion above regarding the proposed requirement ''Freedom from Abuse, Neglect, and Exploitation'' (§ 483.12), there are very limited circumstances where restraints may be appropriate in a nursing facility. However, many facilities have achieved a rate of zero percent restraint use, and CMS continues to promote reduction in the use of physical restraints. We considered proposing requirements for the use of restraints and seclusion that parallel the more extensive requirements for restraint and seclusion currently set forth in the Conditions of Participation for Hospitals at § 483.13(e). However, given the progress towards zero restraint use under existing guidance and taking into consideration the different types of care provided in the two settings, we have chosen to pursue a less burdensome approach and codify existing guidance. In addition, we are proposing requirements for the use of psychotropic medications, including the use of PRN orders, at § 483.45(e), discussed below, to ensure that these medications are only used to treat specific conditions that are diagnosed and documented in the resident's clinical record. We welcome comments on our approach as well as suggestions for more extensive requirements.

We propose a new § 483.25(d)(2) to establish specific requirements when a facility uses bed rails on a resident's bed. Specifically, we propose to require that the facility ensure correct installation, use and maintenance of bed rails, including attempting to use alternatives prior to installing a side or bed rail, assessing the resident for risk of entrapment from bed rails prior to installation, reviewing the risks and benefits of bed rails with the resident and obtaining informed consent prior to installation, ensuring that the resident's size and weight are appropriate for the bed's dimensions, and following the manufacturers' recommendations and specifications for installing and maintaining bed rails. Bed rails can pose a significant safety risk to residents. Between January 1, 1985 and January 1, 2013, FDA received 901 incidents of patients caught, trapped, entangled, or strangled in hospital beds. The reports included 531 deaths, 151 nonfatal injuries, and 220 cases where staff needed to intervene to prevent injuries. Most patients were frail, elderly or confused. Additional information and resources regarding the use of bed rails

is available at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/GeneralHospitalDevicesandSupplies/HospitalBeds/default.htm*. We propose to revise existing language at § 483.25(c) and § 483.25(k)(7) and re-designate them under a new § 483.25(d)(4), ''Skin Integrity.'' Here, we propose to revise the language to include a statement that care must be consistent with professional standards of practice and to clarify that foot care includes care to prevent complications from the resident's medical conditions such as diabetes, peripheral vascular disease, or immobility, and also includes assistance in making and keeping necessary appointments with qualified healthcare providers such as podiatrists.

In § 483.25(d)(5), we propose to address mobility both range of motion and other limitations of mobility. We propose to retain, unchanged, the provisions related to range of motion, but to add a new provision to require that residents with limited mobility receive appropriate services and equipment to maintain or improve mobility unless reduced mobility is unavoidable based on the resident's clinical condition.

In § 483.25(d)(6), we propose to retain existing provisions on urinary incontinence, add a new § 483.25(d)(5)(B) to address residents who are admitted with an indwelling urinary catheter, and add a new § 483.25(d)(6)(iii) to require that residents with fecal incontinence receive the appropriate treatment and services to restore as much normal bowel function as possible. Fecal or bowel incontinence affects a substantial number of nursing home residents. Urinary and fecal incontinence affect 50 percent or more of nursing home residents and frequently occur together because immobility and dementia are primary risk factors for both conditions (John F Schnelle, Felix W Leung, Urinary and fecal incontinence in nursing homes, Gastroenterology, Volume 126, Supplement 1, January 2004, Pages S41–S47, ISSN 0016–5085, 10.1053/j.gastro.2003.10.017. (*http://www.sciencedirect.com/science/article/pii/S0016508503015658*)). In an older study, 20 percent of nursing home study participants developed fecal incontinence over a 10 month period (Chassagne P, Landrin I, Neveu C, et al. Fecal incontinence in the institutionalized elderly: incidence, risk factors, and prognosis. Am J Med 1999;106:185–90.), and a 1998 survey of 18,000 Wisconsin nursing home residents found a prevalence of up to 50 percent (Nelson RL, Furner S, Jesudason V. Fecal incontinence in Wisconsin nursing homes. Dis Colon Rectum 1998;41:1226–9). Fecal incontinence may be related to impaired skin integrity, including pressure ulcers, as well as depression and anxiety. We retain, unchanged, colostomy, ureterostomy, and ileostomy care in § 483.25(d)(7).

In § 483.25(d)(8), we propose to modify existing provisions on nasogastric tubes to reflect current clinical practice and to include enteral fluids. Other methods of providing assisted nutrition are now common practice. Therefore, we propose to include gastrostomy tubes with nasogastric tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy. We also propose to include in this paragraph requirements regarding both assisted nutrition and hydration and specify that the facility must ensure that the resident maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and protein levels, unless the resident's clinical condition demonstrates that this is not possible and that the resident receives sufficient fluid intake to maintain proper hydration and health. Additionally, we propose to modify the requirement for a therapeutic diet to require that the resident is offered a therapeutic diet when appropriate, recognizing that the resident has a right to choose to eat a therapeutic diet or not. Finally, we propose to specify that based on the comprehensive assessment of a resident, the facility must ensure that a resident who has been able to eat enough on his or her own or with assistance is not fed by enteral methods unless the resident's clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident; and a resident who is fed by enteral means receives the appropriate treatment and services to restore, if possible, oral eating skills and to prevent complications of enteral feeding. The American Geriatric Society (AGS), in their May 2013 position statement on feeding tubes in advanced dementia, states that institutions such as hospitals, nursing homes and other care settings should promote choice, endorse shared and informed decision-making, and honor patient preferences regarding tube feeding. The statement further notes that enteral feeding is not associated with better outcomes in older adults with advanced dementia, but is associated with agitation, increased use of restraints, and worsening pressure ulcers and is not recommended for older adults with advanced dementia and recommends careful hand-feeding. (*http://www.americangeriatrics.org/files/documents/feeding.tubes.advanced.dementia.pdf*). Our proposed requirements are consistent with the AGS position statement.

In § 483.25(d)(9), we propose to address only parenteral fluids. We would include enteral fluids in § 483.25(d)(8), our proposed provisions on assisted nutrition and hydration, as discussed above.

We propose to add a new § 483.25(d)(13) to ensure that residents receive necessary and appropriate pain management. Pain that impairs function affects 45 percent to 80 percent of nursing home residents, with half of those experiencing daily pain (Davis, M., & Srivastava, M. (2003). Demographics, assessment and management of pain in the elderly. Drugs & Aging, 20(1), 23–57). Also, Thomas Cavalieri noted that pain in the elderly is often unrecognized and undertreated. He further recognized that ineffective pain management can have a significant impact on the quality of life of older adults, including contributing to depression, isolation, and loss of function. (J Am Osteopath Assoc September 1, 2002 vol. 102 no. 9 481–485). Further, Cheryl Phillips, MD, speaking to the United State Senate Special Committee on Aging on behalf of the American Geriatrics Society, reported that pain is common among nursing home residents and is undertreated in an estimated 45 percent to 80 percent of residents with substantial pain. According to Dr. Phillips untreated pain is associated with multiple consequences, including poor oral intake and weight loss, inability to sleep, depression, loss of mobility and increased risk of falls, increased risk of pressure ulcers, depression, anxiety, decreased socialization, sleep disturbance, increased emergency room transfers and increased re-hospitalization rates (Testimony of Cheryl Phillips, MD before the Special Committee on Aging, United States Senate, March 24, 2010. *http://www.americangeriatrics.org/files/documents/Adv_Resources/AGS.Testimony.Senate.Aging.Pain.Management.in.Nursing.Homes.pdf*).

More recently, in 2011, the Institute of Medicine issued a comprehensive report on pain entitled ''Relieving Pain in America: A Blueprint for Transforming Prevention, Care, Education and Research'' (*http://www.iom.edu/Reports/2011/Relieving-Pain-in-America-A-Blueprint-for-Transforming-*

Prevention-Care-Education-Research.aspx). This report identifies pain as a national challenge, affecting more Americans than heart disease, diabetes, and cancer combined, and as a factor that significantly increases the cost of health care across all settings, including nursing facilities.

Clearly, adequate pain management is critical to the health, safety, and quality of life for nursing home residents. Therefore, we propose to explicitly include oversight of pain management as a special concern. We propose that the facility, based on the resident's comprehensive assessment and choices, must ensure that residents receive treatment and care for pain management in accordance with professional standards of practice.

We also propose to add a new § 483.25(d)(14) to ensure that residents who require dialysis receive those services in accordance with professional standards of practice and the residents choices.

We further propose to add a new § 483.25(d)(15) to ensure that trauma survivors, including Holocaust survivors, survivors of abuse, military veterans with post-traumatic stress disorder, and survivors of other trauma receive care that addresses the special needs of trauma survivors. Specifically, we propose to require that facilities ensure that residents who are trauma survivors receive care and treatment that is trauma-informed, takes into consideration the resident's experiences and preferences in order to avoid triggers that may cause re-traumatization, and meet professional standards of practice.

Finally, we propose to revise and relocate to § 483.45, ''Pharmacy services'', the provisions related to unnecessary drugs, antipsychotic drugs, medication errors, and influenza and pneumococcal immunizations. These provisions are further discussed below in our section on pharmacy services.

J. Physician Services (§ 483.30)

Under the reorganization discussed above, requirements regarding physician services currently located at § 483.40 would be moved to proposed § 483.30. We would retain the current requirements but propose a few additions as discussed below. In our review of the requirements for LTC facilities, we have considered what, if any, minimum health and safety standards are appropriate and necessary to ensure that residents of SNFs and NFs are not unnecessarily hospitalized. CMS has focused recently on reducing the number of avoidable hospitalizations of nursing home residents. We believe that many of our proposals will support this objective.

We propose to revise the introductory text of new § 483.30 to specify that, in addition to a physician's recommendation that the individual be admitted to a facility, a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist must provide orders for the resident's immediate care and needs. This is consistent with the current requirement at § 483.20(a) that the facility must have physician's orders for the resident's immediate care and ensure that each resident receives care for his or her specific needs until a comprehensive assessment and care planning can be completed.

We also propose to add a new § 483.30(e) to require that a facility, prior to an unscheduled transfer of a resident to a hospital, provide or arrange for an in-person evaluation of a resident, to be conducted expeditiously, by a physician, a physician assistant, nurse practitioner, or clinical nurse specialist prior to transferring the resident to a hospital, unless the transfer is emergent and obtaining the in-person evaluation would endanger the health or safety of the individual or unreasonably delay the transfer. This requirement, in concert with proposals to improve transitions of care, communications among and between practitioners, appropriate exchange of information, and quality assessment activities, will help ensure that the decision to transfer a resident to an acute care facility is made on the basis of a clinical assessment and the best evidence available. Physicians are already required under § 483.12(a)(3) to document in the medical record when a resident is discharged or transferred as a result of the facility's inability to meet the needs of the resident. However, an evaluation of a resident by a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist prior to a resident's transfer may identify options that could allow for the resident to be treated in place and avoid an unnecessary hospitalization. Additionally, in the event the resident needs to be transferred, the evaluation would provide valuable assessment information for the receiving facility.

At § 483.30(f)(2), we propose to provide the physician with the flexibility to delegate to a qualified dietitian or other clinically qualified nutrition professional the task of writing dietary orders, to the extent the dietitian or other clinically qualified nutrition professional is permitted to do so under state law. We believe this flexibility is beneficial to both the physician and the resident and is consistent with the training and experience of qualified dietitians and other clinically qualified nutrition professionals, as discussed below in section II. P. of this preamble, ''Food and Nutrition Services.''

Similarly, at § 483.30(f)(3), we propose to provide the physician with the flexibility to delegate to a qualified therapist under proposed § 483.65 below the task of writing therapy orders, to the extent that the therapist is permitted to do so under state law. We believe this flexibility is beneficial to both the physician and the resident, allowing the physician to determine how to best use his or her time and allowing the resident to have more frequent adjustments to therapy as his or her condition or abilities change. Furthermore, we believe this is consistent with the training and experience of qualified therapists acting in accordance with their state scope of practice acts. Moreover, we believe therapists already write therapy orders that are routinely endorsed by a physician without change.

K. Nursing Services (§ 483.35)

Under the proposed reorganization, requirements for nursing services currently located at § 483.30 would be located at proposed § 483.35. The current regulations at § 483.30 address certain aspects of nursing home staffing but leave gaps related to a number of areas such as the competencies of licensed nurses and the need to take into account resident acuity. Since the promulgation of the original regulations, state requirements and industry standards, as well as research, literature and related policy in other healthcare settings regarding nursing home staffing have all evolved. Issues such as nursing home administrator standards, minimum nurse staffing standards, requirements related to specialized personnel such as dietitians, pharmacists, therapists and practitioners with behavioral health and/or geriatric training/experience as well as utilization of nurse practitioners, clinical nurse specialists, and physician assistants have all been raised as concerns or options to address care and services provided in the LTC setting.

We are aware of long-standing interest in increasing the required hours of nurse staffing per day. We have heard suggestions that we impose a minimum number of hours per resident day or require a RN to be on site 24 hours a day 7 days a week. Existing regulations at § 483.30 mirror the statutory language at sections 1819(b)(4)(C)(i) and 1919(b)(4)(C)(i) of the Act requiring

(with certain exceptions) an RN providing services in a facility 8 consecutive hours a day, 7 days a week, licensed nurses 24 hours a day and ''sufficient staff'' to meet residents' needs. We may also waive the nurse staffing requirements in specific circumstances.

There is abundant research that associates increased RN staffing with improved quality of care. Rather than specify how many nurses must be on duty, most focus on the number of hours of nursing care a resident must receive to achieve certain quality objectives. A 2001 DHHS Report to Congress provides substantial information about potential minimum requirements, although it stops short of making a recommendation. A 2011 study by Zhao and Haley demonstrated that higher RN staffing hours per resident day was associated with significantly lower malpractice paid-losses and higher NA hours per resident day was found to be related to higher malpractice paid-losses. At least one study notes that the relationship is not necessarily linear—that is, it takes more resources to achieve a certain level of improvement, but beyond that the improvement slows. (Zhang, Unruh, Liu, and Wan, 2006. ''Minimum Nurse Staffing Ratios for Nursing Homes.''

CMS's own study reported that facilities with staffing levels below 4.1 hours per resident day (HRPD) for long stay residents may provide care that results in harm and jeopardy to residents (Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II Final Report, 2001, Abt Associates). A study by Schnelle and colleagues (2004) also supports a threshold level of 4.1 total nursing hours per resident day to ensure that the processes of nursing care are adequate (Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 2005–2010. Charlene Harrington, Ph.D.; Helen Carrillo, M.S.; Megan Dowdell, M.A.; Paul P. Tang, B.S.; Brandee Woleslagle Blank, M.A.). A staffing level of 4.1 hours per resident day is the most common number put forward as a minimum standard. However, the conclusions in the 2001 Abt Associates study previously cited were rejected by the then Secretary of HHS due to ''serious reservations about the reliability of staffing data at the nursing home level.'' Based on existing data, according to the Centers for Disease Control's National Center for Health Statistics National Study of Long-Term Care Providers (2013), the average hours of nursing care per resident per day for nursing homes is 3.83 (.52 RN, .85 LPN or LVN, and 2.46 Aide) plus an additional .08 hours of Social Worker time. This does not include therapist time, although virtually all nursing homes (99.3%) offer therapeutic services and therapeutic services are critical to helping residents 'attain or maintain the highest practicable physical, mental, and psychosocial well-being'—in order for a facility to achieve its statutory mandate that a nursing facility provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.'' (see sections 1819(b)(2) and1919(b)(2) of the Act). However, as a result of section 1128I of the Act, as added by the ACA, CMS is currently developing systems to collect staffing information that is auditable back to payroll data. Once implemented, this new system is expected to increase accuracy and timeliness of data. When this improved staffing data is collected at the nursing home level, more accurate and reliable estimates of the care hours provided by staff categories will be available, potentially leading to updated research and reconsideration of HPRD requirements and recommendations.

An alternative approach to mandating a specific number of hours per resident day is to mandate the presence of a registered nurse in a nursing home for more hours per day than is currently required, potentially 24 hours a day 7 days a week, subject to the statutory waiver. We note that a number of states already require this. Increased presence of RNs in nursing facilities would address several issues. First, greater RN presence has been associated in research literature with higher quality of care and fewer deficiencies. Second, it has been reported in the literature that LPNs or LVNs may find themselves practicing outside of their scope of practice because, at least in part, there are not enough RNs providing direct patient care. Increasing the number of hours a day that an LTC facility must have RNs in the nursing home would alleviate this issue. While imposing a mandate for more RNs raises concerns about the adequacy of the supply of registered nurses, a December 2014 HRSA report on the future of the nursing workforce suggests that growth in RN supply will actually outpace demand in the period between 2012 and 2025 (U.S. Department of Health and Human Services. ''The Future of the Nursing Workforce: National- and State-Level Projections, 2012–2025.'' Health Resources and Services Administration, Bureau of Health Workforce, National Center for Health Workforce Analysis. (December 2014)). The study notes that the national projections mask a distributional imbalance of RNs at the state level and that there is considerable variation in the geographic distribution of the growth in RN supply. Sixteen states are projected to have a shortage by 2025, particularly Arizona, Colorado, and North Carolina (*http://bhpr.hrsa.gov/healthworkforce/supplydemand/nursing/workforceprojections/nursingprojections.pdf*). In looking at the employment of registered nurses in nursing homes, the BLS reported in its May 2012 Occupational Employment Statistics (*http://www.bls.gov/oes/2012/may/oes291141.htm*) that 139,440 registered nurses were employed in nursing care facilities (skilled nursing facilities); in the May 2014 Occupational Employment Statistics (*http://www.bls.gov/oes/current/oes291141.htm*) that number has risen to 148,970. At the same time, the number of nursing homes has decreased somewhat from 15,844 based on FY 2012 to 15,691 in 2015, based on CASPER data.

Perhaps somewhat contrary to much of the discussion and literature, a 2011 review of the literature on nurse staffing and quality of care raises questions about the direct cause and effect relationship between the nursing workforce and quality of care. Specifically, the authors conclude that ''A focus on numbers of nurses fails to address the influence of other staffing factors (for example, turnover and agency staff use), training and experience of staff, and care organization and management.'' They note that the studies they reviewed presented 42 measures of quality and 52 ways of measuring staffing. They also note that it is ''difficult to offer conclusions and recommendations about nurse staffing based on the existing research evidence.'' (Spilsbury, Hewitt, Stirk and Bowman ''The relationship between nurse staffing and quality of care in nursing homes: a systematic review'' The International Journal of Nursing Studies 48(2011)732–750.) An October 2011 research article by John R. Bowblis concludes that minimum direct care staffing requirements for nursing homes ''change staffing levels and skill mix, improve certain aspects of quality, but can lead to use of care practices associated with lower quality'' (HSR: Health Services Research 46:5 (2011) 1945). In short, there is concern that a facility can have sufficient numbers of staff, but if those staff do not have the skills and competencies to do the

necessary work, quality will not improve.

While we believe that existing requirements for sufficient staff need further clarification, we do not believe that we have sufficient information at this time to require a specific number of staff or hours of nursing care per resident. Furthermore, we do not necessarily agree that imposing such a requirement is the best way to clarify what is ''sufficient'' to the exclusion of other factors that are important in improving the quality of care for each resident. The American Nurses Association (ANA), in its 2012 Principles for Nurse Staffing, describe appropriate nurse staffing as ''a match of registered nurse expertise with the needs of the recipient of nursing care services in the context of the practice setting and situation.'' The ANA further notes that ''staffing needs must be determined based on an analysis of healthcare consumer status (for example, degree of stability, intensity, and acuity), and the environment in which the care is provided. Other considerations to be included are: professional characteristics, skill set, and mix of the staff and previous staffing patterns that have been shown to improve outcomes. The International Council of Nurses (ICN) included similar considerations in its 2012 statement of principles of safe staffing levels (*http://www.icn.ch/images/stories/documents/pillars/sew/ICHRN/Policy_Statements/Policy_statement_Safe_staffing_levels.pdf*). The ICN policy statement includes as one of its key principles that ''safe staffing levels must reflect the skills, experience and knowledge required to meet patient care needs, taking acuity levels into account.'' A second key principle states that safe staffing ''involves a range of factors including (but not limited to) a sufficient number of staff available, an appropriate level and mix of skills, a manageable workload of both teams and individuals; . . .''. We agree. We believe that the focus should be on the skill sets and specific competencies of assigned staff to provide the nursing care a resident needs rather than a static number of staff or hours of nursing care that does not consider resident characteristics such as stability, intensity and acuity and staffing abilities including professional characteristics, skill sets and staff mix. We are concerned that establishing a specific number of staff or hours of nursing care could result in staffing to that number rather than to the needs of the resident population. A competency-based staffing approach would require the facility to evaluate its population and its resources in accordance with proposed § 483.70(e), including the number and acuity of the residents, the range of diagnoses and resident needs and the training, experience, and skill sets of staff, and base staffing plans and assignments on these assessments. This would include, but not be limited to, allocating the appropriate number of competent staff to a care situation. Based on evolving demographic shifts and staffing patterns, we believe a competency based approach will help to maintain flexibility in facility staffing and capability. Our intent is to require facilities to make thoughtful, informed staffing plans and decisions that are focused on meeting resident needs, including maintaining or improving resident function and quality of life. We maintain that such an approach is essential to person-centered care. We considered combining this approach with a minimum staffing requirement. Options included establishing minimum nurse hours per resident day, establishing minimum nurse to resident ratios, requiring that an RN be present in every facility either 24 hours a day or 16 hours a day, and requiring that an RN be on-call whenever an RN was not present in the facility. We also considered multiple combinations of these option and note that states have implemented a variety of these options. We welcome comment on all of these options. In particular, we are aware that the IOM has recommended in several reports that we require the presence of at least one RN within every facility at all times. We specifically invite comments on the costs of mandating a 24 hour RN presence. We also invite comment on the benefits of a mandatory 24 hour RN presence, including cost savings and improved resident outcomes, as well as any unintended consequences of implementing this requirement. We further welcome evidence of appropriate thresholds for minimum staffing requirements (for both nurses and direct care workers) and evidence of the actual cost of implementing recommended thresholds, including taking into account current staffing levels as well as projected savings from reduced hospitalizations and other adverse events.

As noted earlier, current regulations at § 483.30 mirror the statutory language at sections 1819(b)(4)(C)(i) and 1919(b)(4)(C)(i) of the Act, requiring (with certain exceptions) an RN providing services in a facility 8 consecutive hours a day, 7 days a week, licensed nurses 24 hours a day current regulations and requiring the facility to have ''sufficient'' nursing staff. This standard has been praised by some in that it provides facilities with flexibility to determine the level of staffing needed in order to meet the needs of each resident, based upon individual assessments and plans of care. However, the current standard has been criticized by others who have found it lacking sufficient clarity to indicate to facilities what level of staffing is sufficient to provide residents with even minimal standards of care and quality of life. In this proposed rule, we have proposed an approach of a facility assessment process, requiring facilities to determine adequate staffing based on this assessment, which includes but is not limited to the number of residents, resident acuity, range of diagnoses, and the content of care plans. (proposed §§ 483.35 and 483.70). We solicit comments on whether this proposed approach can reasonably be expected to enable facilities to determine and provide adequate levels of staffing to meet the needs of each resident.

We recognize that many States have developed minimum staffing levels of CNAs in their nursing facility licensure requirements. States have implemented a variety of methods to address staffing levels to best meet resident care and quality of life needs. Some States have implemented a CNA hours-per-resident-day model (some include part or all of the hours of licensed nurses into this calculation). For example, Washington, DC requires a minimum daily average of 4.1 hours of direct nursing care per resident per day (with opportunity to adjust the requirements above or below this level, as determined by the Director of Department of Health), an RN on site 24/7, plus additional nursing and medical staffing requirements. *http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Nursing_Facility_Regulations_Health_Care_Facilities_Improvement_2012.pdf.*

Some States have implemented a ratio of numbers of full-time equivalent CNAs per resident. For example, Maine requires no fewer than one direct care provider for every five residents during the day shift, one per ten in the evening, and one per fifteen in the night. Arkansas requires no less than one direct care provider for every six residents during the day shift, one per nine in the evening, and one per fourteen in the night, plus requirements for minimum numbers of licensed nurses per residents per shift. We solicit comments on whether CMS should consider adopting one of these or other approaches in determining adequate direct care staffing. We invite information regarding research on these

approaches which indicate an association of a particular approach or approaches and the quality of care and/or quality of life outcomes experienced by resident, as well as any efficiencies that might be realized through such approaches.

States have found that requirements for increased staffing levels resulted in improved resident care outcomes and decreased deficiencies. For example, after increasing its nurse staffing levels, Florida found ''evidence that quality of care has substantially improved in Florida nursing homes since the introduction of increased nurse staffing levels and other quality standards since 2001. Average deficiencies per facility have decreased. Importantly, the citations for the more serious deficiencies have decreased dramatically and remain lower than the national average. Measures of resident care outcomes have improved in 2007 after the new staffing standards of 2.9 hours per resident day were instituted.'' Hyer, K. et al, (2009) University of South Florida, Analyses on Outcomes of Increased Nurse Staffing Policies in Florida Nursing Homes: Staffing Levels, Quality and Costs (2002–2007); i. At this time, we have deferred deciding on any potential specific requirement pending evaluation of additional data that will be collected on payroll based staffing data.

We are proposing to revise the section to incorporate language to require that nursing service personnel have the competencies and skill sets necessary to provide nursing and related services to assure the safety of residents and help them to attain or maintain the highest practicable physical, mental, and psychosocial well-being. The facility would have to take into account its assessment of all residents as well as the skill-sets of individual staff when making staffing decisions. We also propose revisions to improve the logical order and readability of these regulatory provisions.

We propose to include in the introductory language of proposed § 483.35 ''Nursing Services'' the requirement that, in addition to having sufficient staff to provide nursing care to each resident in accordance with his or her care plan and individual needs, the facility ensure that staff have appropriate competencies and skill sets to assure resident safety. We would also require that the determination of what is sufficient staff as well as the determination of the necessary competencies and skill sets take into account the number, acuity and diagnoses of the facility's resident population.

We propose to clarify at § 483.35(a)(1)(ii) that nurse aides are included in the term ''other nursing personnel.'' Currently, a number of provisions regarding nurse aides are included in the regulatory provisions under § 483.75 Administration. Nurse aides provide much, if not most, of the direct care provided in nursing facilities and as a practical matter are managed within most organizations by the nursing services department in medical models of care delivery. We include nurse aides in proposed § 483.35 in recognition of this fact and to ensure clarity of our intent.

We propose to add § 483.35(a)(3) and (4) to specify that the facility ensure that licensed nurses have the competencies and skill sets necessary to care for residents' needs, as identified through resident assessments, and as described in each resident's individual plan of care. We further propose to specify that caring for a resident's needs would include but not be limited to assessing, evaluating, planning and implementing resident care plans and responding to each resident's needs. This continues our focus on ensuring that not only are there a sufficient number of staff in a facility, but also that staff have the necessary abilities, knowledge and competencies to be effective and efficient in carrying out the work necessary to meet the needs of each resident receiving care in the facility.

Consistent with our clarification that nurse aides are included in the term ''other nursing personnel,'' we propose to move most of the provisions relating to nurse aides previously located in § 483.75 to proposed § 483.35. Specifically, we propose to re-designate § 483.75(f) ''Proficiency of Nurse Aides'' as § 483.35(c). We propose to re-designate § 483.75(e) as § 483.35(d) and re-title the provision as ''Requirements for Facility hiring and use of nursing aides'' to reflect its contents more accurately. A proposed revision to the definition of a nurse aide is included in our proposed revisions to § 483.5 and is included in our earlier discussion of that section. The regulations at proposed § 483.35(d)(2) are re-designated from § 483.75(e) and address non-permanent employees Non-permanent caregivers are expected to meet competency, knowledge and skill requirements to the same extent as permanent personnel. These caregivers may have less familiarity than permanent staff with a facility's residents and processes. Therefore, this must be considered when using, orienting, and assigning non-permanent staff. We also propose to add the term ''minimum'' to § 483.35(c)(3) to clarify that this paragraph identifies the minimum requirements for hiring a nurse aide. Meeting this minimum standard does not automatically meet the competency requirement specified in § 483.35 that would be specific to the needs of each individual resident.

L. Behavioral Health Services (§ 483.40)

Currently, § 483.25 requires that each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. We propose to add a new section § 483.40 to address this requirement as it relates to behavioral health services.

Serious mental illness and cognitive and/or functional impairment are strong predictors of admission into a nursing home. Although estimates vary, the industry literature indicates that a large number of nursing home residents have a significant mental health disorder. In 2004, over 16 percent of nursing home residents received a primary diagnosis of a mental disorder upon admission (Jones, Figure 7). By the time residents were interviewed for the National Nursing Home Survey that percentage increased to almost 22 percent. The 1999 estimate was about 18 percent. In addition, nursing homes are caring for a significant number of patients with dementia and depression. By 2012, over 48 percent of nursing home residents had a diagnosis of Alzheimer's disease or another dementia and/or depression (Harris-Kojetin, p. 35, Figure 23).

In a 2003 report, the OIG concluded that not all residents of LTC facilities receive the behavioral health services they need. Additionally, there is evidence that there is not full compliance with the requirement to provide medically-related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident (''Psychosocial Services in Skilled Nursing Facilities,'' Department of Health and Human Services, Office of the Inspector General, OEI–02–01–00610, March 2003).

Given the prevalence of mental health disorders and other cognitive impairments and in order to achieve the LTC requirements' goal of the highest practicable mental and psychosocial well-being for each resident, it is critical that LTC facilities ensure that behavioral health issues are addressed. Therefore, we propose to add a new section § 483.40 to include requirements for both behavioral health services and for social workers. These provisions

work in conjunction with other provisions we propose, including those related to reducing the inappropriate use of psychotropic medications.

Currently, sections 1819(b)(7) and 1919(b)(7) of the Act require that a facility with more than 120 beds employ at least one social worker on a full-time basis or assure the provision of social services. However, all facilities are required to provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. Meeting one requirement does not negate the need to meet other requirements. In keeping with our competency focus, we propose to include in new § 483.40 requirements to ensure that there are sufficient direct care staff with the appropriate competencies and skills to provide the necessary care to residents with mental illness and cognitive impairment. The needed competencies and skill sets include knowledge and training, including non-pharmacologic interventions, necessary to provide the care for residents with mental illnesses and psychosocial disorders. Thus, LTC facilities would be required to have the staff, including social workers, necessary to provide the social services needed by their residents.

We propose, in § 483.40(a) to require that the facility have sufficient direct care staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at proposed § 483.70(e). Necessary competencies and skills include knowledge of and appropriate training and supervision for caring for residents with the mental illness and psychosocial or adjustment problems as well as residents with a history of trauma and/or post-traumatic stress disorder that have been identified in the facility assessment. Furthermore, staff must be trained in implementing non-pharmacological interventions. We propose to specify in new paragraph (b) that, based on the comprehensive assessment of a resident, the facility must ensure that a resident who displays or is diagnosed with mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem or to attain the highest practicable mental health and psychosocial well-being. In addition, we propose to specify that a resident whose assessment does not reveal or who does not have a diagnosis of a mental illness or psychosocial adjustment difficulty will not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that the pattern was unavoidable. Furthermore, if rehabilitative services such as physical therapy, speech-language pathology, occupational therapy, and rehabilitative services for mental illness and intellectual disability are required in the resident's comprehensive plan of care, the facility must provide the required services, including specialized rehabilitation services as required in § 483.45; or obtain the required services from an outside provider of specialized rehabilitative services in accordance with proposed § 483.75(g).

We encourage facilities to take advantage of the many tools and resources available to them for free or at low cost. Facilities may also contact CMS staff at *dnh_behavioralhealth@cms.hhs.gov*, to be put in touch with state coalition leads and state-level resources.

M. Pharmacy Services (§ 483.45)

Currently, the LTC requirements require that each resident's drug regimen be reviewed by a pharmacist at least once a month (§ 483.60(c)). Based on our experience with LTC facilities, some pharmacists review the medical chart for each resident when they perform the drug regimen review, and others simply review the medication administration record (MAR).

We believe that there are specific circumstances under which the pharmacist must at least periodically review the resident's medical record concurrently with the drug regimen review. Those circumstances include transitions in care, specifically when the resident is new to the facility or is returning or being transferred from another facility. We also believe it is critical when a resident is on a psychotropic or antimicrobial medication. In addition, we propose specific requirements related to the use of psychotropic drugs, § 483.45(e), and antibiotics, § 483.80(a)(2). We believe having the pharmacist review residents' medical charts when these medications are prescribed would not only assist the pharmacist in detecting irregularities related to these drugs but also enhance or contribute to the goal of ensuring that these medications are used only when medically appropriate for the resident. We also believe that the pharmacist's review could contribute to our proposed requirements for infection control and antibiotic stewardship. By reviewing the resident's medical chart, the pharmacist could review whether an infection or communicable disease has been documented in the chart, whether the antibiotic is usually prescribed for that condition, and whether it has been prescribed for the recommended length of time. To maximize the effectiveness of this review, we would recommend that the pharmacist be familiar with the facility's antibiotic use protocols and its system for monitoring antibiotic use. Thus, we propose that a pharmacist be required to review the resident's medical record coincident with the drug regimen review when—(1) the resident is new to the facility; (2) a prior resident returns or is transferred from a hospital or other facility; and (3) during each monthly drug regimen review when the resident has been prescribed or is taking a psychotropic drug, an antibiotic, or any drug the QAA Committee has requested be included in the pharmacist's monthly drug review. We are proposing the last criteria to give each facility's QAA Committee the ability to request that certain drugs receive more scrutiny during the monthly drug regiment review. For example, anticoagulants and antidiabetic medications have been identified as being related to adverse events related to medications in SNFs (Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries. Office of Evaluations and Inspections, Report OEI–06–11–00370. Office of Inspector General, Department of Health & Human Services. (2014)). Our proposal would give the facility's QAA Committee the ability to add specific drugs or drug categories that need additional scrutiny so that those residents on those drugs would have their medical record reviewed by a pharmacist as part of the monthly drug review. In addition, we encourage the QAA Committee to collaborate with the pharmacist to enhance the committee's understanding and oversight of the facility's pharmaceutical practices, especially concerning the use of psychotropic drugs and its antibiotic stewardship, as well as their QAPI activities.

The current LTC requirements at § 483.25(l)(2) also specifically identify antipsychotic drugs and provide specific safeguards for their use. Section 483.25(l)(2)(i) requires that residents who have not previously been prescribed antipsychotics not be given them unless the medication is necessary

to treat a specific condition as diagnosed and documented in the clinical record. Also, § 483.25(l)(2)(ii) requires that residents taking antipsychotics should receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue use of these drugs. In this proposed rule, we are moving this requirement to § 483.45(e).

Antipsychotics are a particular concern for residents. These drugs have serious side effects and can be especially dangerous for the elderly. Since the LTC requirements became effective in 1992, there has been a reduction in the number of antipsychotics prescribed to residents. However, we are concerned that as the use of antipsychotic drugs has decreased, the use of other psychotropic medications has increased. Therefore, we propose to expand the drugs to which proposed § 483.45(e) applies to include all psychotropic medications. In conducting our research into a definition for psychotropic medications, we discovered different definitions. We are proposing to use the definition used in the November 2001 OIG report, ''Psychotropic Drug Use in Nursing Homes'' (OEI–02–00–00490), which is that they are drugs that affect brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories: (1) Anti-psychotic, (2) anti-depressant, (3) anti-anxiety, (4) hypnotic, (5) opioid analgesic, and (6) any other drug that results in effects similar to the drugs listed above. We are proposing the last category, ''(6) any other drug that results in effects similar to the drugs listed above,'' to address other medications. We are also specifically soliciting comments on this definition and the types of drugs that should be included.

In addition, we are concerned about the PRN use of psychotropic medications. A PRN order is often used to titrate or adjust the dosage of a psychotropic medication until an appropriate therapeutic dose is determined for the resident. However, we have received reports that some residents remain on PRN orders for psychotropic medications for extended periods of time. Therefore, we are proposing that LTC facilities ensure that residents do not receive psychotropic drugs pursuant to a PRN order unless that medication is necessary to treat a diagnosed specific condition that is documented in the clinical record. In addition, every PRN order for a psychotropic drug is limited to 48 hours and cannot be continued beyond that time unless the resident's primary care provider, for example, his or her physician, documents the justification for this continuation in the resident's clinical record. We would also appreciate comments on the use of PRN orders for these medications and our proposal to limit PRN prescriptions for these drugs to 48 hours unless the resident's primary care provider provides a rationale for the continuation of the PRN order in the resident's clinical record.

The current LTC requirements also require the pharmacist conducting the monthly drug regimen review must report any irregularities to the attending physician and the director of nursing. The term ''irregularities'' is not defined in the regulation and no examples are given. We propose to define ''irregularities'' to include, but not be limited to, the use of any drug that meets the criteria set forth in proposed paragraph (d) for an unnecessary drug. In addition, we propose to require that the pharmacist performing the monthly drug regimen review must report any ''irregularities'' to the attending physician and the facility's medical director and the director of nursing, and that these reports must be acted upon (re-designated in proposed § 483.45(c)(4)). However, it does not indicate how the pharmacist is to notify these individuals or how to ascertain if the report was acted upon. Based on our experience with facilities, this reporting of irregularities has been communicated in different ways, including by simply making a note in the resident's medical chart that the drug will be continued as ordered. We are concerned that the pharmacist's report of irregularities may not be given the appropriate review and consideration that is merited. Therefore, we propose that the medical director be added to the individuals who should be notified of irregularities in residents' drug regimens. We also propose that the pharmacist create a written report that is dated, and contains, at a minimum, the resident's name, the relevant drug, and the irregularity the pharmacist noted. We are not proposing the manner in which this report is developed or transmitted because we want nursing homes to have the flexibility to comply with this proposed requirement in the most efficient manner considering their circumstances. For example, for many nursing homes, the facility may develop an electronic form that the pharmacist can fill out on-line as he or she is performing the reviews and pre-populating the emails to which the form is to be sent to include, at a minimum, the attending physician, medical director, and director of nursing. Other nursing homes may need to develop a paper form and ensure that copies are transmitted to the appropriate individuals. To ensure that the reported irregularities are acted upon, we are also proposing that the attending physician must document in the resident's medical record that the identified irregularity has been reviewed and what, if any, action has been taken to address it. If there is to be no change in the medication, the attending physician should document his or her rationale in the resident's medical record.

The current description of ''unnecessary drugs'' and the specific requirements for antipsychotic drugs are set forth in § 483.25(l)(1) and (2), respectively, under the ''Quality of Care'' condition of participation. Furthermore, the requirements for the facility to maintain a medication error rate of no greater than 5 percent and to keep residents free of any significant medication errors is set forth in current § 483.25(m). After reviewing the existing provisions, we believe that these requirements should be relocated from § 483.25 ''Quality of Care'' to proposed § 483.45 ''Pharmacy services.'' All of these requirements are concerned with medications and medication errors. Although medication errors and unnecessary drugs are clearly part of the quality of care that residents receive, we believe it is more appropriate and logical to relocate these requirements under the general section at proposed to § 483.45, ''Pharmacy Services.'' This relocation should make it easier for individuals to locate the requirements concerning medications since they will all be set forth in the pharmacy services section.

We want to emphasize that the proposed requirements concerning psychotropic medications are not intended to have a chilling effect or in any manner discourage the prescription or use of any medication intended for the benefit of a resident who has been diagnosed for a specific condition that requires these medications. Our proposed requirements are intended to protect nursing home residents from drugs that are not being prescribed for their benefit. Our proposed requirements for gradual drug reductions, if not clinically contraindicated, and for behavioral interventions are intended to reduce or, if possible, eliminate the need for these medications. Likewise, our proposed requirement for a 48 hour limitation on PRN orders for psychotropic medications is intended to safeguard the resident's health. We are concerned about reports that PRN orders for these

drugs may remain in effect for an extended time without being reviewed by the resident's physician or primary care provider. These proposed requirements are completely in alignment with the concepts and requirements of person-center care and the requirement that residents receive the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care (Proposed §§ 483.21 and 483.40). Therefore, we do not believe these proposed requirements should discourage the use of psychotropic medications when these drugs are required for the resident's benefit.

N. Laboratory, Radiology, and Other Diagnostic Services (§ 483.50)

Currently, § 483.75(j) sets forth requirements regarding laboratory services and § 483.75(k) sets forth requirements for radiology and other diagnostic services that a facility must provide or obtain to meet the needs of its residents. These regulations are currently located in § 483.75 ''Administration,'' which largely focuses on the manner in which a facility must operate to provide quality care to its residents. In an effort to improve the readability of our regulations and follow our proposed reorganization of subpart B, we propose to relocate and re-designate both § 483.75(j) and § 483.75(k) to a new proposed § 483.50 entitled, ''Laboratory, Radiology, and Other Diagnostic Services.'' This proposed new section would include all of the content from current § 483.75(j) and § 483.75(k) relocated to § 483.50(a) and § 483.50(b), respectively. We propose to retain the existing requirements with some revisions as discussed in detail below.

Current § 483.75(j)(a)(2)(i) and § 485.75(k)(2)(i), require that a facility must provide or obtain laboratory and radiology and other diagnostic services ''only when ordered by the attending physician.'' We propose to clarify these requirements by removing the phrase, ''the attending physician'' and replacing it with ''a physician, a physician assistant, nurse practitioner, or clinical nurse specialist.'' The revised requirements would be located at proposed § 483.50(a)(2)(i) and (b)(2)(i), respectively. Furthermore, we would allow for these orders only if the practitioners are acting in accordance with state law, including scope of practice laws and facility policy. We believe that this proposal reflects current practice models and recognizes the importance of non-physician practitioners in LTC facilities. These revisions would also increase access to care by avoiding possible delays in treatment of residents as well as eliminate burden to attending physicians by clarifying the services that non-physician practitioners can provide.

Additionally, current § 483.75(j)(2)(ii) and (k)(2)(ii) require that facilities ''promptly notify the attending physician of the findings'' once laboratory results have been obtained. We are sympathetic to stakeholder concerns regarding the potential for disruption that notification of attending physicians for nonemergency results or findings could cause. Therefore, we are proposing to allow increased flexibility under this requirement to provide that other practitioners have the ability to receive laboratory and radiology and other diagnostic results if these practitioners ordered the tests. Specifically, we propose to revise § 483.50(a)(2)(ii) to permit that the ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist to be notified of laboratory results. In addition, we propose in § 483.50(a)(2)(ii) to clarify that the laboratory must promptly notify the ordering professional if results fall outside of clinical reference or expected ''normal'' ranges, unless the orders for the test or the facility's policies and procedures require otherwise. While we want to ensure that the lab notifies the appropriate professional, we also want to reduce unnecessary notification of staff. We believe this revision would improve the notification process, therefore saving time and reducing burden, while still ensuring resident safety.

We received a comment from stakeholders requesting that we revise the regulations to explicitly state that laboratory and diagnostic services be provided or obtained from ''a certified or accredited company.'' Current § 483.75(j)(1)(i) (now re-designated in proposed § 483.50(a)(1)(i)), provides that laboratory services provided in a facility are subject to the requirements set forth in 42 CFR part 493 under the Clinical Laboratory Improvement Amendment (CLIA). Part 493 sets forth the conditions that all laboratories must meet to be certified to perform testing on human specimens. In addition, current § 483.75(k)(1)(i) specifies that if a facility provides its own diagnostic services, the services must meet the requirements set forth in § 482.26. Section 482.26 sets forth the conditions of participation that a hospital must meet to provide diagnostic radiologic services including staff qualifications. Similarly, current § 483.75(k)(ii) specifies that if the facility does not provide its own diagnostic services, it must have an agreement to obtain the services from a provider or supplier that is approved to provide the services under Medicare. We believe that the current requirements for laboratory and diagnostic services to be furnished by qualified laboratories and facilities are sufficient, and are proposing to retain it without change.

O. Dental Services (§ 483.55)

Under the proposed reorganization, requirements regarding dental services would remain at § 483.55. Section 1862(a)(12) of the Act states, in part, that Medicare will not cover dental services such as the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth. State plans vary in their coverage of dental services. However, both sections 1819(b)(4)(A)(vi) and 1919(b)(4)(A)(vi) of the Act include requirements related to the provision of dental services. We recognize that dental care supports the overall well-being of all facility residents. Currently, § 483.55 requires that facilities assist residents in obtaining appropriate dental services at the resident's expense for SNF residents and as covered under the state plan for NF residents.

We propose limited changes to update and clarify this section. First, we propose to add a new § 483.55(a)(3) to clarify that a facility may not charge a resident for the loss of or damage to dentures when the loss or damage is the responsibility of the facility. We considered, but are not specifying in this proposed rule, the circumstances under which a facility is responsible, believing that facilities already make this determination, but we do specify that the determination must be made pursuant to facility policy. We welcome comment on this issue. Second, we propose to re-designate existing § 483.55(a)(3) as § 483.55(a)(4) and revise § 483.55(a)(4) by adding the phrase ''or if requested'' to clarify that if a resident asks for assistance in scheduling a dental appointment, the facility would be required to provide the assistance. Third, we propose to modify the section by adding language at new § 483.55(a)(4)(ii) and § 483.55(a)(5) regarding transportation and referrals for dental services. We note that facilities could comply with these provisions by referring and transporting residents to a dental clinic or dental school rather than a dentist's office. We also understand that in some facilities, dental services are provided in the facility. In these instances, the facility

would be in compliance with these provisions by assisting resident access to the dental office within the facility. Finally, we propose to re-designate § 483.55(a)(4) as § 483.55(a)(5) and would require that referral for dental services occur in 3 business days or less from the time the loss or damage to dentures is identified unless the facility can provide documentation of extenuating circumstances that resulted in the delay. We believe that it is imperative that the loss or damage is addressed and corrected quickly to avoid adverse consequences such as weight loss. We propose to make the same changes at § 483.55(b)(2) and § 483.55(b)(3) to apply to nursing facilities and add a new § 483.55(b)(4) to require that facilities assist residents to apply for reimbursement of dental services as an incurred medical expense under the state plan as appropriate.

P. Food and Nutrition Services (§ 483.60)

Dietary standards for residents of LTC facilities are critical to both quality of care and quality of life. An August 2011 report by the Pioneer Network Food and Dining Clinical Standards Task Force notes research by Simmons and others (Simmons SF, Lim B & Schnelle JF. (2002). Accuracy of Minimum Data Set in identifying residents at risk for undernutrition: Oral intake and food complaints. Journal of the American Medical Directors' Association, 3(May/June):140-145) that 50 to 70 percent of residents leave 25 percent or more of their food uneaten at most meals and that documentation by facility staff on food consumption is inaccurate. A 2005 position paper by the American Dietetic Association suggests that malnutrition is one of the most serious problems in LTC and is associated with poor outcomes (*http://www.journals.elsevierhealth.com/periodicals/yjada/article/S0002-8223(05)01742-6/fulltext*). Malnutrition, protein-energy under nutrition (PEU), and dehydration can have a deleterious cascade effect on residents, resulting in a downward spiral of declining physical, mental and psychosocial well-being. An earlier (2000) report sponsored by the Commonwealth Fund stated that between 35 percent and 85 percent of nursing home residents are malnourished and between 3 percent and 50 percent are substandard in bodyweight (*http://www.commonwealthfund.org/~/media/Files/Publications/Fund%20Report/2000/Jul/Malnutrition%20and%20Dehydration%20in%20Nursing%20Homes%20%20Key%20Issues%20in%20Prevention%20and%20Treatment/burger_mal_386%20pdf.pdf*). Thus, in considering requirements for food and nutrition services in facilities, we seek to establish minimum health and safety standards that support the nutritional well-being of all nursing home residents while respecting each resident's right to make informed choices about his or her care, including decisions about diet. Given the diversity of nursing home residents, it may be challenging for facilities to meet every resident's individual preferences every time; however, we believe by incorporating a facility assessment, along with individual assessments, more can be done to ensure residents are offered meaningful choices in diets that are nutritionally adequate and satisfying to the individual. At the same time, we do not intend to require a facility to provide on an ongoing basis a diet that would be impractical or financially unreasonable. Therefore, we propose revisions described below consistent with our goals to provide flexibility for the facility while enhancing resident choice. We believe that this will lead to overall improvement in the nutritional status of nursing home residents.

It is not enough; however, to ensure that residents have choices in what they eat. Many nursing home residents have other barriers to eating, including dental issues, medical issues, medication-related issues, physical limitations and the need for proper positioning and assistance at mealtimes. With so many issues facing nursing home residents, adequate nutrition requires both an understanding of the facility's population as a whole and an interdisciplinary approach for each resident. This includes ensuring that sufficient staff are available and have the appropriate skill sets, competencies, and training to assess and plan an overall facility dietary program as well as assess and assist individual residents at meals and with snacks. Some individual residents may require assistance to get to a dining area or to sit up in a comfortable position conducive to eating. Other residents may require the correct application and set up of assistive devices or may need an individual to sit with them and actively assist them throughout the meal. Thus, our proposed revisions include person-centered requirements that are outcome focused and intended to ensure each resident is provided, in a dignified manner, the nutritional and dietary care and services needed to meet the statutory goal of attaining or maintaining his or her highest practicable mental, physical and psychosocial well-being. We propose to revise this section as follows:

We propose to re-designate existing § 483.35 ''Dietary Services'' as new proposed § 483.60 ''Food and Nutrition Services'' and revise the introductory language to include taking resident preferences into consideration. We propose to revise § 483.60(a) to require that the facility employ sufficient staff with the appropriate competencies and skills sets to carry out the functions of the food and nutrition service, taking into consideration resident assessments, individual plans of care and the number, acuity and diagnoses of the facility's resident population.

In proposed § 483.60(a)(1) we would retain the requirement that a facility employ a qualified dietitian on a full-time, part-time or consultant basis and update the requirements to be considered a qualified dietitian. The role of the dietitian is critical in the delivery of food and nutrition services. Dietitians are part of the interdisciplinary team and play a significant role, working with other clinicians, to treat wounds, weight-gain or -loss, protein malnutrition, dehydration, and nutrition-related chronic diseases such as diabetes, congestive heart failure and chronic obstructive pulmonary disease. The dietitian is the subject-matter expert for making person-centered recommendations to ensure the nutritional well-being of each resident. In addition to individual evaluations, the dietitian plays a vital role in developing the nursing home's overall menus. This means the dietitian must understand the general and individual needs of the population of the nursing home, encompassing not just minimum nutritional needs, but also diversity and cultural variety of the residents and work with the director of food service to craft menus to serve the facility population. Finally, the dietitian plays a role in managing and monitoring the dietary staff and food quality, including nutritional standards, food service standards, and infection control standards. In order to ensure the highest level of expertise to meet these requirements, we are proposing to require minimum qualifications for dietitians working in SNFs or NFs. We propose to require that a qualified dietitian must either be registered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics, or be recognized (licensed or certified) by the state in which the SNF or NF operates as a dietitian or clinically qualified nutrition professionals. Currently, five states (AZ, CA, CO, NJ, and VA) do not license or certify

dietitians. We note that the California State Personnel Board requires valid certificate of registration with the Commission on Dietetic Registration of the American Dietetic Association to qualify for state employment in various dietetic positions. We would allow for the retention of dietitians hired or contracted prior to the effective dates of the revised regulations, for a period of no longer than 5 years after the effective date of a finalized requirement. We propose to change the requirement for employment of a dietitian on a full-time, part-time or consultant basis to allow for employment of other clinically qualified nutrition professionals who are recognized (licensed or certified) by the state in which the SNF or NF operates. Retaining the option to employ a dietitian or other clinically qualified nutrition professional less than full-time would allow flexibility for small facilities and alternative care delivery models. We note that regardless of how the facility chooses to obtain the services of a dietitian or other clinically qualified nutrition professional, the facility must ensure it achieves the required outcomes for food and nutrition services, both in terms of providing a nourishing, palatable, balanced diet and in terms of ensuring that each resident is provided the necessary services, both assessment and care delivery, to achieve his or her highest practicable physical, mental, and psychosocial well-being.

In re-designated § 483.60(a)(2), we propose to continue to require that, if a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services who receives frequently scheduled consultation from a qualified dietitian. We do not currently establish any standards for a director of food and nutrition services. However, we believe that this position is responsible for critical aspects of food and nutrition services and we believe this individual should have specialized training to manage menus, food purchasing, and food preparation; to be able to apply nutrition principles, document nutrition information, ensure food safety and sanitary procedures, and to manage staff and work teams. We propose to require that the director of food and nutrition services, if hired or designated after the effective date of these regulations, must be a certified dietary manager or certified food service manager as evidenced by meeting national certification standards for a certified dietary manager such as those by the Association of Nutrition and Foodservice Professionals (ANFP), or for a certified food manager such as those by the International Food Service Executives Association or the Food Management Professional certification through the National Restaurant Association. If already serving as a director of food and nutrition service on the effective date without one of these certifications, the individual must obtain a certification no later than 5 years after the effective date of the rule. Alternatively, the director of food and nutrition services may also meet the proposed requirement through specialized education or training in food service management and safety resulting in an associate's or higher degree in hospitality or food service management. Finally, the director of food and nutrition services would meet our proposed requirement if he or she meets applicable state requirements to be a food service manager or dietary manager. We do not suggest that a the director of food and nutrition services replaces the specialized expertise of qualified dietitians or other clinically qualified nutrition professionals; however, with their expertise in managing dietary operations in a facility, they may provide needed expertise and assistance in combination with a qualified dietitian or other clinically qualified nutrition professional to achieve the necessary quality of food and nutrition services for residents.

In new § 483.60(a)(4), we propose to require that the facility provide sufficient support personnel with the appropriate competencies and skills sets to carry out the functions of the food and nutrition service, taking into consideration resident assessments, individual plans of care and a facility assessment that includes the number, acuity and diagnoses of the facility's resident population. The current regulations require that the facility employ sufficient support personnel to carry out the functions of the dietary service. Our proposed revisions would clarify that those support personnel must have the requisite skill sets that take into account an assessment of the facility and considering the individual needs of residents. We believe that most facilities already meet this requirement; however, because nutrition and dining safety are critical to the well-being of residents, we think it is important to be more explicit in our expectations. In particular, we think it is imperative that facilities consider not just the number of residents when making staffing decisions, but the acuity and diagnoses of residents in order to provide effective and appropriate food and nutrition services. SNF and NF residents have become sicker and more complex over time and this must be factored into staffing decisions, both in terms of how many staff are present and the skill sets and competencies the staff need to have.

We propose a new § 483.60(b) to specify that a member of food and nutrition services also participate in the IDT. The registered dietitian or other clinically qualified nutrition professional is a critical member of the IDT; however, in some cases another member of food and nutrition services with the appropriate skill sets and competencies may be an acceptable alternative. Nutrition is an integral aspect of a resident's well-being, thus it is critical an individual knowledgeable about the facility capabilities as well as the resident's needs and preferences participate in the interdisciplinary team in order to ensure that resident can achieve or maintain his or her maximum practicable well-being.

In proposed § 483.60(c)(1), we would change ''Recommended Dietary Allowances'' to ''established national guidelines or industry standards.'' For example, United States Department of Agriculture provides an online, interactive tool for healthcare professions to calculate daily nutrient recommendations for dietary planning based on the Dietary Reference Intakes (DRIs) at *http://fnic.nal.usda.gov/fnic/interactiveDRI/.* The DRIs are the Food and Nutrition Board of the Institute of Medicine's update to the Recommended Dietary Allowances, developed in partnership with Health Canada. Since 1998, the Institute of Medicine has issued a series of DRIs that offer quantitative estimates of nutrient intakes to be used for planning and assessing diets applicable to healthy individuals in the United States and Canada. Additional information on the DRIs, including access to 14 nutrient specific reports and several summary charts, are available in the USDA Food and Nutrition Information Center at *http://fnic.nal.usda.gov/.* We also propose to add a new § 483.60(c)(4) to require that menus reflect the religious, cultural, and ethnic needs of the residents, as well as input received from residents or resident groups. While we do not require that every resident be afforded every possible choice at any time, we are cognizant of the importance of appropriate choice availability. Utilizing information from a facility assessment and from residents and resident groups should assist in ensuring that appropriate options are

available to residents under most circumstances.

In proposed § 483.60(d), we propose minor revisions to incorporate the addition of drinks, to clarify that ''proper'' means both safe and appetizing, to include consideration of allergies, intolerances, and preferences in preparing food, and to ensure that water and other dietary liquids are available to residents and provided, consistent with resident needs and preferences. We believe it is critical to specifically include dietary fluids in our regulations pertaining to food and nutrition services. Hydration is a critical aspect of nutrition and elderly people who do not receive adequate fluids are more susceptible to urinary tract infections, pneumonia, decubitus ulcers, and confusion and disorientation. Chidester, J.C., and Spangler, A.A., ''Fluid Intake in the Institutionalized Elderly,'' *Journal of the American Dietetic Association* 97 (1997):23–30. Orthostasis, confusion and disorientation, function decline, recurrent falls, pressure sores, urinary tract infections, pneumonia, and skin infections are all common conditions associated with inadequate fluid intake in frail, elderly long-term care residents. Feinsod, F., Levenson, S., Rapp, K., Rapp, M., Beechinor, E., & Liebmann, L. (2004). ''Dehydration in frail, older residents in long-term care facilities.'' *Journal of The American Medical Directors Association,* 5(2 Suppl), S35–S41. Available from: MEDLINE with Full Text, Ipswich, MA. A 1999 study by Gaspar revealed that only 8 of 99 nursing home residents observed met their standard water requirement based on two 24 hour observation periods. (Gasper, P.M. ''Water Intake of Nursing Home Residents.'' Journal of Gerontologic Nursing. 1999;25(4):22–29.)

In new § 483.60(e) ''Therapeutic diets,'' we propose to retain the requirement in current § 483.35(e) that therapeutic diets be prescribed by the attending physician. However, we propose to add a new § 483.60(e)(2) to allow the attending physician to delegate to a qualified dietitian or other clinically qualified nutrition professional the task of prescribing a resident's diet, including a therapeutic diet, to the extent allowed by state law. While the statute requires physician supervision of each resident's nursing home care, we believe that the physician can delegate authority to a dietitian or other clinically qualified nutrition professional to write dietary orders, so long as the authority is consistent with dietitian or other clinically qualified nutrition professional practice allowed under state law. In this instance, the physician is responsible for making the decision of whether or not to delegate this task and remains responsible for the resident's care even if the task is delegated. Further, if necessary, the physician would be able to modify a diet order with a subsequent physician order. We believe this is consistent with other tasks that the physician may delegate and may allow for more efficient use of physician time and effort and more frequent assessment and updating of diet orders by an on-site dietitian or other clinically qualified nutrition professional. We believe qualified dietitians and other clinically qualified nutrition professional are well qualified to assess a resident's nutritional status and design and implement a nutritional treatment plan in consultation with the resident's interdisciplinary team. In order for residents to receive timely nutritional care, the qualified dietitian or other clinically qualified nutrition professional must be viewed as an integral member of the IDT who, as the team's clinical nutrition expert, is responsible for a resident's nutritional evaluation and treatment in light of the resident's medical diagnosis. Without allowing for the delegation for writing diet orders to qualified dietitians or other clinically qualified nutrition professionals, nursing homes will not be able to effectively realize the improved resident outcomes and overall cost savings that we believe would be possible with these changes. However, we note that because a few states elect not to use the regulatory term ''registered'' and choose instead to use the term ''licensed'' (or use no modifying term at all), we are proposing to use the term ''qualified dietitian.'' Our intention is to include all qualified dietitians, regardless of the modifying term (or lack thereof), as long as each qualified dietitian meets the requirements of his or her respective state laws. We also recognize that there are other nutrition professionals who are equally qualified to provide required services and we are expressly including these or other clinically qualified nutrition professionals to the extent they are authorized under state law.

We propose to modify § 483.35(f) in re-designated § 483.60(f) regarding frequency of meals. Specifically, we propose to modify the requirement that facilities provide and residents receive 3 meals per day at regular times by adding language to clarify that meals should be served at times in accordance with resident needs, preferences, requests and the plan of care. We further propose to eliminate the requirement that there be no more than 14 hours between a substantial evening meal and breakfast the following day, except when a substantial bedtime snack is provided, and focus instead on when residents prefer to eat and on ensuring that meal service is provided to meet residents' clinical and nutritional needs. Rather, we propose to require instead that the facility provide suitable, nourishing alternative meals and snacks for each resident who want to eat at non-traditional times or outside of the facility's scheduled meal service times, in accordance with their respective plan of care. By suitable, nourishing alternative meals, we mean that when a resident misses a meal or snack, an alternative of comparable nutritive value to the missed meal or snack should be provided. We do not intend to require a 24-hour-a-day full service food operation or an on-site chef. Suitable alternatives may be meals prepared in advance that can be appropriately served by appropriately trained facility staff at non-traditional times. For example, staff may be trained to safely re-heat soup and serve a sandwich as a reasonable alternative for a resident who prefers to eat a late supper, so long as it meets the resident's nutritional needs, takes into consideration the resident's preferences, and is prepared using safe food handling techniques.

We propose to re-designate existing § 483.35(g) as new § 483.60(g) and revise it to require that the facility provide not only adaptive eating equipment and utensils for residents who need these devices but also provide the appropriate staff assistance to ensure that these residents can use the assistive devices when consuming meals and snacks.

We propose to re-designate existing § 483.35(h) as new § 483.60(h) and retain, with some revisions, provisions for paid feeding assistants, as set out in the 2003 final rule (68 FR 55528). We believe the use of paid feeding assistants provides a valuable flexibility to nursing facilities and can serve to ensure that residents requiring dining assistance are able to receive it. In § 483.60(h)(2)(ii), we propose to eliminate the reference to the resident call system. Section 483.35(h)(2)(ii) currently requires that, in an emergency, a paid feeding assistant must call a supervisory nurse for help ''on the resident call system.'' Paid feeding assistants should be able to call for assistance in whatever manner is most efficient rather than be limited to a specific call system. We focus on the outcome of getting assistance rather than on the mechanism used to request it. We also propose to have the IDT

make the determination if a resident is appropriate for assistance by a paid feeding assistant which would be separate from a charge nurse's ability and responsibility to make work assignments on a more immediate basis reflecting the current situation.

In proposed § 483.60(i), we clarify in new § 483.60(i)(1)(i) that facilities may procure food directly from local producers—farmers or growers, in accordance with state and local laws or regulations. We further propose to clarify in new § 483.60(i)(1)(ii) that this provision does not prohibit or prevent facilities from using produce grown in facility gardens, subject to compliance with applicable safe growing and handling practices, such as using pesticides in accordance with manufacturers' instructions. We note that facilities are required under proposed § 483.70(b) and (c) to be in compliance with applicable federal, state and local laws, regulations and codes and professional standards as well as other HHS regulations. We believe this includes food service requirements applicable to facilities and note that most states and territories have adopted some version of the FDA model food code (*http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FederalStateCooperativePrograms/ucm108156.htm*). We expect that facilities comply with these requirements as required by state law. Consistent with § 483.70(b), we propose to specify in § 483.60(i)(2) that facilities would be required to store, prepare, distribute, and serve food in accordance with professional standards for food service safety. We considered requiring a Hazard Analysis and Critical Control Points (HACCP) program in facilities; however, we are concerned about the application of this requirement in innovative and small health care delivery models. We understand this may be a requirement under some state or local laws and solicit comment on whether or not a HACCP program should be required in all SNFs and NFs. We propose to add a new § 483.60(i)(3) to require a facility to have a policy in place regarding use and storage of foods brought to residents by visitors to ensure safe and sanitary handling. A resident has the right to make choices, including the right to decide whether or not to accept food from family, friends, or other visitors and guests. However, the facility has a responsibility to help family, visitors, and residents understand safe food handling practices. If facility staff is assisting with reheating or other preparation activities for food brought by visitors, the facility staff must use safe food handling practices and encourage visitors and residents who are contributing to food preparation to also use these safe practices. We believe having a policy in place to address use and storage of foods brought to residents will help ensure consistent application of safe and sanitary food handling practices by staff when these foods are present in the facility.

Q. Specialized Rehabilitative Services (§ 483.65)

Current regulations at § 483.45 set forth the services that a facility must provide if a resident needs specialized rehabilitative services including, but not limited to, physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness. Following our proposed reorganization of part 483 subpart B, we propose to relocate these existing provisions to proposed § 483.65 with minor revisions. Consistent with specialized rehabilitative services, the need for respiratory therapy and respiratory illnesses are very common among older adults; however, the current regulations do not discuss respiratory therapy. According to data collected by the Centers for Disease Control and Prevention (CDC), 6.7 percent of nursing home residents have some form of disease of the respiratory system at the time of their admission into a nursing home (The National Nursing Home Survey. 2004 overview: National Center for health Statistics [on-line]. *http://www.cdc.gov/nchs/about/major/nnhsd/nnhsd.htm.* Accessed January 10, 2013). In addition to the occurrence of respiratory illnesses at admission, outbreaks of respiratory tract infections are also common in LTC facilities among older adults. In LTC facilities, rates of pneumonia as high as 42 percent and case-fatality rates exceeding 70 percent have been reported in outbreaks due to the influenza virus (Loeb M, McGeer A, McArthur, Peeling R, Petric M, Simor A. Surveillance for outbreaks of respiratory tract infections in nursing homes (cover story). CMAJ: Canadian Medical Association Journal [serial online]. April 18, 2000;162(8):1133–1137. Available from: Health Policy Reference Center, Ipswich, MA. Accessed January 23, 2013).

Given these statistics and our prior knowledge about the need for respiratory related treatment and therapy in facilities, we propose at re-designated § 483.65(a) to specifically add respiratory therapy to the list of specialized rehabilitative services. Adding this service to the regulations would reflect the more current needs of facility residents. The addition of this service would also explicitly require facilities to provide or obtain these services when necessary and meet the needs of residents facing respiratory issues. However, this would not change coverage policy regarding respiratory therapy. At § 483.65(a)(2), we propose to clarify that when it is necessary for facilities to obtain these services from an outside source, the provider should be a certified Medicare and/or Medicaid provider.

Secondly, we propose to clarify the meaning of specialized rehabilitative services in relation to PASARR. Current requirements do not clarify what specialized rehabilitative services for mental illness are and this has led to confusion among providers, states, and others. Therefore, to eliminate confusion and provide clarification, we propose to add in § 483.65 a cross reference to the PASARR regulations at § 483.120(c) which define the mental health or intellectual disability services a nursing facility must provide to all residents who need these services. In addition, we would correct a typographical error deleting the redundant ''mental health'' before ''rehabilitative services for mental illness and intellectual disability''.

R. Outpatient Rehabilitative Services (§ 483.67)

We propose to add a new § 483.67 ''Outpatient Rehabilitative Services'' to address facilities that choose to provide outpatient rehabilitative therapy services to individuals that do not reside in the facility. Currently, the provision of outpatient rehabilitative services for non-residents is not addressed by the requirements for LTC care facilities. We note that § 483.65 ''Specialized Rehabilitative Services'' sets forth the requirements that a facility must meet when providing rehabilitative therapy services to residents who reside in their facility. We understand that some, and possible many, facilities provide rehabilitative services on an outpatient basis and that these services may be paid for under Medicare Part B (see section 1861(p) of the Act, implementing regulations at 42 CFR 410.60(b), and the Medicare Benefit Policy Manual, Pub. 100–02, Chapter 15, § 220.1.4.) Therefore, we believe it is necessary to ensure that services meet health and safety standards. We propose to require facilities that provide outpatient rehabilitative therapy services to meet requirements similar to those already established for hospitals. Specifically, we propose to require in

new § 483.67 that if the facility provides outpatient rehabilitation, physical therapy, occupational therapy, audiology, or speech-language pathology services, the services must meet the needs of the patients in accordance with acceptable standards of practice and the facility must meet certain requirements. The requirements include at proposed § 483.67(a) that the organization of the service must be appropriate to the scope of the services offered. In proposed § 483.67(b), we are proposing to require that the facility assign one or more individuals to be responsible for outpatient rehabilitative services and that the individual responsible for the outpatient rehabilitative services must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services. We also propose to require that the facility must have appropriate professional and nonprofessional personnel available at each location where outpatient services are offered. In addition, we propose to require that physical therapy, occupational therapy, speech-language pathology or audiology services, if provided, must be provided by qualified physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, speech-language pathologists, or audiologists as defined in part 484 of this chapter. In proposed § 483.68(c) we would require that services must only be provided under the orders of a qualified and licensed practitioner who is responsible for the care of the patient, acting within his or her scope of practice under state law and that all rehabilitation services orders and progress notes must be documented in the patient's clinical record in accordance with the requirements at § 483.70(i). Finally, we propose to require that the provision of care and the personnel qualifications must be in accordance with national acceptable standards of practice. We believe the addition of these provisions is necessary to ensure that outpatient rehabilitative services provided by facilities meet health and safety standards.

S. Administration (§ 483.70)

We propose to re-designate current § 483.75 ''Administration'' as § 483.70. In paragraph (c), we propose to replace the term ''handicap'' with the term ''disability''and to add a reference to the HIPAA Privacy, Security, and Breach Notification Rules, 45 CFR parts 160 and 164. In addition, we would clarify that violations of other HHS regulations, as determined by the agency or entity with enforcement authority for those regulations, may result in a finding by CMS of non-compliance with the requirements of § 483.70(c). In proposed § 483.70(d)(2)(i) we would delete the phrase ''where licensing is required'' since all states participating in the Medicaid program are required to license nursing home administrators under section 1908 of the Act. We propose to add a new § 483.70(d)(2)(iii) to specify that the nursing home administrator would report to and be accountable to the governing body. We are concerned that the governing body can appoint the nursing home administrator but is not, on an ongoing basis, required to remain cognizant of the operations and management of the facility. Given that the governing body is responsible for implementing the management and operations of the facility, we believe it is important to ensure that it remains informed and knowledgeable regarding those issues. We also propose to add a new § 483.70(d)(3) to specify that the governing body is responsible and accountable for the QAPI program, in accordance with proposed § 483.75(f). We propose to re-designate and revise existing § 483.75(e) and (f), provisions regarding nurse aides, to our proposed section on Nursing Services at § 483.35 or our proposed new section on Training at § 483.95. We refer readers to see the separate discussions under those sections.

We propose to create new section § 483.50 ''Laboratory, radiology, and other diagnostic services'' and relocate and revise existing paragraphs, § 483.75(j) laboratory services and § 483.75(k) radiology and other diagnostic services, to the new section. Please see our separate discussions of the new section.

We are proposing a new § 483.70(e) which would establish a new requirement for an annual facility assessment. This new requirement would be a central feature of our revisions to subpart B and is intended to be used by the facility for multiple purposes, including but not limited to activities such as determining staffing requirements, establishing a QAPI program, and conducting emergency preparedness planning. This is similar to existing common business practices for strategic planning and capital budget planning and we believe that facilities will find this assessment useful beyond what is required to meet our requirements. This facility-wide assessment would determine what resources a facility would need to care for its residents competently during both day-to-day operations and emergencies. This assessment would have to be facility and community-based, utilizing an all-hazards approach. The facility would have to review and update the assessment as necessary, but at least annually and whenever there was, or the facility planned for, any change that would require a substantial modification to any part of the assessment. We propose to require that the facility assessment address or include:

- The facility's resident population, including the number of residents, the facility's resident capacity, the care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity that are present within that population.
- The staff competencies that are necessary to provide the level and types of care needed for the resident population.
- The physical environment, equipment, and services that are necessary to care for this population.
- Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.
- The facility's resources, including but not limited to buildings and other physical structures and vehicles; medical and non-medical equipment.
- The services provided, such as physical therapy, pharmacy, and specific rehabilitation therapies.
- Personnel, including managers, employed and contracted staff, and volunteers, as well as their education and/or training and any competencies related to resident care.
- Contracts, memorandums of understanding, or other agreements with third parties to provide services or equipment to the facility both during normal operations and emergencies.
- Health information technology resources, such as systems for electronically managing patient medical records and electronically sharing information with other organizations.

In conducting the facility assessment, we did not propose that the facility include any input from either the resident or any other individuals who have a personal interest in the resident. We believe the facility should have the flexibility to determine when and from whom a facility would seek input and how to incorporate that information into their assessment. However, we encourage facilities to determine when it would be appropriate to seek input from the resident, the resident's representative or any of the resident's family or friends and consider that

information in formulating their assessment.

We propose to retain the provisions in existing § 483.75(g), (h) and (i) unchanged and re-designate them as proposed § 483.70 (f), (g), and (h). We propose to re-designate existing § 483.75(l) as proposed § 483.70(i) and to amend it to better conform to the requirements of the HIPAA Privacy, Security, and Breach Notification rules at 45 CFR parts 160 and 164. We also propose minor revisions in it to clarify that the clinical record must contain the resident's comprehensive plan of care and physician's and other licensed professional's progress notes. It is important that the clinical record reflect the services provided across disciplines to ensure information is readily available when needed and to facilitate communication among the interdisciplinary team. Existing paragraph (m) would be removed and revised pursuant to a separate proposed rule, ''Medicare and Medicaid Programs: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers'' (78 FR 79081, December 27, 2013).

In proposed § 483.70(j), ''Transfer Agreement, ''we propose to modify the current language at § 483.75(n) to allow a practitioner other than the attending physician to determine that a hospital transfer is medically appropriate in an emergency situation and consistent with state law and facility policy. We believe this is both appropriate and necessary to promote prompt treatment and protect resident safety. We further propose to specify here that the information exchange required by existing paragraph § 483.75(n)(ii) be modified to require that the exchanged information include, at a minimum, the information we propose to require under new paragraph § 483.15(b)(2)(iii)(B). As discussed earlier, the effective exchange of information can reduce the risk inherent to transitions of care and promote improved resident outcomes.

We propose to incorporate existing § 483.75(o), assessment and quality assurance, into proposed § 483.75(c). New § 483.75 will also include requirements established under section 6102 of the Affordable Care Act for a QAPI program. We refer readers to the separate discussion on QAPI, in Section II.S. of this proposed rule.

Provisions on Disclosure of Ownership, Facility Closure-Administrator, Facility Closure, and Hospice services are re-designated as paragraphs § 483.75(k), (l), (m), and (o) respectively, and the cross-reference in proposed (m) updated, but otherwise unchanged. We propose to address training of paid feeding assistants in our proposed new § 483.95—Training requirements.

We propose in § 483.70(n) to require facilities that ask residents to accept binding arbitration to resolve disputes between the facility and the resident to meet certain criteria. Alternative dispute resolution (ADR), including binding arbitration, has become increasingly popular in recent years. However, unlike other forms of ADR, binding arbitration requires that both parties waive the right to any type of judicial review or relief. While this can be a valid agreement when entered into by individuals with equal bargaining power, we are concerned that the facilities' superior bargaining power could result in a resident feeling coerced into signing the agreement. Also, if the agreement is not explained to the resident, he or she may be waiving an important right, the right to judicial relief, without fully understanding what he or she is waiving. Also, the increasing prevalence of these agreements could be detrimental to residents' health and safety and may create barriers for surveyors and other responsible parties to obtain information related to serious quality of care issues. This results not only from the residents' waiver of judicial review, but also from the possible inclusion of confidentiality clauses that prohibit the resident and others from discussing any incidents with individuals outside the facility, such as surveyors and representatives of the Office of the State Long-Term Care Ombudsman.

We propose that the facility be required to explain the agreement to the resident in a form, manner and language that he or she understands and have the resident acknowledge that he or she understands the agreement. The agreement must not contain any language that prohibits or discourages the resident or any other person from communicating with federal, state, or local officials, including, but not limited to, federal and state surveyors, other federal or state health department employees, or representatives of the Office of the State Long-Term Care Ombudsman, regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action, in accordance with proposed § 483.11(i). The explanation must state, at a minimum, that the resident is waiving his or her right to judicial relief for any potential cause of action covered by the agreement. The agreement must be entered into by the resident voluntarily and provide for the selection of a neutral arbitrator and a venue convenient to both parties, the resident and the facility. An agreement will not be considered to have been entered into voluntarily by the resident if the facility makes it a condition of admission, readmission, or the continuation of his or her residence at the facility. Thus, we believe that any agreement for binding arbitration should not be contained within any other agreement or paperwork addressing any other issues. It should be a separate agreement in which the resident must make an affirmative choice to either accept or reject binding arbitration for disputes between the resident and the facility. Finally, in order to address concerns about conflict of interest when the resident has a guardian that is affiliated with the facility, we propose to specify that the guardians or representatives cannot consent to an agreement for binding arbitration on the resident's behalf unless that individual is allowed to do so under state law, all of the other requirements in this section is met, and the individual has no interest in the facility. We are also aware that there are concerns that these agreements should be prohibited in the case of nursing home residents. Therefore, we are also soliciting comments on whether binding arbitration agreements should be prohibited.

We propose to relocate the requirement for and qualifications of a social worker from the current § 483.15(g)(3) to proposed § 483.70(p). In addition, there is a list of human services fields from which a bachelors degree could provide the minimum educational requirement for a social worker. We propose to add ''gerontology'' to that list of human services fields. We would also welcome comments related to qualifications for the social worker, especially whether state licensure should remain the threshold requirement or if additional requirements are appropriate.

Finally, in our proposed rule ''Medicare and Medicaid Programs; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs) for FY 2016, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and Staffing Data Collection'' (CMS–1622–P) (80 FR 22044), published on April 20, 2015, at § 483.75(u), we proposed to require that facilities submit staffing information based on payroll data in a uniform format. Section 6106 of the Affordable Care Act of 2010 (Pub. L. 111–148, March 23, 2010) added a new section 1128I to the Act that requires a facility to electronically submit to the Secretary direct care staffing information, including information for agency and

contract staff, based on payroll and other verifiable and auditable data in a uniform format according to specifications established by the Secretary. In this proposed regulation, we are proposing to redesignate § 483.75(u) (as set out in the April 20, 2015 proposed rule at 80 FR 22044) to § 483.70(q).

T. Quality Assurance and Performance Improvement (QAPI) (§ 483.75)

Section 6102 of the Affordable Care Act amended the Act by adding new section 1128I. Subsection (c) of section 1128I of the Act requires that the Secretary establish and implement a QAPI program requirement for SNFs and NFs, including those that are part of a multi-unit chain of facilities. Under the QAPI provision, the Secretary must establish standards relating to facilities' QAPI program and provide technical assistance to facilities on the development of best practices in order to meet these standards. No later than 1 year after the date on which the regulations are promulgated, a facility must submit to the Secretary a plan for the facility to meet these standards and implement the best practices, including a description of how it would coordinate the implementation of the plan with quality assessment and assurance activities currently conducted under sections 1819(b)(1)(B) and 1919(b)(1)(B) of the Act. This proposed rule would establish these programmatic standards.

Current regulations at § 483.75(o) require a facility to maintain a quality assessment and assurance (QAA) committee, consisting of the director of nursing services, a physician designated by the facility, and at least three other members of the facility staff. The QAA committee must meet at least quarterly and identify quality deficiencies and develop and implement plans of action to correct the deficiencies. The facility is only required to disclose records of the QAA committee if the disclosure is related to the compliance of the committee with the regulatory requirements. While our proposal retains the existing QAA requirements at § 483.75(o), these requirements alone do not conform to the current health care industry standards that proactively design quality improvement into each program at the outset, monitor data (indicators, measures and reports of staff/residents/families), determine root causes of problems, design and use performance improvement projects (PIPs) to promote continuous improvement, develop and implement plans that effect system improvement, and monitor the success of this systematic approach to improving quality. The focus of a QAPI approach is to optimize quality improvement activities and programs comprehensively and proactively, even in areas where no specific deficiencies are noted. The QAPI program should include standards for quality assurance, active feedback systems to monitor performance, and continuous efforts to optimize program design through quality improvement activities and proactive strategies. The QAPI requirements we propose would not replace the QAA committee requirements but would enhance and be coordinated with these requirements.

The QAPI program utilizes objective data to study and continually make improvements to all aspects of an organization's operations and services. It enables facilities to take a systematic approach to reviewing its operating systems and processes of care and identifying and implementing opportunities for improvement. QAPI has significant potential to be an efficient and effective method for improving the quality of care and performance of health care providers.

In 2001, the Institute of Medicine released a pivotal report, ''Crossing the Quality Chasm'' in which it stated that ''the American healthcare delivery system is in need of fundamental change'' and recognized that ''quality problems are everywhere affecting many patients (*http://www.iom.edu/Reports/2001/Crossing-the-Quality-Chasm-A-New-Health-System-for-the-21st-Century.aspx*). In a 2004 educational publication co-sponsored by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services and the American Health Lawyers Association (AHLA), ''Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors, (*https://oig.hhs.gov/fraud/docs/complianceguidance/CorporateResponsibilityFinal%209-4-07.pdf*), the authors discuss the IOM report and state that the oversight of quality and patient safety is becoming clearly recognized as a core fiduciary responsibility of health care organizations. They further note that promoting quality of care and preserving patient safety are at the core of the health care industry and the reputation of each health care organization and suggest that ''contemporary health care quality, patient safety and cost efficiency initiatives provide an opportunity for health care organizations to make a positive difference to society while promoting their missions and enhancing their financial success.'' Therefore, pursuant to the requirements of the Affordable Care Act and as discussed in detail below, we are proposing to add a new § 483.75 entitled, ''Quality Assurance and Performance Improvement.''

At proposed § 483.75(a), we would require that a facility develop, implement, and maintain an effective, comprehensive, data-driven QAPI program, reflected in its QAPI plan, that focuses on systems of care, outcomes and services for residents and staff. The QAPI program would be designed to monitor and evaluate performance of all services and programs of the facility, including services provided under contract or arrangement. We propose that the facility's governing body, or designated persons functioning as a governing body, ensure that the QAPI program is defined, implemented, and maintained and addresses identified priorities. As discussed above, facilities are required to submit the QAPI plan to the Secretary. Therefore, we propose in new § 483.75(a)(1) that the facility would maintain documentation and demonstrate evidence of its QAPI program. This includes but is not limited to the QAPI plan. We propose in new § 483.75(a)(2) that the facility must submit the QAPI plan to the State Agency or federal surveyor, as the agent of the Secretary, at the first annual recertification survey that occurs at least 1 year after the effective date of these regulations. In addition, we propose in new § 483.75(a)(3), based on the Secretary's authority at sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act to establish other requirements relating to the health and safety of residents, to require that the facility present the QAPI plan to the State Agency surveyor at each annual recertification survey and upon request to the State Agency or federal surveyor at any other survey and to CMS upon request. In addition, we propose in new § 483.75(a)(4), to require the facility to present its documentation and evidence of an ongoing QAPI program upon request of a State Agency, federal surveyor, or CMS. The State Agency, pursuant to its agreement with the Secretary under section 1864 (a) of the Act, will consider such plan in making its certification recommendation and providing evidence to the CMS Regional Office for a compliance determination. We propose this recurring requirement to ensure that the QAPI program is ongoing and that the facility meets the standards established in this section.

At § 483.75(b), we establish requirements for the design and scope of the QAPI program. We propose to

require that the facility design its QAPI program to be ongoing, comprehensive and address the full range of care and services provided by the facility. When implemented, the QAPI program would be required to address all systems of care and management practices and would always include clinical care, quality of life, and resident choice. It would have to utilize the best available evidence to define and measure indicators of quality and facility goals that reflect processes of care and facility operations that have been shown to be predictive of desired outcomes for residents of a facility and reflect the complexities, unique care, and services that the facility provides.

We propose in new § 483.75(c) to establish requirements for QAPI program feedback, data systems and monitoring. We propose at new § 483.75(c)(1) that, as part of its QAPI process, the facility would have to maintain effective systems to obtain and use feedback and input from direct care/direct access workers, other staff, and residents, resident representatives and families to identify opportunities for improvement. In new § 483.75(c)(2), we propose to require that the systems, governed by appropriate policies and procedures, also include how the facility would identify, collect, and use data from all departments, including how the information would be used to identify high risk, high volume or problem-prone areas. In new § 483.75(c)(3), we would require that the policies and procedures include a description of the methodology and frequency for developing, monitoring, and evaluating performance indicators. Finally, in new § 483.75(c)(4), we propose to require that the system, policies and procedures include the process for identification, reporting, analysis, and prevention of adverse events and potential adverse events or near misses. This would include methods by which the facility would obtain information on adverse events and potential adverse events from residents, family and direct care/direct access staff, and how the facility would address and investigate the adverse event or potential adverse event and provide feedback to those same individuals. Adverse events remain a serious problem in LTC facilities. A recent OIG report estimated that 22 percent of Medicare beneficiaries experienced adverse events during a skilled nursing facility stay. Many of those adverse events were preventable. (Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries. Office of Evaluations and Inspections, Report OEI–06–11–00370. Office of Inspector General, Department of Health & Human Services. (2014)). According to the World Health Organization (WHO), an adverse event is an injury related to medical management, in contrast to complications of disease. Medical management includes all aspects of care, including diagnosis and treatment, failure to diagnose or treat, and the systems and equipment used to deliver care. Adverse events may be preventable or non-preventable. A near miss is a serious error or mishap that has the potential to cause an adverse event but fails to do so because of chance or because it is intercepted; it is also called a potential adverse event. (WHO Draft Guidelines for Ad verse Event Reporting and Learning Systems. 2005 *http://www.who.int/patientsafety/events/05/Reporting_Guidelines.pdf*). Examples of situations that would qualify as an adverse event for a facility include, but are not limited to, medication errors, resident injury due to falls, resident injury due to abuse or neglect by care-givers or other residents, failure to identify acute change in condition, pressure ulcers due to inappropriate care and the spread of disease due to errors in infection prevention and control. Near misses in any of these situations would be considered potential adverse events. As discussed in section II.B. of this preamble, we propose to define an adverse event as an untoward, undesirable, and usually unanticipated event that cause death or serious injury, or the risk thereof, consistent with the definition currently established at 42 CFR 482.70 and already in use for transplant centers. However, we are aware that there are other definitions and welcome comments on this definition.

We propose to establish a new § 483.75(d) to address QAPI program systematic analysis and action. We propose in § 483.75(d)(1) to require that the facility take actions aimed at performance improvement and, after implementing those actions, to measure the success of those actions and to track performance to ensure that the improvements are sustained. We further propose to require in § 483.75(d)(2), that the facility develop policies describing how they would use a systematic approach (such as, root cause analysis, reverse tracer methodology, and health care failure and effects analysis, for example) to determine underlying causes of problems impacting larger systems. These policies would address the development of corrective actions that would be designed to affect change at the systems level, and how the facility would monitor the effectiveness of its performance improvement activities to ensure that improvements were sustained.

In § 483.75(e), we propose to establish requirements for program activities. Specifically, we would require at new § 483.75(e)(1) through(3) that the facility establish priorities for performance improvement activities that focus on patient safety; coordination of care; autonomy; choice; and high risk, high volume, and/or problem-prone areas identified as a result of the facility assessment as specified in § 483.70(e). We propose to require that performance improvement activities track medical errors and adverse resident events, analyze their causes, and implement preventative actions and mechanisms that include feedback and learning throughout the facility. Finally, QAPI program activities would be required to include Performance Improvement Projects (PIPs). Under our proposal, the facility would be required to conduct distinct performance improvement projects. The number and frequency of improvement projects conducted by the facility would have to reflect the scope and complexity of the facility's services and available resources. We propose that each facility would be required to implement at least one project annually that focused on a high risk or problem prone area identified through the required data collection and analysis. We considered not establishing a minimum requirement or establishing a requirement based on facility size and welcome comment on whether or not there should be a specific number of PIPS and what that number should be. We also considered establishing mandatory PIPs and requiring facilities to implement at least one PIP selected from the mandatory PIPs. We solicit comment on establishing mandatory PIPS, specifically regarding the feasibility for and impact on facilities.

Finally, in new § 483.75(f), we propose to require that the facility ensure, through the governing body or executive leadership, that an ongoing QAPI program is defined, implemented, and sustained during transitions in leadership and staffing and that the QAPI program is adequately resourced, including ensuring staff time, equipment, and technical training as needed. Furthermore, the governing body or executive leadership would have to ensure that the QAPI program identified and prioritized problems and opportunities based on performance indicator data; resident and staff input that reflected organizational processes, functions, and services provided to

residents; that corrective actions addressed gaps in systems, and were evaluated for effectiveness; and that clear expectations were set around safety, quality, rights, choice, and respect.

These proposed requirements for the QAPI program are an outgrowth of the QAPI demonstration project conducted by CMS working with stakeholders, providers and experts. Our proposed requirements directly reflect five elements that were identified through this process as critical to the success of a QAPI program. We discuss this project below under ''Technical Assistance for facilities.''

We propose to re-designate § 483.75(o) as § 483.75(g). In § 483.75(g)(1) we propose to revise the language to clarify that the QAA committee membership requirements are a minimum requirement. Facilities may, at their discretion, include additional individuals on their QAA committee. For example, some facilities may wish to include a pharmacist on the QAA committee to coordinate QAPI activities related to reducing the inappropriate use of psychotropic medications. The QAA committee may also benefit from including individuals such as a resident council president, the director of social services or the activities director. We also propose to add the requirement that the Infection Control and Prevention Officer (ICPO) participate in the quality assessment and assurance committee. We consider the ICPO's coordination with the quality assurance committee and with QAPI activities important to the success of the infection control and prevention program and discuss the need for this further in our section on infection control.

In § 483.75(g)(2), we propose to specify that the quality assessment and assurance committee report to the facility's governing body, or designated persons functioning as a governing body, regarding its activities, including implementation of the QAPI program required under new § 483.75(a) through (f). We further propose to specify that the committee coordinate and evaluate activities under the QAPI program, including performance improvement projects, and that the committee review and analyze data collected under the QAPI program as well as data from pharmacists resulting from monthly drug regimen reviews and the resulting reports as specified in § 483.45(c)(4). Section 6102(c)(1) of the Affordable Care Act specifically requires that the implementation of the QAPI plan be coordinated with the quality assessment and assurance activities conducted under sections 1819(b)(1)(B) and 1919(b)(1)(B) of the Act. As there is significant overlap in the expectations for the QAPI program and the quality assessment and assurance committee, we believe that the existing committee is the appropriate resource to coordinate the QAPI program.

We propose to add a new § 483.75(h) to address disclosure of information. We propose to re-designate existing § 483.75(o)(3) as § 483.75(h)(1) and add a new § 483.75(h)(2) to clarify that facilities, in order to demonstrate compliance with the requirements of this section, may be required to disclose or provide access to certain QAPI information. Specifically, we would require, to the extent necessary to demonstrate compliance with the requirements of this section, access to systems and reports demonstrating systematic identification, reporting, investigation, analysis, and prevention of adverse events; documentation demonstrating the development, implementation, and evaluation of corrective actions or process improvement activities; and other documentation considered necessary by a state or federal surveyor in assessing compliance. We further propose to re-designate § 483.75(o)(4) as § 483.75(i).

In sum, we believe these proposed requirements would ensure that facilities establish and implement QAPI plans that result in continuous quality improvement throughout the facility and enhanced quality of care, quality of life and resident and staff satisfaction, while providing facilities with the flexibility to design, monitor, and maintain QAPI approaches best suited to the type and complexity of services they provide and the needs of their residents.

Technical Assistance for Facilities

In addition to establishing the standards for a QAPI program in this proposed rule, we would provide technical assistance to nursing homes on the development of best practices relating to QAPI. Since 2011, we have worked with stakeholders, providers and experts to develop tools, resources and technical assistance to implement a QAPI program. A demonstration project tested implementation strategies and effectiveness of QAPI tools, resources and technical assistance. Through this process, five critical elements, which are reflected in our proposed requirements, have been identified for a successful QAPI program. The five elements are as follows:

- Design and Scope.
- Governance and Leadership.
- Feedback, Data Systems and Monitoring.
- Performance Improvement Projects.
- Systematic Analysis and Systemic Action.

QAPI materials developed through this process are available at no cost to all facilities at *http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/QAPI.html*. In addition, facilities may choose from a wide variety of existing professionally recognized quality assurance and performance improvement resources. We discuss a non-exhaustive list of some of these resources below.

Under the direction of CMS, the Medicare Quality Improvement Organization (QIO) Program (*www.cms.hhs.gov/QualityImprovementOrgs*) consists of a national network of 53 QIOs—one in each state, plus the District of Columbia, Puerto Rico, and the Virgin Islands. QIOs work with beneficiaries, healthcare providers, consumers and stakeholder to achieve national priorities focused on three broad aims of—(1) better care; (2) improved health; and (3) lower costs. QIOs work with nursing homes (among other providers) to focus on a number of quality improvement measures, such as decreasing healthcare associated conditions, providing direct technical assistance and engaging with nursing homes and other long term care providers participating in the National Nursing Home Quality Care Collaborative.

Advancing Excellence in America's Nursing Homes (*http://www.nhqualitycampaign.org*) is a national campaign to encourage, assist and empower nursing homes to improve the quality of care and life for residents. It is composed of LTC providers, medical professionals, consumers, employees, and is an ongoing, coalition-based campaign focused on improvements in care and services for the elderly, chronically ill and disabled, as well as those recuperating in a nursing home environment. The mission of the Advancing Excellence in America's Nursing Homes Campaign is to help nursing homes achieve excellence in the quality of care and quality of life for the more than 1.5 million residents in America's nursing homes by improving clinical and organizational outcomes, among other goals. The Campaign works to achieve its mission by providing free practical and evidence-based resources to support quality improvement efforts in America's nursing homes.

The State Medicaid Agencies (SMAs) and HHS's Administration for Community Living (ACL) provide online information resources for community care and transition programs, options, supports and services, community care transition planning entities, and contacts and links: *www.medicaid.gov; www.mfp-tac.com;* and *www.acl.gov*. Finally, CMS provides links to resources in its existing Interpretive Guidelines that provide information on how to develop and enhance quality improvement programs.

U. Infection Control (§ 483.80)

Healthcare-associated infections (HAIs) often result in considerable suffering for residents in LTC facilities as well as increased costs for the healthcare system. Although estimates vary widely, there are between 1.6 and 3.8 million HAIs in nursing homes every year. Annually, these infections result in an estimated 150,000 hospitalizations, 388,000 deaths, and between $673 million to $2 billion dollars in additional healthcare costs (Castle, et al. Nursing home deficiency citations for infection control, American Journal of Infection Control, May 2011; 39, 4). Individuals receiving care in a nursing home may have increased susceptibility to infections as a result of malnutrition, dehydration, comorbidities, or functional impairments, such as urinary and fecal incontinence, or medications that diminish immunity, or immobility. In addition, residents may have a higher risk of exposure to infectious agents in the facility due to socialization among residents, staff, and visitors. The National Action Plan to Prevent Health Care Associated Infections includes a chapter focused on long term care settings that pertains to nursing facilities: *http://www.hhs.gov/ash/initiatives/hai/actionplan/hai-action-plan-ltcf.pdf*. According to the Plan, the most common HAIs in nursing facilities are urinary tract infections, lower respiratory tract infections, skin and soft tissue infections, and gastroenteritis.

Since 1992, our requirements for LTC facilities currently set out at § 483.65 have required these facilities to establish and maintain infection control programs designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection. The program must investigate, control, and prevent infections in the facility; issue and maintain protocols to guide decisions about what procedures, such as isolation, should be applied to an individual resident, and maintain a record of incidents and corrective actions related to infections. Under § 483.65(b)(1), when the infection control protocol recommends that a resident be isolated to prevent the spread of infection, the facility must isolate the resident. Under § 483.65(b)(2) of our regulations, the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food if direct contact will transmit the disease. Under § 483.65(b)(3), the facility must require staff to wash their hands after each direct resident contact. Section 483.65(c) requires LTC facilities to handle, store, process, and transport linens so as to prevent the spread of infection.

Each of these requirements remains important; however, as a result of advances in the study and practice of infection prevention and control and given the impact of HAIs, we find that the current requirements for infection control in our requirements warrant updating and strengthening. In developing our proposals, we reviewed the existing requirements for SNFs and NFs, as well as the current requirements for other Medicare providers and suppliers related to infection control. We also reviewed available research and literature related to infection prevention and control in nursing homes and published infection control guidelines for long term care facilities from the Society for Healthcare Epidemiology of America (SHEA) and the Association for Professionals in Infection Control (APIC) (Smith, P.W., et al., SHEA/APIC Guideline: Infection Prevention and Control in the Long-Term Care Facility, Infection Control and Hospital Epidemiology, Vol. 29, No. 9 (September 2008), pp. 785–814).

We especially want to emphasize the importance of infection prevention and surveillance. As discussed below, we propose that each facility's infection prevention and control program (IPCP) include an antibiotic stewardship program, which includes antibiotic use protocols and antibiotic monitoring. Antibiotic resistance has emerged as a national healthcare concern and even the appropriate use of antibiotics can contribute to antibiotic resistance. Nursing homes are the next frontier where new antibiotic resistant organisms may emerge and flourish. Organisms such as *Clostridium difficile* (C-diff) and methicillin-resistant *Staphylococcus aureus* (MRSA) are known concerns. Nursing homes need to have the tools to participate in surveillance, learn and use infection control and containment practices, and adopt a proactive approach to preventing spread while being good stewards of antibiotics to preserve effectiveness of the agents we have today. While avoiding the inappropriate use of antibiotics is critical, one of the best mechanisms to combat the rise in antibiotic resistance is to prevent infections and, when they do occur, prevent the spread of the infection to others (Spellberg, Brad, et al., The Future of Antibiotics and Resistance, The New England Journal of Medicine, 368:4 (January 24, 2013), pp. 299–302). In addition, the Centers for Disease Control and Prevention (CDC) has identified four core actions to prevent antibiotic resistance (Frieden, Tom, et al., Antibiotic Resistance Threats in the United States, 2013, Centers for Disease Control and Prevention (2013)). Those four core actions are preventing infections and the spread of those infections, tracking or monitoring, improving antibiotic prescribing and stewardship, and developing new medications and tests. The first three actions are within the control of the nursing home. Thus, we propose to require that the IPCP incorporate preventing and controlling infections and communicable diseases, and an antibiotic stewardship program, which includes both antibiotic use protocols and a system to monitor antibiotic use. We believe these requirements will improve antibiotic use by ensuring that the residents who require antibiotics are prescribed the appropriate antibiotics for the medically necessary time. This should reduce unnecessary antibiotic use and the risk to residents from being prescribed an unnecessary antibiotic or an inappropriate antibiotic for an inappropriate time. The surveillance and prevention aspects of the LTC facilities' IPCP are crucial to the health of the residents, as well as for individuals who work or visit the facility.

Based on our research, we propose to revise the regulatory description of the infection control program to: include infection prevention, identification, surveillance, and antibiotic stewardship; require each facility to periodically review and update its program; require performance of an analysis of their resident population and facility; designate an infection prevention and control officer(s) (IPCO); integrate the IPCO with the facility's quality assurance and performance improvement (QAPI) program; establish written policies and procedures for the IPCP; and provide the IPCO and facility staff with education or training related to the IPCP.

Specifically, as part of our overall reorganization of these regulations to improve clarity, we propose to re-designate the provisions under existing § 483.65 as § 483.80. We propose to modify the introductory language to include infection prevention as well as control and to clarify that the program must help prevent the development and transmission of communicable diseases as well as infections. We propose to revise paragraph (a) to read ''Infection prevention and control program'' and add new § 483.80(a)(1), (2) and (3) to specify the elements of the IPCP. We propose to require that the program must follow accepted national standards, be based upon the facility assessment conducted according to proposed § 483.70(e) and include, at a minimum, a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contractual arrangement. We would require the facility to have written standards, policies, and procedures for the IPCP, including but not limited to, a system of surveillance designed to identify possible communicable disease or infections before it can spread to other persons in the facility; reporting requirements for possible incidents of communicable disease or infections; standard and transmission-based precautions to be followed to prevent spread of infections; circumstances in which generally, isolation should be used for a resident; the circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if the contact is likely to transmit the disease; and the hand hygiene procedures to be followed by all staff as indicated by accepted professional practice. The facility would be required to train staff related to the IPCP as specified below in proposed § 483.95.

We are not proposing specific requirements for the standard and transmission-based precautions to be followed to prevent the spread of infections and isolation. Medical science and our knowledge of infectious agents are constantly improving. In addition, we can expect that new infectious agents will be identified in the future. Facilities need the flexibility to determine the appropriate care for their residents who have infectious agents, including whether isolation is appropriate and the circumstances of that isolation.

Antibiotics are one of the most frequently prescribed medications in nursing homes. Antibiotics may account for approximately 40 percent of the drugs given in nursing homes (NAP, p. 216). It has been estimated that between 25 and 75 percent of antibiotic prescriptions in nursing homes may be inappropriate. This extensive use of antibiotics results in the risk of not only adverse drug reactions, but also the development of antibiotic-resistant or even multidrug resistant organisms (MDROs). Thus, the inappropriate use of antibiotics poses a significant risk to the resident population (Smith, 2008). In order to effectively address the problem of healthcare-associated infections, a LTC facility must have an effective IPCP that includes antibiotic stewardship. Therefore, we are proposing that the facility's IPCP must also include an antibiotic stewardship program that includes antibiotic use protocols and systems for monitoring antibiotic use and recording incidents identified under the facility's IPCP and the corrective actions taken by the facility.

We further propose to add a new paragraph (b) to require that the facility designate an IPCO who is responsible for the IPCP and who has received specialized training in infection prevention and control. While all staff members should be responsible for infection prevention and control, we agree with the SHEA/APIC guidelines that establish that an effective IPCP should have a designated IPCO for whom implementation and management of the IPCP is a major responsibility. We understand that infection control is often assigned to a nurse who may have other administrative or patient care responsibilities. We want to allow sufficient flexibility for facilities to determine the qualifications of and the time needed for an IPCO to devote to the IPCP based on the facility assessment but also ensure that an IPCO has the time and other resources necessary to properly develop, implement, monitor and maintain the IPCP for the facility. Thus we require that the IPCP be a major responsibility for the individual assigned as the facility's IPCO. In addition, while nurses and other healthcare professionals may be likely candidates for the IPCO role, many of these professionals may have only received training in basic infection control practices in their core professional preparation for licensure. The responsibility and necessary knowledge for an IPCP likely goes well beyond basic infection control training. Therefore, we propose to require that the IPCO be a healthcare professional with specialized training in infection prevention and control beyond their initial professional degree. Considering the diverse nature of the resident population and of the healthcare delivery model, the qualifications, training, and time needed by an IPCO at each facility would vary widely, thus we are not at this time proposing more specific requirements. We do, however, solicit comment on the issue of IPCO qualifications as well as the requirements for an effective IPCP.

In new § 483.80(c), we propose to require that the IPCO be a member of the facility's Quality Assessment and Assurance (QAA) committee. While the literature suggests and we agree that an infection control committee is a good idea, we are also mindful that many nursing homes have limited staff and that requiring an infection control committee could be overly burdensome, especially for small facilities. We believe that requiring that the IPCO work with the facility's QAA committee, which is responsible for implementing the facility's QAPI plan, as well as coordinating and evaluating activities under the QAPI plan, as discussed in section II.S. of this preamble, would achieve many of the same benefits. Thus we do not propose to require that a facility have an infection control committee, only that the IPCO be a member of the facility's QAA committee to ensure that the IPCO is an active participant in the facility's QAPI plan. If a facility does have an infection control committee, we would still expect the IPCO to be a member of the QAA committee.

We are also proposing to eliminate the exception that is currently located at § 483.25(v), which provides that, based on an assessment and practitioner recommendation, a second pneumococcal immunization could be given after 5 years following the first pneumococcal immunization, unless medically contraindicated or the resident or the resident's legal representative refuses the second immunization. We are proposing to remove this exception because it is no longer the standard of care.

We also propose to add a new § 483.80(f) to require that the facility review its IPCP annually and update the program as necessary. Due to changes in the issues and practice of infection prevention and control and changes in the facility itself, an annual update is important to ensuring the effectiveness of the IPCP.

We are proposing to relocate the requirements for influenza and pneumococcal immunizations from the current § 483.25(n) to § 483.80(d). The language in § 483.80(d) is identical to the current § 483.25(n), except that we

propose using the term ''resident representative'' instead of ''legal representative.'' We believe this is a broader term and encompasses individuals whom the resident has personally identified as their representative. A more detailed discussion of this change is set forth in Section II. ''Provisions of the Proposed Rule'', B. Definitions.

Finally, we propose moving the requirement concerning linens from the current § 483.65(c) to the proposed § 483.80(e). Otherwise, the language is identical.

V. Compliance and Ethics Program (§ 483.85)

As noted previously, section 6102 of the Affordable Care Act amended the Act by adding new section 1128I. Subsection 1128I(b) requires the operating organizations for SNFs and NFs to have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care consistent with regulations developed by the Secretary. The current regulations governing SNFs and NFs at § 483.75(b) require these facilities to be ''in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.'' In addition, according to § 483.75(c), SNFs and NFs must be in compliance with ''the applicable provisions of other HHS regulations, including but not limited to those pertaining to . . . fraud and abuse (42 CFR part 455).'' However, the current regulations do not require that SNFs and NFs have in place compliance and ethics programs as required by the Affordable Care Act.

In this proposed rule, we seek to address how nursing facilities can best establish internal controls, prevent fraudulent activities, and promote quality of care through these elements as implementing written procedures and standards of conduct, designating a compliance officer, and other specific requirements. This proposed rule would require SNFs, NFs, and dually-participating SNF/NFs to have in place an effective compliance and ethics program that would require facilities to use internal controls to more efficiently monitor adherence to applicable statutes, regulations, and program requirements to deter, reduce, and detect violations and promote quality of care for nursing home residents. SNFs and NFs must meet the requirements in part 483 to participate in the Medicare and Medicaid programs and therefore, we are proposing that the requirements for effective compliance and ethics programs as set forth in section 1128I of the Act be incorporated into the SNF and NF Requirements in Part 483. Specifically, we are proposing to add a new § 483.85 entitled, ''Compliance and ethics program''.

Prior OIG Guidance

The DHHS Office of the Inspector General (OIG) has issued several industry-specific guidance documents on compliance. In the March 16, 2000, **Federal Register** (65 FR 14289), the OIG published its ''Final Compliance Program Guidance for Nursing Facilities'' (herein after referred to as the 2000 OIG Guidance). In this guidance, the OIG uses the term ''nursing facility'' to include SNFs and NFs that meet the requirements of sections 1819 and 1919 of the Act, respectively. The OIG guidance was intended to assist SNFs and NFs in the development of comprehensive compliance programs that would promote facilities' adherence to applicable statutes and regulations in the federal health care programs, as well as meet private insurance program requirements. It indicated that the guidance was voluntary for nursing homes and did not establish any mandatory requirements. The OIG also noted that compliance programs promote a nursing home's goals of providing quality care to its residents and enhancing operation functions, as well as strengthen the government's efforts in preventing and reducing fraud and abuse. The 2000 OIG Guidance listed the following seven basic elements that, at a minimum, should be included in any effective comprehensive compliance program:

- The development and distribution of written standards of conduct, as well as written policies, procedures and protocols that promote the nursing facility's commitment to compliance (for example, including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud and abuse, such as claims development and submission processes, quality of care issues, and financial arrangements with physicians and outside contractors.
- The designation of a compliance officer and other appropriate bodies (for example, a corporate compliance committee) charged with the responsibility for developing, operating and monitoring the compliance program. The officers and committees, report directly to the owner(s), governing body, and or chief executive officers.
- The development and implementation of regular, effective education and training programs for all affected employees.
- The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and protect whistle-blowers from retaliation.
- The use of audits and other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problems.
- The development of policies and procedures addressing the non-employment or retention of excluded individuals or entities and the enforcement of appropriate disciplinary action against employees or contractors who have violated corporate or compliance policies and procedures, applicable statutes, regulations, or federal, state, or private payer health care program requirements.
- The development of policies and procedures with respect to the investigation of identified systemic problems, which include direction regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action, repayments, and preventive measures (see 65 FR 14291).

In the September 30, 2008 **Federal Register** (73 FR 56832), the OIG published additional guidance entitled, ''OIG Supplemental Compliance Program Guidance for Nursing Facilities'' (hereinafter referred to as the ''2008 OIG Guidance''). In this supplemental guidance, the OIG again indicated that the guidance was only a recommendation and provided voluntary guidelines to assist SNFs and NFs. It noted that facilities should regularly conduct periodic reviews of the implementation and execution of their compliance programs, such as on an annual basis (73 FR 56848). It also reiterated that the basic elements of a compliance program include all of the following:

- Designation of a compliance officer and compliance committee.
- Development of compliance policies and procedures, including standards of conduct.
- Development of open lines of communication.
- Appropriate training and teaching.
- Internal monitoring and auditing.
- Response to detected deficiencies.

• Enforcement of disciplinary standards.

Although the basic elements of an effective compliance program listed in the 2008 OIG guidance are more concise, they appear to be essentially the same as those provided in the original 2000 OIG guidance to which the supplemental guidance directs facilities to review for further details on the elements.

Comments Solicited in the September 23, 2010 Proposed Rule

Section 6401(a)(3) of the Affordable Care Act, as amended by subsection 1304(1) of HCERA, established a new paragraph 1866(j)(8) of the Act. This paragraph requires that all providers of medical or other items or services or suppliers shall, as a condition of enrollment in Medicare, Medicaid, or the Children's Health Insurance Program (CHIP), establish a compliance program that contains core elements to be established by ''the Secretary in consultation with the Inspector General [of DHHS].'' SNFs and NFs are subject to the compliance program requirements under both section 6102 and section 6401(a) of the Affordable Care Act since section 6401(a) of the Affordable Care Act applies to all providers and suppliers enrolling into the Medicare and Medicaid programs, and CHIP.

In order to consider the view of the industry stakeholders, on September 23, 2010, we published a proposed rule entitled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers,'' in the **Federal Register** (75 FR 58204). In section II.E. of that proposed rule, we solicited public comments on compliance program requirements that are required by both sections 6102 and 6401(a) of the Affordable Care Act. We listed the seven basic elements of an effective compliance and ethics program that were taken from Chapter 8 of the U.S. Federal Sentencing Guidelines Manual (75 FR 58228) and specifically sought comments on those elements. Some of the commenters were supportive of using those elements as a basis for the core elements of any required compliance program for Medicare, Medicaid, and CHIP. In addition, a few commenters from the healthcare industry indicated that they had already incorporated at least some of those elements into their existing compliance programs. Only one of those commenters appeared to be from the nursing home industry. Some commenters expressed concerns about, among other things, the use of those elements, how compliance would be evaluated, and how long they would be given to get their compliance and ethics programs in compliance with our requirements.

The 2010 proposed rule was published as a final rule with comment period in the February 2, 2011 **Federal Register** (76 FR 5862). In that final rule with a comment period, we stated that we did not intend to finalize any of the compliance and ethics plan requirements of sections 6102 and 7401(a) of the Affordable Care Act in that final rule at that time. Rather, we intended to propose both compliance plan requirements in future rulemaking (76 FR 5942). This proposed rule only implements section 6102 of the Affordable Care Act, which applies only to SNFs and NFs. The requirements under section 6401(a) of the Affordable Care Act, which apply to all providers and suppliers including SNFs and NFs, will be addressed in separate rulemaking at a later time. We will consider this proposed and subsequent final rule as we are developing the rule for section 6401(a) of the Affordable Care Act to ensure consistency.

We would like to express our appreciation to all of the individuals and groups that submitted comments in response to our solicitation, which greatly assisted us in developing this proposed rule regarding the requirements of section 6102 of the Affordable Care Act. In addition to reviewing the public comments received, we have met with and will continue to work with the OIG to discuss the statutory provisions for sections 6102 and 6401(a) of the Affordable Care Act and the lessons the OIG has learned about establishing effective and comprehensive compliance programs in general.

Proposed § 483.85(a) and § 483.85(b)

At proposed § 483.85(a), we would define the terms ''compliance and ethics program,'' ''high-level personnel'', and ''operating organization.'' We are proposing to define ''compliance and ethics program'' to mean with respect to a facility, a program of the operating organization that has been reasonably designed, implemented, and enforced so that it is effective in preventing and detecting criminal, civil, and administrative violations under the Act, and in promoting quality of care; and includes, at a minimum, the required components specified in proposed § 483.85(c). We are proposing to define ''high-level personnel'' as individuals who have substantial control over the operating organization or who have a substantial role in the making of policy within the operating organization. The individuals considered ''high-level personnel'' will differ according to each operating organization's structure. However, some examples include, but are not limited to, the following: (1) A director; (2) an executive officer; (3) an individual in charge of a major business or functional unit; and (4) an individual with a substantial ownership interest as defined in section 1124(a)(3) of the Act in the operating organization.

We do not propose using the term ''managing employee'' that is contained in the current nursing home requirements. Section 1126(b) of the Act defines a managing employee as, ''with respect to an entity, an individual, including a general manager, business manager, administrator, and director who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.'' In describing the required components for the compliance and ethics program in section 1128I(b)(4) of the Act, the Congress specifically used the term ''high-level personnel.'' The term ''high-level personnel'' was also used in the September 23, 2010 proposed rule that solicited comments on, among other things, the compliance and ethics program requirements that are required by section 6102 of the Affordable Care Act. While the definition of ''managing employee'' refers to an individual with either operational or managerial control over the entity or who directly or indirectly conducts the day-to-day operations of the entity, the proposed definition of ''high-level personnel'' includes the term ''substantial'' and adds someone who has ''a substantial role in the making of policy within the operating organization.'' We believe the differences in these two terms clearly convey our intention that only individuals who exercise the greatest control over the operating organization are to have the overall responsibility and oversee its compliance and ethics program. Therefore, we propose to retain the terminology used in the Affordable Care Act and the former proposed rule.

We are also proposing to define ''operating organization'' to mean the individual(s) or entity that operates a facility. Section 1128I(b)(1) of the Act defines an ''operating organization'' as ''the entity that operates the facility.'' Although many nursing homes are part of corporate chains, there are still some nursing homes that are owned by an individual or a small group of individuals. Therefore, we added

''individual(s)'' to the definition to make it clear that all nursing homes, regardless of their legal structure, are required to comply with these requirements.

In § 483.85(b), we propose that the operating organization for each facility must have in operation a compliance and ethics program (as defined in proposed § 483.85(a)) that meets the requirements of this section beginning on the date that is one year after the rule's effective date.

Proposed § 483.85(c)

In § 483.85(c), we propose that the operating organization for each facility be required to develop, implement, and maintain an effective compliance and ethics program that contains, at a minimum, several components, which we discuss below.

The operating organization would have to establish written compliance and ethics standards, policies, and procedures to follow that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under the Act and which include, but are not limited to, the designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and disciplinary standards that set out the consequences for committing violations for the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers' expected roles (proposed § 483.85(c)(1)).

We expect that each operating organization would establish its own written compliance and ethics standards, policies, and procedures. We also expect that each operating organization's standards, policies, and procedures would include, among other things, financial disclosure obligations, conflicts of interest standards, and requirements for promptly reporting any abuse or neglect of a resident. Additionally, within their program, each operating organizations should designate an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and establish disciplinary standards so that the operating organization's entire staff, individuals providing services under a contractual arrangement, and volunteers, consistent with the volunteers' expected roles, are clearly aware of the consequences of program violations. We also expect that these disciplinary standards would promote consistent enforcement of the operating organization's program through disciplinary mechanisms, as required in proposed § 483.85(c)(7). We acknowledge that there may be instances when an individual who chooses to report a suspected violation anonymously may subsequently be subject to discipline for not reporting the suspected violation. Each operating organization should be aware of this possibility and address how it would be handled in their program.

The operating organization would assign specific individuals within the high-level personnel of the operating organization with the overall responsibility to oversee compliance with the operating organization's compliance and ethics program's standards, policies, and procedures, such as, but not limited to, the chief executive officer (CEO), members of the board of directors, or directors of major divisions in the operating organization (proposed § 483.85(c)(2)).

The program would include provisions ensuring that the specific individuals designated with oversight responsibility in proposed § 483.85(c)(2) have sufficient resources and authority to assure compliance with these standards, policies, and procedures (proposed § 483.85(c)(3)). The resources devoted should include both human and financial resources.

The operating organization would be required to use due care not to delegate discretionary authority to individuals whom the operating organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, or administrative violations under the Act. (Proposed § 483.85(c)(4)). ''Due care'' generally means the care that a reasonable person would use under the same or similar circumstances (*see, e.g., http://thelawdictionary.org/due-care/* (accessed on April 17, 2015)). While the degree of due care would vary depending upon the circumstances, we would expect that the operating organization would apply the degree of scrutiny commensurate with the level of discretion being delegated to the individual. For example, the level of scrutiny applied to the compliance officer should be much higher than the level given to an employee who has minimal discretionary authority over the residents' activities.

The operating organization would be required to effectively communicate the standards, policies, and procedures in the operating organization's compliance and ethics program to the operating organization's entire staff including individuals providing services under a contractual arrangement, and volunteers, consistent with the volunteers' expected roles. Requirements would include, but not be limited to, mandatory participation in training or orientation programs, and/or dissemination of information that explained in a practical manner what was required under the program (proposed § 483.85(c)(5)).

The compliance program would need to ensure that reasonable steps were being taken to achieve compliance with the program's standards, policies, and procedures, such as utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under the Social Security Act by any of the operating organization's staff, individuals providing services under a contractual arrangement, or volunteers, having in place and publicizing a reporting system whereby any of these individuals could report violations by others anonymously within the operating organization without fear of retaliation, and having a process for ensuring the integrity of any reported data (proposed § 483.85(c)(6)).

The operating organization would be required to enforce consistently the operating organization's standards, policies, and procedures through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect and report a violation to the appropriate party identified in the operating organization's compliance and ethics program. An operating organization would be required to consistently enforce its standards and procedures through appropriate disciplinary mechanisms (proposed § 483.85(c)(7)).

After an operating organization detected a violation, it would have to ensure that all reasonable steps identified in its program were taken to respond appropriately to the violation and, to prevent further similar violations, including any necessary modification to the operating organization's program to prevent and detect criminal, civil, and administrative violations under the Act (proposed § 483.85(c)(8)).

The ''reasonable steps'' that should be taken when a violation is detected should be clearly identified in the operating organization's program. We expect that the steps would differ depending upon the size of the operating organization, the position of the individual reporting the violation,

and possibly the type of violation. For example, an operating organization's program may state that a staff member should immediately notify their immediate superior when he or she detects a violation. However, if it is the immediate superior or the operating organization's management whom the staff member believes is committing the violation, the staff member should have an alternative process to report the violation, such as, the Office of the State Long-Term Care Ombudsman or other appropriate agency or law enforcement authority. In addition, the operating organization's program should include those steps that are necessary to comply with any mandatory reporting requirements, such as those concerning suspected resident neglect or abuse. Under those circumstances, reporting to an immediate supervisor or manager may not be sufficient and the program should clearly indicate how any suspected neglect or abuse is to be reported. We also expect that ethics compliance would be a strong component of each operating organization's program.

In sections 1128I(b)(3)(F) and (G) of the Act, which correspond to proposed § 483.85(c)(7) and (8), the term ''offense,'' is used instead of ''violation.'' We believe that the terms are used interchangeably. We have used ''violations'' throughout the proposed regulatory text. The eight previously described components would be mandatory for all of the SNF and NF operating organizations' compliance and ethics programs.

Proposed § 483.85(d)

In proposed § 483.85(d), we would require operating organizations that operate five or more facilities to designate a compliance officer, and require that such individuals be designated as high-level personnel of the operating organizations with the overall responsibility to oversee the compliance and ethics program. In addition, the designated compliance officer should report directly to the governing body for the operating organization. We believe this is necessary to ensure that the compliance officer is not unduly influenced by other managers or executive officers, such as the general counsel, chief financial officer or chief operating officer. Thus, we are proposing the compliance officer should not be subordinate to the general counsel, chief financial officer or the chief operating officer. We considered requiring all operating organizations to designate a compliance officer. However, some smaller operating organizations may not have the staff to have one individual to whom the compliance and ethics program could be a major responsibility. However, it is very important that there be an individual that staff, as well as others, may contact for questions or concerns and to whom they could report suspected violations. Therefore, we are proposing that all operating organizations designate a compliance and ethics program contact. We welcome comments on this issue.

In § 483.85(d), in addition to all of the other requirements in proposed § 483.85(a), (b), and (c), we propose that operating organizations that operate five or more facilities must also include, at a minimum, the following components in their compliance and ethics program:

- A mandatory annual training program on the operating organization's compliance and ethics program (§ 483.85(d)(1)).
- A designated compliance officer for whom the operating organization's compliance and ethics program is a major responsibility (§ 483.85(d)(2)).
- Designated compliance liaisons located at each of the operating organization's facilities (§ 483.95(d)(3)).

The compliance officer should be among those individuals designated as high-level personnel of the operating organization with the overall responsibility to oversee the operating organization's compliance and ethics program as required by proposed § 483.85(c)(2). We also believe that the compliance officer must have the authority to raise compliance and ethics issues directly with the Board of Directors, President, CEO, and General Counsel or their equivalents in the operating organization. We have not defined ''major responsibility'' in this rule because we believe that operating organizations must have flexibility in designating their compliance officers. The category of ''five or more operating organizations'' encompasses small chains of facilities with as few as five nursing homes up to very large nursing home chains with hundreds of nursing homes. For some operating organizations to have an effective compliance and ethics program, they will need a compliance officer who can devote all of her or his time to the program. However, some operating organizations will have the resources to have a dedicated individual whose sole responsibility is the compliance and ethics program and others will not. For operating organizations that have insufficient resources to appoint a compliance officer whose sole responsibility is the operating organization's program, we would expect that the operating organization would ensure that the assigned compliance officer has sufficient time and other resources to fulfill all of his or her responsibilities under the operating organization's compliance and ethics program.

In selecting their designated compliance officers, we also expect that operating organizations would consider potential conflicts of interest. For example, if the compliance officer was also the director of accounting, he or she might have a conflict of interest if there were an allegation of deliberate billing errors. In addition, if the compliance officer was also related to other high-level personnel in the operating organization, staff members might be hesitant to report certain violations that might involve the compliance officer's family members. Therefore, we expect that operating organizations would take appropriate action concerning any actual or potential conflicts of interest when selecting their compliance officers. In addition, we believe that the compliance officer should report directly to the governing body.

The facility would be required to designate compliance liaisons at each of the operating organization's facilities (proposed § 483.85(d)(3)). We have not provided a specific definition for a ''designated compliance liaison'' in this rule. We believe that operating organizations need to have flexibility in defining these positions and their responsibilities. We would expect that operating organizations would develop a description for these positions and the duties and responsibilities these individuals would have in the operating organization's compliance and ethics program. At a minimum, these liaisons should be responsible for assisting the compliance officer with his or her duties under the operating organization's program at their individual facilities.

In addition to the additional elements for operating organizations that operate five or more facilities, as set out previously in proposed paragraph (d), we also anticipate that their programs would be more formal. However, the formality of these programs will be addressed in other guidance, including the interpretative guidelines, which will be developed to provide more instruction on how this rule should be implemented after it is finalized.

We welcome comments on the proposed additional requirements for operating organizations with five or more facilities and how to address the formalizing of these programs. In addition to the auditing and monitoring systems described in proposed § 483.85(c), we also considered

requiring periodic external audits specifically focusing on financial records and quality of care issues. We would welcome comments on a requirement for these types of audits or any other additional requirements for operating organizations that operate five or more facilities.

Proposed § 483.85(e)

Lastly, at § 483.85(e), we propose that the operating organization for each facility must review its compliance and ethics program annually, and revise its program, as needed to reflect changes in all applicable laws or regulations and within its organization and facilities to improve its performance in deterring, reducing, and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care.

Laws, regulations, and administrative requirements are subject to change. Without an annual review, an operating organization's compliance and ethics program could easily become out of date. As an operating organization becomes aware of changes in these requirements, it should modify its program to ensure it is current with these requirements. Importantly, the operating organization's performance in prior years should also be used to improve its program. In addition, as an operating organization revises its program, it should ensure that those changes are communicated to all of the individuals identified in proposed § 483.85(c)(5).

In proposed § 483.85(a), we use the term ''reasonable'' or ''reasonably'' in the definition of a compliance and ethics program and in three of the proposed required components of the program in proposed § 483.85(c)(1), (6) and (8). These terms are used in the Affordable Care Act legislation. We would appreciate comments on how to evaluate the reasonableness of the design, implementation, and enforcement of an operating organization's compliance and ethics program and how to determine the reasonableness of the steps an operating organization has taken to achieve compliance with its standards and the steps an operating organization should take in response to offenses and prevent similar occurrences.

W. Physical Environment (§ 483.90)

The physical environment of a nursing facility is integral to the resident's health and safety. Therefore, the facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public. Many of these provisions relate to Life Safety Code (LSC) requirements. We have recently published a proposed rule which would adopt many provisions of the 2012 LSC ''Medicare and Medicaid Programs; Fire Safety Requirements for Certain Health Care Facilities,'' 79 FR 21552, April 16, 2014. Those requirements have been or are being addressed in separate rule-making and we are not proposing any substantial changes or revisions. As part of our comprehensive review and restructuring, we propose to re-designate the existing provisions of § 483.70 as new § 483.90; however, the language in existing § 483.70(a) ''Life safety from fire'' and § 483.70(b) ''Emergency power'' would be unchanged, including new provisions related to the requirement that long term care facilities have automatic sprinkler systems added by the final rule ''Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction, Part II'' published in the **Federal Register** on May 12, 2014 (79 FR 27106). In new § 483.90(c) ''Space and equipment'', we propose to add the resident's individual assessment, including preferences and choices, as an element to consider in addition to the resident's plan of care when considering the space and equipment requirements of the facility. While this assessment is considered in developing the resident's plan of care, we believe including it separately for consideration will help avoid any gaps in the facility's ability to provide required services based on space and equipment needs and help ensure person-centeredness. We propose to eliminate the word ''essential'' from new § 483.90(c)(2) (re-designated from § 483.70(c)(2)), as we believe that all equipment the resident may be exposed to, whether it is deemed essential or not, must be maintained in safe operating condition in order to ensure resident safety. In addition, we propose to add a new § 483.90(c)(3) to specifically require that facilities conduct regular inspections of all bed frames, mattresses, and bed rails and to ensure that bed rails are compatible with the bed frame and mattress. As noted earlier, bed rails can pose a significant entrapment hazard, so ensuring that they are used safely warrants explicit reference here.

Currently, in existing § 483.70(d), the regulations allow for bedrooms that accommodate up to four residents. We believe that this number of residents per room is inconsistent with current common practice, is not person-centered nor supportive of achieving the resident's highest practicable mental, physical and psychosocial well-being and is not an environment that promotes maintenance or enhancement of each resident's quality of life. Therefore, we propose to require in new § 483.90(d)(1)(i) that, bedrooms in facilities accommodate not more than two residents unless the facility is currently certified to participate in Medicare and/or Medicaid or has received approval of construction or reconstruction plans by state and local authorities prior to the effective date of this regulation. Reconstruction means that the facility undergoes reconfiguration of the space such that the space is not permitted to be occupied, or the entire building or an entire occupancy within the building, such as a wing of the building, is modified. We believe that semi-private rooms are far more supportive of privacy and dignity. While a facility is not a permanent home for all of its residents, this provision is particularly critical for those residents whose only home is the nursing facility. We considered, but did not propose to require private rooms. We note that many states have physical environment requirements that exceed our requirements. These requirements vary widely, but many include a requirement for no more than two beds per resident room or establish a minimum percentage of rooms that must be private or semi-private. Proposed § 483.90(d) also would require that the bed size and height be not only convenient for the resident's needs, but also safe. The Food and Drug Administration (FDA) reports that between Jan 1, 1985 and January 1, 2013, it received 901 incidents of patients caught, trapped, entangled, or strangled in hospital beds. Most patients were frail, elderly or confused. (see *http://www.fda.gov/medicaldevices/productsandmedicalprocedures/generalhospitaldevicesandsupplies/hospitalbeds/default.htm*). Therefore, we believe that bed safety should be an explicit consideration for facilities. Guidance for facilities as well as other information related to bed safety is available from FDA, which issued, on March 10, 2006, its ''Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment.'' (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm072662.htm*). Section 483.70(e) currently requires that each bedroom be equipped with or located near toilet and bathing facilities. We propose in new § 483.90(e) to add the requirement that, for facilities that receive approval of construction or

reconstruction plans by State and local authorities or are newly certified to participate in Medicare and/or Medicaid after the effective date of this rule, each resident room must have its own bathroom equipped with at least a toilet, sink and shower. In addition, we propose that if a facility undergoes reconstruction, each resident room in the reconstructed space must have its own bathroom equipped with at least a toilet, sink and shower. Reconstruction means that the facility undergoes reconfiguration of the space such that the space is not permitted to be occupied, or the entire building or an entire occupancy within the building, such as a wing of the building, is modified. We understand that this is common in new construction, and we believe it is important to ensure that residents can achieve their highest practicable mental, physical and psychosocial well-being and maintain self-respect and dignity. Further, we expect that this will ease care delivery. Ensuring facilities in each room may minimize staff time and effort to assist residents to and from the bathroom, reduce the likelihood of avoidable incontinence episodes, and enhance the facility's ability to effectively implement toileting protocols for residents who are good candidates for these interventions.

Proposed § 483.90(f), re-designated from § 483.70(f), requires a resident call system. The intent of this provision is to ensure that a resident can easily call for assistance in his or her room or bathroom. This is a critical safety issue. The existing language refers to a ''nurse's station.'' This language may, in many cases, be outdated. Therefore, we propose to require that the facility must be adequately equipped to allow residents to call for staff assistance through a communication system which relays the call directly to a staff member or to a centralized staff work area from the resident's bedside, toilet and bathing facilities. This provides flexibility that will be supportive of innovation in care delivery and still provide the elements necessary for resident needs and safety.

Proposed § 483.90(g), re-designated from § 483.70(g) addresses dining and activity rooms and includes a requirement to designate non-smoking areas. We propose to eliminate the language ''with non-smoking areas identified'', as it is inconsistent with current practice. Many, if not all, states have specific requirements related to the permissibility of smoking in healthcare facilities and related issues. In current practice, facilities are likely to be non-smoking facilities or may have designated smoking areas. Therefore, we propose to add a new paragraph (h)(5) to new § 483.90(h) that would require facilities to establish policies, in accordance with applicable federal, state and local laws and regulations, regarding smoking, including tobacco cessation, smoking areas and safety, including but not limited to non-smoking residents. The inclusion of a tobacco cessation policy is consistent with the recommendations of the U.S. Preventive Services Task Force (*http://www.uspreventiveservicestaskforce.org/Page/Document/UpdateSummaryDraft/tobacco-use-in-adults-and-pregnant-women-counseling-and-interventions1?ds=1&s=Smoking*) as well as the National Strategy for Quality Improvement in Health Care (*http://www.ahrq.gov/workingforquality/about.htm*). Smoking cessation, even among older, frail adults, produces significant health and quality of life benefits (Cataldo, JK. J Gerontol Nurs, 2007 Aug; 33(8):32–41). While we would expect that, when appropriate, tobacco cessation would be a matter to be discussed between a resident and his or her primary care provider and to be addressed in a resident's care plan, based on the individual's preferences and goals of care, we believe that including the overarching policy within the facility policy related to smoking would be beneficial.

X. Training Requirements (§ 483.95)

We are proposing to add a new § 483.95 to subpart B that would set forth training requirements. We propose that a facility must develop, implement, and maintain an effective training program for all new and existing staff; individuals providing services under a contractual arrangement; and volunteers, consistent with their expected roles. We also propose that a facility be required to determine the amount and types of training necessary based on a facility assessment as specified at § 483.70(e). We encourage facilities to take advantage of the many free or low cost resources available to them. Various resources and training materials are available at *http://www.nhqualitycampaign.org*.

Communication Training

We propose at § 483.95(a) to include effective communications as a required training topic for direct care personnel. Effective communication has been identified as important in reducing unnecessary hospitalizations as well as for improving a nursing home resident's overall quality of life and quality of care. Breakdowns in communications are a known contributor to adverse events of all types. CMS noted in its 2012 Nursing Home Action Plan that critical information often is not communicated from one set of providers to another during a care transition. According to the Agency for Health Research and Quality, detecting and promptly reporting changes in a nursing home resident's condition are critical for ensuring the resident's well-being and safety. These changes may represent a patient safety problem, and they can be a signal that the resident is at increased risk for falling, medication errors, and other complications. Training all nursing home staff, particularly direct care staff, to be on the lookout for changes in a resident's condition and to effectively communicate those changes is one tool LTC facilities can employ to improve patient safety, create a more person-centered environment, and reduce the number of adverse events or other resident complications. AHRQ offers training materials to train front line personnel in nursing homes in effective communications (Improving Patient Safety in Long-Term Care Facilities: Training Modules. AHRQ Publication No. 12–0001. July 2012. Agency for Healthcare Research and Quality, Rockville, MD. *http://www.ahrq.gov/qual/ptsafetyltc/index.html*). AHRQ's TeamSTEPPS® Long Term Care Version is a training program to enhance communication for front line staff in nursing homes. (*http://www.ahrq.gov/professionals/education/curriculum-tools/teamstepps/longtermcare*). AHRQ's On-Time Pressure Ulcer Prevention program provides training for nursing homes with an EHR to use the EHR to improve communications of changes in residents' pressure ulcer risk factors to help staff intervene earlier. (*www.ahrq.gov/professionals/systems/long-term-care/resources/on-time/qualityimprov/index.html*). An evaluation of nursing homes in New York State showed a reduction of 59% in the incidence of pressure ulcers that integrated 3 EHR pressure ulcer risk reports into day-to-day workflow. (Olsho, L., Spector, W., Williams, C. et al. Evaluation of AHRQ's On-Time Pressure Ulcer Prevention Program: A Facilitator-assisted Clinical Decision Support Intervention for Nursing Homes. Medical Care 2014 Mar;52(3):258–66.) In an analysis of interviews of direct care workers, communication and teamwork were also identified as important in delirium prevention and appropriate management (Peacock, R., Hopton, A., Featherstone, I., & Edwards, J. (2012). Care home staff can detect the difference between delirium, dementia and depression. Nursing Older People, 24(1),

26–30.) Finally, enhanced communication skills can have a positive impact on job satisfaction and turnover, factors that can also impact resident care (Rubin, G., Balaji, R. V., & Barcikowski, R. (2009). Barriers to nurse/nursing aide communication: the search for collegiality in a southeast Ohio nursing home. Journal of Nursing Management, 17(7), 822–832. doi:10.1111/j.1365–2834.2008.00913.x)

We are not proposing to require a specific amount of time, specific communications topics, or specific training mechanisms to meet this requirement. While we believe communications training is vital, we also believe that each facility should have the flexibility to determine, based on its internal facility assessment and competencies and skill sets needed for employees, how to structure training to meet its specific needs. We also recognize that training needs are likely to change over time. The specific communications training may even vary within the facility, based on its aspects of care and service. We also note that states may have their own requirements, at the facility or professional levels that already require training. We have, therefore, only proposed this as a training topic that must be incorporated into a facility's ongoing training expectations for all employees. We welcome comments on whether or not more specific requirements are necessary.

Resident's Rights Training

We propose at § 483.95(b) to require that facilities train staff members on the rights of the resident and the responsibilities of a LTC facility to properly care for its residents as set forth at § 483.10 and § 483.11, respectively. We believe that it is necessary to ensure that direct care workers are trained to recognize when treatment is abusive or constitutes neglect or exploitation. We also believe that training in these areas is likely to reduce incidents. In addition, the effective training of staff on the requirements for participation is likely to have a positive effect on the operation of a facility.

Abuse, Neglect, and Exploitation Training

At § 483.95(c) we propose to require that a facility provide training to its staff on the freedom from abuse, neglect, and exploitation requirements found in § 483.12. We propose to specify that facilities must provide training to their staff that at a minimum educates staff on activities that constitute abuse, neglect, exploitation, and misappropriation of resident property and procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property. We believe that in order for staff to be proactive and prevent these types of incidents, they must first be educated on what they are and how to report them. We believe that requiring this training would not only educate a facilities staff, but would also improve operations and increase the level of accountability for staff members.

Quality Assurance and Performance Improvement Training

At § 485.95(d), we propose to require that a facility must provide mandatory QAPI training to its staff. This training would outline the elements and goals of the facility's QAPI program. All facility staff should be aware of what a QAPI program entails and how the facility intends to implement and monitor their program. Given that a facility's QAPI program is meant to encompass input from facility staff, it is imperative that staff members are adequately trained on the elements of the facility's QAPI program.

Infection Control Training

As discussed earlier, HAIs result in considerable suffering to nursing home residents and considerable costs to the healthcare system. Therefore, at § 483.95(e) we propose to require LTC facilities to include staff training as part of their efforts to prevent and control infection. It would be the facility's responsibility to ensure that their staff was effectively educated on the facility's infection control policies and procedures.

Compliance and Ethics Training

At § 483.95(f)(1), we propose that the operating organization for each facility must include as part of their compliance and ethics program training for staff that outlines the standards, policies, and procedures. We do not specify how a facility should develop this training; however the training must explain in a practical manner the requirements under the compliance and ethics program. In addition, at § 483.95(f)(2) we propose to require that if the operating organization operates five or more facilities, it must include mandatory training annually.

Required In-Service Training for Nurse Aides

The Need for Nurse Aide Training in Dementia Management

Dementia among nursing home residents is prevalent and increasing. According to the Certification and Survey Provider Enhanced Reports (CASPER) data, in June 2009, 47 percent of all nursing home residents had a diagnosis of Alzheimer's or other dementia in their nursing home record. The Alzheimer's Association noted in a report entitled, ''2010-Alzheimer's Disease Facts and Figures,'' at *http://www.alz.org/documents_custom/report_alzfactsfigures2010.pdf* that the number of Americans surviving into their 80s and 90s and beyond is expected to grow dramatically due to advances in medicine and medical technology, as well as social and environmental conditions. Since the incidence and prevalence of Alzheimer's disease and other dementias increase with age, the number of people with these conditions will also grow rapidly. The Alzheimer's Association also noted in the report that two-thirds of those dying with dementia die in nursing homes, compared with 20 percent of cancer patients and 28 percent of residents dying from all other conditions in nursing homes.

According to the OIG in a 2002 report entitled, ''Nurse Aide Training,'' (OEI–05–01–00030), 63 percent of the nursing home supervisors interviewed said that training has not kept pace with the care demands imposed by current resident diagnoses. Many of these supervisors pointed out that they are seeing more combative and violent residents. Many supervisors and nurse aides stated that nurse aides need more training in caring for residents with behavioral and cognitive disorders, such as Alzheimer's disease. Also, six state Nurse Aide Training Competency Evaluation Program (NATCEP) directors specifically emphasized the need for more training in caring for residents with cognitive disorders.

According to a September, 2008 report prepared for CMS entitled, ''Improving Nurse Aide Training,'' by Abt Associates, Inc. (Contract #500–95–0062/TO#3), studies have shown that educational programs are more likely to be successful when the education is ongoing. Students are also more receptive to new information that is relevant to their current work environment, rather than information that is presented during the initial training. This report suggests that ongoing training in dementia management and abuse prevention, in addition to the already-required initial training, would be valuable.

Based on the information included in these reports, we believe that ongoing training in dementia management and abuse prevention for NAs is necessary and could enhance the overall quality of care that residents receive in LTC facilities.

The Need for Nurse Aide Training in Abuse Prevention

Based on CASPER data for 2007–2009, nursing homes received 3,124 citations for abuse and mistreatment of residents. In 2003, State Long-Term Care Ombudsman programs nationally investigated 20,673 complaints of abuse, gross neglect, and exploitation on behalf of nursing home and board and care residents. Among the types of abuse categories, physical abuse was the most common type reported.

A GAO report entitled, ''More Can Be Done to Protect Residents from Abuse,'' ((GAO–02–312) March 1,2002 *http://www.gao.gov/newitems/do2312.pdf*) revealed that experts who have conducted studies on the issue of physical and sexual abuse of nursing home residents have reported that abuse is a serious problem with potentially devastating consequences. Nursing home residents have suffered serious injuries or, in some cases, have died as a result of abuse.

A report by the National Association of State Units on Aging, published in 2005, entitled, ''Nursing Home Abuse Risk Prevention Profile and Checklist'' concluded that understaffing and inadequate training of NAs are major causes of abuse, especially for individuals with dementia.

The Center for Advocacy Rights and Interests (CARIE) reports on their Web site (*http://www.carie.org/programs-services/for-provider-professionals/abuse-prevention/*) the results of a research study conducted by Beth Hudson Keller, Director of Education and Training at the Philadelphia CARIE, and Dr. Karl Pillemer, Associate Professor at Cornell University, on nursing home abuse. The research showed that nursing assistants in 10 Philadelphia-area nursing homes self-reported abusive behaviors over a one-month period. During this period,

- 51 percent reported yelling at a resident in anger;
- 23 percent insulted or swore at a resident;
- 8 percent threatened to hit or throw something at a resident;
- 17 percent excessively restrained a resident;
- 2 percent had slapped a resident; and
- 1 percent had kicked or hit a resident with a fist

CARIE believes that training helps to increase staff awareness of abuse and neglect and potentially abusive situations. In addition, training equips workers with appropriate conflict intervention strategies and reduces incidents of abuse and neglect in LTC settings, thus improving the quality of life for residents.

According to the National Center on Elder Abuse (NCEA), training can, among other things, enable NAs to build confidence and develop skills in defusing volatile situations, alert them to the penalties for abuse, and help NAs cope with the stresses that are associated with care giving. Also, as stated above, the 2008 Abt Report suggested that ongoing NA training in abuse prevention should result in fewer instances of resident abuse.

Section 6121 of the Affordable Care Act added sections 1819(f)(2)(A)(i)(1) and 1919(f)(2)(A)(i)(1) of the Act. These sections require all NAs to receive on-going training in both dementia management and patient abuse prevention training, ''if the Secretary determines appropriate.'' While all NAs currently receive initial training by the states in dementia management and abuse prevention, the regulation does not require that training be provided by LTC facilities to all NAs during their annual 12 hours of in-service training. However, since NAs are the primary caregivers in LTC facilities, we believe ongoing training of NAs is critical to prevent abuse of patients and to ensure NAs can provide appropriate care for residents particularly those individuals suffering from dementia. As discussed previously, various studies and reports have indicated that these areas need improvement.

We are proposing to amend the LTC requirements by requiring the current mandatory on-going training requirements for NAs include dementia management and resident abuse training. LTC facilities are required at existing § 483.75(e)(8) to complete a performance review of every NA at least once every 12 months, and facilities must provide regular in-service education based on the outcome of these reviews. The in-service training must be sufficient to ensure the continuing competence of NAs, and must be no less than 12 hours per year. The training must address areas of weakness, as determined in the NA's performance reviews and may address the special needs of residents as determined by the facility staff. The existing requirement at § 483.75(e)(8)(iii) requires NAs that provide services to individuals with cognitive impairments to receive in-service training to address the care of the cognitively impaired.

We propose to relocate these training requirements for CNAs at § 483.75(e)(8) to proposed § 483.95(g). Specifically, we propose to re-designate existing § 483.75(e)(8)(i), (ii), and (iii) to § 483.95(g)(1), (3), and (4), respectively. At § 483.95(g)(2), we propose to add the new requirement that the 12 hours of annual in-service training for NAs must include dementia management and abuse prevention training. Also, at newly redesignated § 483.95(g)(3), we propose to add to the existing requirement that the in-service training address areas of weakness as determined by a facility's assessment at § 483.70(e). We note that states have the option of requiring additional hours of in-service training, as they deem appropriate. According to the 2008 Abt report, ''Improving Nurse Aide Training'', with regard to ongoing training, only four states required more than 12 annual in-service hours. Florida required 18 hours and Alaska, California, and Oklahoma required 24 hours.

Since we are proposing that these four additional topics be addressed within the current in-service training requirement, we would like to solicit comments on whether it would be beneficial to require additional ongoing hours to accommodate this training. As discussed in the 2008 report by the Abt Associates, ''Improving Nurse Aide Training,'' based on analyses of surveys of NAs, NATCEP directors, and nursing home administrators, the report concluded, that there was no evidence that additional hours resulted in better quality care or outcomes for residents. The report also concluded that simply adding more training hours without evaluating the efficacy of the training would yield very little return on investment. Therefore, we are requesting public comment, including the results of any additional studies that would support an increase in the required hours for in-service training above the currently required 12 hours.

Training for Feeding Assistants

Current regulations at § 483.75(q) require facilities to only employ as a paid feeding assistant those individuals who have successfully completed a state approved training program, as specified in § 483.160. We propose to relocate this provision without change to proposed § 483.95(h).

Behavioral Health Training

We propose at § 483.95(i) to require that facilities provide behavioral health training to its entire staff, based on the facility assessment at § 483.70(e). As required at § 483.70(e), the facility would be responsible for using their facility assessment to determine the behavioral health related needs of their residents. Then the facility would ensure that their staff is provided with

behavioral health training that correlates with the needs of their residents.

III. Long-Term Care Facilities Crosswalk

The table below shows the cross-references between the current sections to the proposed. We also note that we have made conforming changes that would revise any cross-references to part 483 in title 42 that would change due to the reorganization of subpart B in this proposed rule.

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B

Existing CFR Section	Title	Action	New CFR section
§ 483.1	Basis and Scope	Revised	§ 483.1.
	(a)		
§ 483.5(a)–(c)	(a) *Facility defined*	Re-designated	§ 483.5 in alphabetical order.
	(b) *Distinct part.*		
	(c) *Composite distinct part.*		
§ 483.5 (d)	(d) *Common area*	Re-designated & revised	§ 483.5 in alphabetical order.
§ 483.5(e)	(e) *Fully sprinklered*	Re-designated	§ 483.5 in alphabetical order.
	(f) *Major modification.*		
§ 483.10	Resident rights	Revised	§ 483.10.
§ 483.10(a)(1)	(a) *Exercise of rights*	No change	§ 483.10(a)(2).
§ 483.10(a)(2)	(a) *Exercise of rights*	Revised	§ 483.10(a)(2).
§ 483.10 (a)(3)		Re-designated and revised	§ 483.10(a)(4).
§ 483.10 (a)(4)		Re-designated and revised	§ 483.10(a)(3).
§ 483.10 (b)(1)	(b) *Notice of rights and services*	Re-designated & revised	§ 483.11(e)(9).
§ 483.10(b)(2)		Re-designated & revised	§ 483.10(f)(3).
§ 483.10(b)(3)		Re-designated	§ 483.10(b)(1).
§ 483.10 (b)(4)		Revised	§ 483.10(b)(4).
§ 483.10(b)(5)		Re-designated & revised	§ 483.11(e)(10).
§ 483.10 (b)(6)		Re-designated & revised	483.11(e)(11).
§ 483.10(b)(7)		Re-designated & revised	483.11(e)(12).
§ 483.10(b)(8)		Re-designated & revised	§ 483.11(e)(5)(i)–(v).
§ 483.10(b)(9)		Re-designated & revised	§ 483.11(c)(1).
§ 483.10(b)(10)		Re-designated & revised	§ 483.11(e)(6).
§ 483.10(b)(11)		Re-designated & revised	§ 483.11(e)(7).
§ 483.10(b)(12)		Re-designated	§ 483.11(e)(8).
§ 483.10(c)(1)	(c) *Protection of resident funds*	Re-designated & revised	§ 483.10(e)(9), § 483.11(d)(5).
§ 483.10(c)(2)		Re-designated	§ 483.11(d)(5)(i).
§ 483.10(c)(3)		Re-designated & revised	§ 483.11(d)(5)(ii).
§ 483.10(c)(4)		Re-designated	§ 483.11(d)(5)(iii).
§ 483.10(c)(5)		Re-designated	§ 483.11(d)(5)(iv).
§ 483.10(c)(6)		Re-designated & revised	§ 483.11(d)(5)(v).
§ 483.10(c)(7)		Re-designated	§ 483.11(d)(5)(vi).
§ 483.10(c)(8)		Re-designated & revised	§ 483.11(d)(6).
§ 483.10(d)	(d) *Free choice*	Re-designated & revised	§ 483.10(c).
§ 483.10(d)(1)		Re-designated & revised	§ 483.10(c).
§ 483.10(d)(2)		Re-designated & revised	§ 483.10(b).
§ 483.10(d)(3)		Re-designated & revised	§ 483.10(a)(4)(iv), § 483.10(b)(5).
§ 483.10(e)	(e) *Privacy and confidentiality*	Re-designated & revised	§ 483.10(g).
§ 483.10(e)(1)		Re-designated	§ 483.10(g)(2).
§ 483.10(e)(2)		Re-designated & revised	§ 483.10(g)(4).
§ 483.10(e)(3)		Re-designated & revised	§ 483.10(g)(4).
§ 483.10(e)(3)(i)		Re-designated & revised	§ 483.10(g)(4).
§ 483.10(e)(3)(ii)		Re-designated & revised	§ 483.10(g)(4).
§ 483.10(f)	(f) *Grievances*	Re-designated & revised	§ 483.10(j).
§ 483.10(f)(1)		Re-designated & revised	§ 483.10(j)(1).
§ 483.10(f)(2)		Re-designated & revised	§ 483.10(j)(2).
§ 483.10(g)	(g) *Examination of survey results*	Re-designated	§ 483.10(f)(4).
§ 483.10(g)(1)		Re-designated & revised	§ 483.10(f)(4)(i), § 483.11(e)(3).
§ 483.10(g)(2)		Re-designated	§ 483.10(f)(4)(ii).
§ 483.10(h)	(h) *Work*	Re-designated & revised	§ 483.10(e)(8).
§ 483.10(h)(1)		Re-designated & revised	§ 483.10(e)(8).
§ 483.10(h)(2)		Re-designated & revised	§ 483.10(e)(8), § 483.11(d)(4).
§ 483.10(h)(2)(i)–(iv)		Re-designated	§ 483.11(d)(4)(i)–(iv).
§ 483.10(i)	(i) *Mail*	Re-designated & revised	§ 483.10(g)(1) & (h)(3).
§ 483.10(i)(1)		Re-designated & revised	§ 483.10(g)(1), § 483.11(f)(1)(i).
§ 483.10(i)(2)		Re-designated & revised	§ 483.10(h)(3)(ii), § 483.11(e)(14)(iii).
§ 483.10(j)(1)	(j) *Access and visitation rights*	Re-designated & revised	§ 483.10(e)(3), § 483.11(d)(1).
§ 483.10(j)(1)(i)–(vi)		Re-designated & revised	§ 483.11(d)(1)(i)(A)–(F).
§ 483.10(j)(1)(vii)		Re-designated & revised	§ 483.11(d)(1)(ii).
§ 483.10(j)(1)(viii)		Re-designated & revised	§ 483.11(d)(1)(iii).
§ 483.10(j)(2)		Re-designated	§ 483.11(d)(1)(iv).
§ 483.10(j)(3)		Re-designated & revised	§ 483.11(f)(3).
§ 483.10(k)	(k) *Telephone*	Re-designated & revised	§ 483.10(h)(1).
§ 483.10(l)	(l) *Personal property*	Re-designated & revised	§ 483.10(d)(2).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.10(m)	(m) *Married couples*	Re-designated	§ 483.10(d)(4).
§ 483.10(n)	(n) *Self-Administration of Drugs*	Re-designated & revised	§ 483.10(b)(6).
§ 483.10(o)(1)–(2)	(o) *Refusal of certain transfers*	Re-designated & revised	§ 483.10(d)(7)(i)–(ii), 483.11(d)(8).
§ 483.12(a)	Admission, transfer and discharge rights (a) *Transfer and discharge*.	Re-designated & revised	§ 483.15(b).
§ 483.12(a)(1)	(1) *Definition:*	Re-designated	§ 483.5.
§ 483.12(a)(2)		Re-designated & revised	§ 483.15(b)(1)(ii).
§ 483.12(a)(2)(i)–(vi)		Re-designated & revised	§ 483.15(b)(1)(ii)(A)–(F).
§ 483.12(a)(3)		Re-designated & revised	§ 483.15(b)(2).
§ 483.12(a)(3)(i)		Re-designated & revised	§ 483.15(b)(2)(ii)(A).
§ 483.12(a)(3)(ii)		Re-designated & revised	§ 483.15(b)(2)(ii)(B).
§ 483.12(a)(4)(i)–(iii)		Re-designated & revised	§ 483.15(b)(3)(i)–(iii).
§ 483.12(a)(5)(i)		Re-designated & revised	§ 483.15(b)(4).
§ 483.12(a)(5)(ii)(A)–(E)		Re-designated & revised	§ 483.15(b)(4)(ii)(A)–(E).
§ 483.12(a)(6)(i)–(vii)		Re-designated & revised	§ 483.15(b)(5)(i)–(vii).
§ 483.12(a)(7)		Re-designated & revised	§ 483.15(b)(7).
§ 483.12(a)(8)		Re-designated & revised	§ 483.15(b)(8).
§ 483.12(a)(9)		Re-designated & revised	§ 483.15(b)(9).
§ 483.12(b)(1)(i)–(ii)	(b) *Notice of bed-hold policy and readmission*.	Re-designated & revised	§ 483.15(c)(1)(i)–(iii).
§ 483.12(b)(2)		Re-designated & revised	§ 483.15(c)(2).
§ 483.12(b)(3)(i)–(ii)		Re-designated	§ 483.15(c)(3)(i)–(ii).
§ 483.12(b)(4)		Re-designated & revised	§ 483.15(c)(4).
§ 483.12(c)(1)	(c) *Equal access to quality care*	Re-designated & revised	§ 483.15(b)(1)(i)(A).
§ 483.12(c)(2)		Re-designated & revised	§ 483.15(b)(1)(i)(B).
§ 483.12(c)(3)		Re-designated	§ 483.15(b)(1)(i)(C).
§ 483.12(d)(1) (i)–(ii)	(d) *Admissions policy*	Re-designated & revised	S483.15(a)(2)(i)–(ii).
§ 483.12(d)(2)		Re-designated & revised	S483.15(a)(3).
§ 483.12(d)(3) (i)–(ii)		Re-designated	S483.15(a)(4)(i)–(ii).
§ 483.12(d)(4)		Re-designated	§ 483.15(a)(5).
§ 483.13(a)	Resident behavior and facility practices. (a) *Restraints*.	Re-designated & revised	§ 483.10(d)(1), § 483.12, § 483.25(d)(1).
§ 483.13(b)	(b) *Abuse*	Re-designated & revised	§ 483.12.
§ 483.13(c)	(c) *Staff treatment of residents*	Re-designated & revised	§ 483.12(b).
§ 483.13(c)(1)		Re-designated	§ 483.12(a).
§ 483.13(c)(1)(i)		Re-designated	§ 483.12(a)(1).
§ 483.13(c)(1)(ii)		Re-designated & revised	§ 483.12(a)(2).
§ 483.13(c)(1)(ii)(A)		Re-designated & revised	§ 483.12(a)(2)(i).
§ 483.13(c)(1)(ii)(B)		Re-designated & revised	§ 483.12(a)(2)(ii).
§ 483.13(c)(1)(iii)		Re-designated & revised	§ 483.12(a)(3).
§ 483.13(c)(2)		Re-designated & revised	§ 483.12(c)(1).
§ 483.13(c)(3)		Re-designated & revised	§ 483.12(c)(2)–(3).
§ 483.13(c)(4)		Re-designated & revised	§ 483.12(c)(4).
§ 483.15	Quality of life	Re-designated & revised	§ 483.11.
§ 483.15(a)	(a) *Dignity*	Re-designated & revised	§ 483.11.
§ 483.15(b)	(b) *Self-determination and participation*.	Re-designated & revised	§ 483.10(e), § 483.11(d).
§ 483.15(b)(1)		Re-designated & revised	§ 483.10(e)(1).
§ 483.15(b)(2)		Re-designated & revised	§ 483.10(e)(2).
§ 483.15(b)(3)		Re-designated	§ 483.10(e)(10).
§ 483.15(c)(1)	(c) *Participation in resident and family groups* groups.	Re-designated & revised	§ 483.10(e)(4).
§ 483.15(c)(2)		Re-designated & revised	§ 483.10(e)(5)–(6).
§ 483.15(c)(3)		Re-designated	§ 483.11(d)(3).
§ 483.15(c)(4)–(6)		Re-designated & revised	§ 483.11(d)(3)(i)–(iii).
§ 483.15(d)	(d) *Participation in other activities*	Re-designated& revised	§ 483.10(e)(7).
§ 483.15(e)	(e) *Accommodation of needs*	Re-designated & revised	§ 483.10(d).
§ 483.15(e)(1)		Re-designated & revised	§ 483.10(d)(3).
§ 483.15(e)(2)		Re-designated & revised	§ 483.10(d)(6).
§ 483.15(f)(1)	(f) *Activities*	Re-designated & revised	§ 483.25(c)(1).
§ 483.15(f)(2)		Re-designated & revised	§ 483.25(c)(2).
§ 483.15(f)(2)(i)		Re-designated & revised	§ 483.25(c)(2).
§ 483.15(f)(2)(i)(A)		Re-designated	§ 483.25(c)(2)(i).
§ 483.15(f)(2)(i)(B)		Re-designated & revised	§ 483.25(c)(2)(ii)(A).
§ 483.15 (f)(2)(ii)–(iv)		Re-designated & revised	§ 483.25(c)(2)(ii)(B)–(D).
§ 483.15(g)(1)	(g) *Social Services*	Re-designated & revised	§ 483.40(d).
§ 483.15(g)(2)		Re-designated & revised	§ 483.70(p).
§ 483.15(g)(3)(i)–(ii)	(3) *Qualifications of social worker*	Re-designated & revised	§ 483.70(p)(1)–(2).
§ 483.15(h)	(h) *Environment*	Re-designated & revised	§ 483.11(g).
§ 483.15(h)(1)		Re-designated & revised	§ 483.11(g)(1).
§ 483.15(h)(2)		Re-designated	§ 483.11(g)(2).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.15(h)(3)		Re-designated	§ 483.11(g)(3).
§ 483.15(h)(4)		Re-designated & revised	§ 483.11(g)(4).
§ 483.15(h)(5)		Re-designated	§ 483.11(g)(5).
§ 483.15(h)(6)		Re-designated	§ 483.11(g)(6).
§ 483.15(h)(7)		Re-designated	§ 483.11(g)(7).
§ 483.20	Resident Assessment	No change	§ 483.20.
§ 483.20(a)	(a) *Admission orders*	No change	§ 483.20(a).
§ 483.20(b)	(b) *Comprehensive assessments*—(1) *Resident assessment instrument.*	Revised	§ 483.20(b).
§ 483.20(c)–(d)	(c) *Quarterly review assessment* .. (d) *Use.*	No change	§ 483.20(c)–(d).
§ 483.20(e)	(e) *Coordination*	Revised	§ 483.20(e).
§ 483.20(f)–(j)	(f) *Automated data processing requirement.* (g) *Accuracy of assessments.* (h) *Coordination.* (i) *Certification.*		
	(j) *Penalty for falsification*	No change	§ 483.20(f)–(j).
§ 483.20(k)(1)	(k) *Comprehensive care plans*	Re-designated & revised	§ 483.21(b)(1).
§ 483.20(k)(2)		Re-designated	§ 483.21(b)(2).
§ 483.20(k)(2)(i)		Re-designated	§ 483.21(b)(2)(i).
§ 483.20(k)(2)(ii)		Re-designated & revised	§ 483.21(b)(2)(ii)(A)–(G).
§ 483.20(k)(2)(iii)		Re-designated & revised	§ 483.21(b)(2)(iii).
§ 483.20(k)(3)(i)–(ii)		Re-designated	§ 483.21(b)(3)(i)–(ii).
§ 483.20(l)	(l) *Discharge summary*	Re-designated & revised	§ 483.21(c)(2).
§ 483.20(l)(1)		Re-designated & revised	§ 483.21(c)(2)(i).
§ 483.20(l)(2)		Re-designated & revised	§ 483.21(c)(2)(ii).
§ 483.20(l)(3)		Re-designated & revised	§ 483.21(c)(2)(iv).
§ 483.20(m)	(m) *Preadmission screening for mentally ill individuals and individuals with mental retardation.*	Re-designated	§ 483.20(k)(1).
§ 483.20(m)(1)(i)–(ii)		Re-designated	§ 483.20(k)(1)(i)–(ii).
§ 483.20(m)(2)(i)–(ii)	(2) *Definition* For purposes of this section—.	Re-designated & revised	§ 483.20(k)(3)(i)–(ii).
§ 483.25	Quality of care	Revised	§ 483.25.
§ 483.25(a)	(a) *Activities of daily living*	Re-designated & revised	§ 483.25(a).
§ 483.25(a)(1)		Re-designated and revised	§ 483.25(a),(b).
§ 483.25(a)(1)(i)		Re-designated and revised	§ 483.25(b)(1).
§ 483.25(a)(1)(ii)		Re-designated and revised	§ 483.25(b)(2).
§ 483.25(a)(1)(iii)		Re-designated and revised	§ 483.25(b)(3).
§ 483.25(a)(1)(iv)		Re-designated and revised	§ 483.25(b)(4).
§ 483.25(a)(1)(v)		Re-designated and revised	§ 483.25(b)(5).
§ 483.25(a)(2)		Re-designated and revised	§ 483.25(a)(1).
§ 483.25(a)(3)		Re-designated	§ 483.25(a)(2).
§ 483.25(b)	(b) *Vision and hearing*	Re-designated	§ 483.25(d)(3).
§ 483.25(b)(1)		Re-designated	§ 483.25(d)(3)(i).
§ 483.25(b)(2)		Re-designated	§ 483.25(d)(3)(ii).
§ 483.25(c)	(c) *Pressure sores*	Re-designated & revised	§ 483.25(d)(4)(i).
§ 483.25(c)(1)		Re-designated & revised	§ 483.25(d)(4)(i)(A).
§ 483.25(c)(2)		Re-designated & revised	§ 483.25(d)(4)(i)(B).
§ 483.25(d)	(d) *Urinary Incontinence*	Re-designated & revised	§ 483.25(d)(6)(ii).
§ 483.25(d)(1)		Re-designated	§ 483.25(d)(6)(ii)(A).
§ 483.25(d)(2)		Re-designated	§ 483.25(d)(6)(i)(C).
§ 483.25(e)	(e) *Range of motion*	Re-designated & revised	§ 483.25(d)(5).
§ 483.25(e)(1)		Re-designated	§ 483.25(d)(5)(i).
§ 483.25(e)(2)		Re-designated	§ 483.25(d)(5)(ii).
§ 483.25(f)	(f) *Mental and Psychosocial functioning.*	Re-designated & revised	§ 483.40(b).
§ 483.25(f)(1)		Re-designated & revised	§ 483.40(b)(1).
§ 483.25(f)(2)		Re-designated & revised	§ 483.40(b)(2).
§ 483.25(g)	(g) *Naso-gastric tubes*	Re-designated & revised	§ 483.25(d)(8)(iv).
§ 483.25(g)(1)		Re-designated & revised	§ 483.25(d)(8)(iv).
§ 483.25(g)(2)		Re-designated & revised	§ 483.25(d)(8)(v).
§ 483.25(h)	(h) *Accidents*	Re-designated	§ 483.25(d)(10).
§ 483.25(h)(1)		Re-designated	§ 483.25(d)(10)(i).
§ 483.25(h)(2)		Re-designated	§ 483.25(d)(10)(ii).
§ 483.25(i)	(i) *Nutrition*	Re-designated & revised	§ 483.25(d)(8).
§ 483.25(i)(1)		Re-designated & revised	§ 483.25(d)(8)(i).
§ 483.25(i)(2)		Re-designated & revised	§ 483.25(d)(8)(iii).
§ 483.25(j)	(j) *Hydration*	Re-designated & revised	§ 483.25(d)(8)(ii).
§ 483.25(k)	(k) *Special needs*	Re-designated & revised	§ 483.25(d).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.25(k)(1)	(1) Injections;	Deleted.	
§ 483.25(k)(2)	(2) Parenteral and enteral fluids;	Re-designated & revised	§ 483.25(d)(9).
§ 483.25(k)(3)	(3) Colostomy, ureterostomy, or ileostomy care;.	Re-designated	§ 483.25(d)(7).
§ 483.25(k)(4)	(4) Tracheostomy care;	Re-designated & revised	§ 483.25(d)(11).
§ 483.25(k)(5)	(5) Tracheal suctioning;	Re-designated & revised	§ 483.25(d)(11).
§ 483.25(k)(6)	(6) Respiratory care;	Re-designated & revised	§ 483.25(d)(11).
§ 483.25(k)(7)	(7) Foot care; and	Re-designated & revised	§ 483.25(d)(4)(ii).
§ 483.25(k)(8)	(8) Prostheses.	Re-designated	§ 483.25(d)(12).
§ 483.25(l)	(l) *Unnecessary drugs*	Re-designated	§ 483.45(d).
§ 483.25(l)(1)(i)–(vi)		Re-designated	§ 483.45(d)(1)–(6).
§ 483.25(l)(2)(i)–(ii)	(2) *Antipsychotic Drugs*	Re-designated & revised	§ 483.45(e)(1)–(2).
§ 483.25(m)(1)–(2)	(m) *Medication Errors*	Re-designated & revised	§ 483.45(f)(1)–(2).
§ 483.25(n)	(n) *Influenza and pneumococcal immunizations*.	Re-designated	§ 483.80(d)(1).
§ 483.25(n)(1)(i)–(iv)		Re-designated & revised	§ 483.80(d)(1)(i)–(iv).
§ 483.25(n)(2)	(2) *Pneumococcal disease*	Re-designated	§ 483.80(d)(2).
§ 483.25(n)(2)(i)–(iv)		Re-designated & revised	§ 483.80(d)(2)(i)–(iv).
§ 483.25(n)(2)(v)	*Exception*	Deleted.	
§ 483.30	Nursing services	Re-designated & revised	§ 483.35.
§ 483.30(a)	(a) *Sufficient staff*	Re-designated	§ 483.35(a).
§ 483.30(a)(1)(ii)		Re-designated & revised	§ 483.35(a)(1)(ii).
§ 483.30(a)(2)		Re-designated	§ 483.35(a)(2).
§ 483.30(b)(1)	(b) *Registered nurse*	Re-designated	§ 483.35(b)(1).
§ 483.30(b)(2)		Re-designated	§ 483.35(b)(2).
§ 483.30(b)(3)		Re-designated	§ 483.35(b)(3).
§ 483.30(c)	(c) *Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis*.	Re-designated	§ 483.35(e).
§ 483.30(c)(1)–(5)		Re-designated	§ 483.35(e)(1)–(5).
§ 483.30(c)(6)		Re-designated & revised	§ 483.35(e)(6).
§ 483.30(c)(7)		Re-designated & revised	§ 483.35(e)(7).
§ 483.30(d)(1)	(d) *SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week*.	Re-designated	§ 483.35(f)(1).
§ 483.30(d)(1)(i)		Re-designated	§ 483.35(f)(1)(i).
§ 483.30(d)(1)(ii)		Re-designated	§ 483.35(f)(1)(ii).
§ 483.30(d)(1)(iii)		Re-designated	§ 483.35(f)(1)(iii).
§ 483.30(d)(1)(iii)(A)		Re-designated	§ 483.35(f)(1)(iii)(A).
§ 483.30(d)(1)(iii)(B)		Re-designated	§ 483.35(f)(1)(iii)(B).
§ 483.30(d)(1)(iv)		Re-designated & revised	§ 483.35(f)(1)(iv).
§ 483.30(d)(1)(v)		Re-designated & revised	§ 483.35(f)(1)(v).
§ 483.30(d)(2)		Re-designated	§ 483.35(f)(2).
§ 483.30(e)(1)(i)–(iv)	(e) *Nurse staffing information*	Re-designated	§ 483.35(g)(1)(i)–(iv).
§ 483.30(e)(2)(i)–(ii)		Re-designated	§ 483.35(g)(2)(i)–(ii).
§ 483.30(e)(3)		Re-designated	§ 483.35(g)(3).
§ 483.30(e)(4)		Re-designated	§ 483.35(g)(4).
§ 483.35	Dietary services	Re-designated & revised	§ 483.60.
§ 483.35(a)	(a) *Staffing*	Re-designated & revised	§ 483.60(a)(1).
§ 483.35(a)(1)		Re-designated & revised	§ 483.60(a)(2).
§ 483.35(a)(2)		Re-designated & revised	§ 483.60(a)(1)(i)–(iii).
§ 483.35(b)	(b) *Sufficient staff*	Re-designated & revised	§ 483.60(a)(3).
§ 483.35(c)	(c) *Menus and nutritional adequacy*.	Re-designated	§ 483.60(c).
§ 483.35(c)(1)–(3)		Re-designated & revised	§ 483.60(c)(1)–(3).
§ 483.35(d)	(d) *Food*	Re-designated	§ 483.60(d).
§ 483.35(d)(1)		Re-designated	§ 483.60(d)(1).
§ 483.35(d)(2)		Re-designated & revised	§ 483.60(d)(2).
§ 483.35(d)(3)		Re-designated	§ 483.60(d)(3).
§ 483.35(d)(4)		Re-designated & revised	§ 483.60(d)(5).
§ 483.35(e)	(e) *Therapeutic diets*	Re-designated & revised	§ 483.60(e).
§ 483.35(f)(1)	(f) *Frequency of meals*	Re-designated & revised	§ 483.60(f)(1).
§ 483.35(f)(2)		Deleted.	
§ 483.35(f)(3)		Re-designated	§ 483.60(f)(3).
§ 483.35(f)(4)		Deleted.	
§ 483.35(g)	(g) *Assistive devices*	Re-designated & revised	§ 483.60(g).
§ 483.35(h)(1)	(h) *Paid feeding assistants*	Re-designated	§ 483.60(h)(1).
§ 483.35(h)(1)(i)–(ii)		Re-designated	§ 483.60(h)(1)(i)–(ii).
§ 483.35(h)(2)(i)		Re-designated	§ 483.60(h)(2)(i).
§ 483.35 (h)(2)(ii)		Re-designated & revised	§ 483.60(h)(2)(ii).
§ 483.35(h)(3)(i)–(ii)		Re-designated & revised	§ 483.60(h)(3)(i)–(ii).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.35(h)(3)(iii)		Re-designated & revised	§ 483.60(h)(3)(iii).
§ 483.35(i)	(i) *Sanitary conditions*	Re-designated & revised	§ 483.60(i).
§ 483.35(i)(1)		Re-designated & revised	§ 483.60(i)(1).
§ 483.35(i)(2)		Re-designated & revised	§ 483.60(i)(2).
§ 483.35(i)(3)		Re-designated	§ 483.60(i)(4).
§ 483.40	Physician services	Re-designated & revised	§ 483.30.
§ 483.40(a)	(a) *Physician supervision*	Re-designated	§ 483.30(a).
§ 483.40(a)(1)–(2)		Re-designated	§ 483.30(a)(1)–(2).
§ 483.40(b)	(b) *Physician visits*	Re-designated	§ 483.30(b).
§ 483.40(b)(1)		Re-designated	§ 483.30(b)(1).
§ 483.40(b)(2)		Re-designated	§ 483.30(b)(2).
§ 483.40(b)(3)		Re-designated & revised	§ 483.30(b)(3).
§ 483.40(c)(1)–(4)	(c) *Frequency of physician visits*	Re-designated	§ 483.30(c)(1)–(4).
§ 483.40(d)	(d) *Availability of physicians for emergency care.*	Re-designated	§ 483.30(d).
§ 483.40(e)(1)	(e) *Physician delegation of tasks in SNFs.*	Re-designated	§ 483.30(f)(1).
§ 483.40(e)(1)(i)–(iii)		Re-designated	§ 483.30(f)(1)(i)–(iii).
§ 483.40(e)(2)		Re-designated	§ 483.30(f)(4).
§ 483.40(f)	(f) *Performance of physician tasks in NFs.*	Re-designated	§ 483.30(g).
§ 483.45	Specialized rehabilitative services (a) *Provision of services*	Re-designated & revised	§ 483.65(a).
§ 483.45(a)(1)–(2)		Re-designated & revised	§ 483.65(a)(1)–(2).
§ 483.45(b)	(b) *Qualifications*	Re-designated	§ 483.65(b).
§ 483.55	Dental services	No change	§ 483.55.
§ 483.55(a)(1)	(a) *Skilled nursing facilities*	Re-designated	§ 483.55(a)(1).
§ 483.55(a)(2)		Re-designated	§ 483.55(a)(2).
§ 483.55(a)(3)		Re-designated	§ 483.55(a)(4).
§ 483.55(a)(3)(i)		Re-designated	§ 483.55(a)(4)(i).
§ 483.55(a)(3)(ii)		Re-designated & revised	§ 483.55(a)(4)(ii).
§ 483.55(a)(4)		Re-designated & revised	§ 483.55(a)(5).
§ 483.55(b)	(b) *Nursing facilities*	Re-designated	§ 483.55(b).
§ 483.55(b)(1)(i)–(ii)		Re-designated& revised	§ 483.55(b)(1)(i)–(ii).
§ 483.55(b)(2)		Re-designated & revised	§ 483.55(b).
§ 483.55(b)(2)(i)–(ii)		Re-designated & revised	§ 483.55(b)(2)(i)–(ii).
§ 483.55(b)(3)		Re-designated & revised	§ 483.55(b)(3).
§ 483.60	Pharmacy services	Re-designated & revised	§ 483.45.
§ 483.60(a)	(a) *Procedures*	Re-designated	§ 483.45(a).
§ 483.60(b)	(b) *Service consultation*	Re-designated	§ 483.45(b).
§ 483.60(b)(1)–(3)		Re-designated	§ 483.45(b)(1)–(3).
§ 483.60(c)(1)	(c) *Drug regimen review*	Re-designated	§ 483.45(c)(1).
§ 483.60(c)(2)		Re-designated & revised	§ 483.45(c)(4).
§ 483.60(d)	(d) *Labeling of drugs and biologicals.*	Re-designated	§ 483.45(g).
§ 483.60(e)(1)–(2)	(e) *Storage of drugs and biologicals.*	Re-designated	§ 483.45(h)(1)–(2).
§ 483.65	Infection control	Re-designated & revised	§ 483.80.
§ 483.65(a)(1)–(3)	(a) *Infection control program*	Re-designated & revised	§ 483.80(a)(1)–(3).
§ 483.65(b)(1)	(b) *Preventing spread of infection*	Re-designated & revised	§ 483.80(a)(2)(iv).
§ 483.65(b)(2)		Re-designated & revised	§ 483.80(a)(2)(v).
§ 483.65(b)(3)		Re-designated & revised	§ 483.80(a)(2)(vi).
§ 483.65(c)	(c) *Linens*	Re-designated	§ 483.80(e).
§ 483.70	Physical environment	Re-designated	§ 483.90.
§ 483.70(a)(1)–(8)	(a) *Life safety from fire*	Re-designated	§ 483.90(a)(1)–(8).
§ 483.70(b)(1)–(2)	(b) *Emergency power*	Re-designated	§ 483.90(b)(1)–(2).
§ 483.70(c)(1)–(2)	(c) *Space and equipment*	Re-designated & revised	§ 483.90(c)(1)–(2).
§ 483.70(d)	(d) *Resident rooms*	Re-designated	§ 483.90(d).
§ 483.70(d)(1)		Re-designated	§ 483.90(d)(1).
§ 483.70(d)(1)(i)		Re-designated & revised	§ 483.90(d)(1)(i).
§ 483.70(d)(1)(ii)–(vii)		Re-designated	§ 483.90(d)(1)(ii)–(vii).
§ 483.70(d)(2)		Re-designated	§ 483.90(d)(2).
§ 483.70(d)(2)(i)		Re-designated & revised	§ 483.90(d)(2)(i).
§ 483.70(d)(2)(ii)–(iv)		Re-designated	§ 483.90(d)(2)(ii)–(iv).
§ 483.70(d)(3)(i)–(ii)		Re-designated	§ 483.90(d)(3)(i)–(ii).
§ 483.70(e)	(e) *Toilet facilities*	Re-designated & revised	§ 483.90(e).
§ 483.70(f)(1)	(f) *Resident call system*	Re-designated & revised	§ 483.90(f)(1).
§ 483.70(f)(2)	(f) Resident call system.	Re-designated	§ 483.90(f)(2).
§ 483.70(g)(1))	(g) *Dining and resident activities*	Re-designated	§ 483.90(g)(1).
§ 483.70(g)(2)		Re-designated & revised	§ 483.90(g)(2).
§ 483.70(g)(3)–(4)		Re-designated	§ 483.90(g)(3)–(4).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.70(h)(1)–(4)	(h) *Other environmental conditions.*	Re-designated	§ 483.90(h)(1)–(4).
§ 483.75	Administration	Re-designated	§ 483.70.
§ 483.75(a)	(a) *Licensure*	Re-designated	§ 483.70(a).
§ 483.75(b)	(b) *Compliance with Federal, State, and local laws and professional standards.*	Re-designated	§ 483.70(b).
§ 483.75(c)	(c) *Relationship to other HHS regulations.*	Re-designated & revised	§ 483.70(c).
§ 483.75(d)(1)	(d) *Governing body*	Re-designated	§ 483.70(d)(1).
§ 483.75(d)(2)(i)–(ii)		Re-designated & revised	§ 483.70(d)(2)(i)–(ii).
§ 483.75(e)	(e) *Required training of nursing aides.*	Re-designated & revised	483.95(g).
§ 483.75(e)(1)	(1) *Definitions. Licensed health professional.*	Re-designated & revised	483.5.
§ 483.75(e)(1)	*Nurse aide*	Re-designated & revised	483.5.
§ 483.75(e)(2)(i)–(ii)	(2) *General rule*	Re-designated & revised	§ 483.35(d)(1)(i)–(ii).
§ 483.75(e)(3)	(3) *Non-permanent employees*	Re-designated & revised	§ 483.35(d)(2).
§ 483.75(e)(4)(i)–(iii)	(4) *Competency*	Re-designated	§ 483.35(d)(3)(i)–(iii).
§ 483.75(e)(5)(i)–(ii)	(5) *Registry verification*	Re-designated	§ 483.35(d)(4)(i)–(ii).
§ 483.75(e)(6)	(6) *Multi-State registry verification*	Re-designated & revised	§ 483.35(d)(5).
§ 483.75(e)(7)	(7) *Required retraining*	Re-designated	§ 483.35(d)(6).
§ 483.75(e)(8)(i)–(iii)	(8) *Regular in-service education*	Re-designated & revised	§ 483.35(d)(7), § 483.95(g).
§ 483.75(f)	(f) *Proficiency of Nurse aides*	Re-designated	§ 483.35(c).
§ 483.75(g)(1)	(g) *Staff qualifications*	Re-designated	§ 483.70(f)(1).
§ 483.75(g)(2)		Re-designated	§ 483.70(f)(2).
§ 483.75(h)(1)	(h) *Use of outside resources*	Re-designated	§ 483.70(g)(1).
§ 483.75(h)(2)(i)–(ii)		Re-designated	§ 483.70(g)(2)(i)–(ii).
§ 483.75(i)(1)	(i) *Medical director*	Re-designated	§ 483.70(h)(1).
§ 483.75(i)(2)(i–ii)		Re-designated	§ 483.70(h)(2)(i)–(ii).
§ 483.75(j)(1)(i)–(iv)	(j) *Laboratory services*	Re-designated	§ 483.50(a)(1)(i)–(iv).
§ 483.75(j)(2)		Re-designated	§ 483.50(a)(2).
§ 483.75(j)(2)(i)–(iv)		Re-designated & Revised	§ 483.50(a)(2)(i)–(iv).
§ 483.75(k)	(k) *Radiology and other diagnostic services.*	Re-designated	§ 483.50(b).
§ 483.75(k)(1)		Re-designated	§ 483.50(b)(1).
§ 483.75(k)(2)		Re-designated & revised	§ 483.50(b)(2).
§ 483.75(l)(1)	(l) *Clinical records*	Re-designated & revised	§ 483.70(i)(1).
§ 483.75(l)(1)(i)–(iv)		Re-designated & revised	§ 483.70(i)(1)(i)–(iv).
§ 483.75(l)(2)		Re-designated & revised	§ 483.70(i)(4).
§ 483.75(l)(2)(i)		Re-designated	§ 483.70(i)(4)(i).
§ 483.75(l)(2)(ii)		Re-designated	§ 483.70(i)(4)(ii).
§ 483.75(l)(2)(iii)		Re-designated	§ 483.70(i)(4)(iii).
§ 483.75(l)(3)		Re-designated & revised	§ 483.70(i)(3).
§ 483.75(l)(4)(i)–(iv)		Re-designated & revised	§ 483.70(i)(2).
§ 483.75(l)(5)(i)–(v)		Re-designated & revised	§ 483.70(i)(5)(i)–(v).
§ 483.75(m)(1)	(m) *Disaster and emergency preparedness.*	See Proposed Rule: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (78 FR 79081, December 27, 2013).	See 78 FR 79081.
§ 483.75(m)(2)		See Proposed Rule: Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (78 FR 79081, December 27, 2013).	See 78 FR 79081.
§ 483.75(n)(1)(i)–(ii)	(n) *Transfer agreement*	Re-designated & revised	§ 483.70(j)(1)(i)–(ii).
§ 483.75(n)(2)		Re-designated	§ 483.70(j)(2).
§ 483.75(o)(1)(i)–(iii)	(o) *Quality assessment and assurance.*	Re-designated & revised	§ 483.75(g)(1)(i)–(iv).
§ 483.75(o)(2)(i)–(ii)		Re-designated & revised	§ 483.75(g)(2)(i)–(iii).
§ 483.75(o)(3)		Re-designated & revised	§ 483.75(h)(1).
§ 483.75(o)(4)		Re-designated	§ 483.75(i).
§ 483.75(p)(1)	(p) *Disclosure of ownership*	Re-designated	§ 483.70(k)(1).
§ 483.75(p)(2)(i)–(iv)		Re-designated	§ 483.70(k)(2)(i)–(iv).
§ 483.75(p)(3)		Re-designated	§ 483.70(k)(3).
§ 483.75(q)	(q) *Required training of feeding assistants.*	Re-designated & revised	§ 483.95(h).
§ 483.75(r)(1)–(3)	(r) *Facility closure-Administrator*	Re-designated	§ 483.70(l)(1)–(3).
§ 483.75(s)	(s) *Facility closure*	Re-designated & revised	§ 483.70(m).

TABLE A—TITLE 42 CROSS-REFERENCES TO PART 483 SUBPART B—Continued

Existing CFR Section	Title	Action	New CFR section
§ 483.75(t)	(t) *Hospice services*	Re-designated	§ 483.70(o)

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 (COI) requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

Omnibus Budget Reconciliation Act of 1987 Waiver

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4204(b) and 4214(d) of Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (OBRA '87) provide for a waiver of Paperwork Reduction Act (PRA) requirements for these regulations. We believe that this waiver still applies to those revisions and updates we made to existing requirements in part 483 subpart B. However, we provide burden estimates for the new information collection requirements proposed in this rule, specifically those requirements implemented as a result of the Affordable Care Act.

Sources of Data Used in Estimates of Burden Hours and Cost Estimates

We obtained the data used in this discussion on the number of the various Medicare and Medicaid nursing facilities from Medicare's Certification and Survey Provider Enhanced Reporting (CASPER) as of April 1, 2015. We have not included data for nursing facilities that are not Medicare and/or Medicaid certified. According to our CASPER database, there are 15,691 SNFs and NFs participating in the Medicare and Medicaid programs. Since the individual States periodically update the CASPER system, the number of SNFs and NFs may vary depending upon the date of the report. Thus, while this number is accurate as of the date of the report, the actual number of facilities may be different as of the date of this proposed rule's publication.

Unless otherwise indicated, we obtained all salary information for the different positions identified in the following assessments from the US Bureau of Labor Statistics at *http://www.bls.gov/oes*. We used the data from this Web site because it identifies many different healthcare industry occupations and specialties and updates that data monthly. We calculated the estimated hourly rates based upon the national median salary for that particular position, including fringe benefits and overhead worth 48 percent of the base salary. Where we were able to identify positions linked to specific positions, we used that compensation information. However, in some instances, we used a general position description or we used information for comparable positions. For example, we were not able to locate specific information for nursing home administrators and directors of nursing, so we used the average hourly wage for a medical and health services manager for these positions. We welcome any comments on the accuracy of our compensation estimates.

In estimating the burden associated with this proposed rule, we also took into consideration the many free or low cost resources nursing facilities have available to them. Following is a non-exhaustive list of some of the available resources:

- *http://www.nhqualitycampaign.org*
- *http://www.ascp.com*
- *http://www.amda.com*
- *http://www.ahcancal.org*
- *http://www.leadingage.org*
- *http://www.americangeriatrics.org*
- *http://www.ntocc.org*

We will discuss the burden for each provision included in this proposed rule in the order in which they appear in the CFR.

A. ICRs Regarding Quality Assurance and Performance Improvement (§ 483.75)

Each facility is currently required to maintain a QAA committee consisting of the director of nursing services, a physician designated by the facility and at least three other members of the facility's staff. The committee must meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary. The committee is required to develop and implement appropriate plans of action to correct identified quality deficiencies. Based on our experience with facilities' compliance with QAA requirements, we anticipate that they already have some of the resources needed to develop and implement a proactive QAPI program. In addition, some ICRs will be met through the technical assistance provided to facilities by CMS on the development of best practices, as required by the Affordable Care Act.

We propose at § 483.75 that a facility have a QAPI program. The burden associated with these proposed requirements would be the time and effort necessary to develop, implement, and maintain a comprehensive, data-driven QAPI program designed to monitor and evaluate the ongoing performance of the facility. The facility would have to establish a program to address the key components of the proposed standards (program measures, program scope, and program activities). The existing regulations require that QAA committees identify and correct specific deficiencies. We believe facilities would use some of the resources they have to comply with the QAA requirements (such as collecting data), in the development of a QAPI-based, proactive approach to assessing services they provide (including those services furnished under contract or arrangement) and to improve the quality of care and quality of life provided to their residents.

Since the existing Interpretative Guidelines for facilities to comply with the Medicare regulations provide information on how to conduct quality improvement programs, we anticipate that some facilities are already utilizing the QAPI model. We also anticipate that facilities would use their existing

resources to meet the requirements in this proposed rule. To the extent that facilities are utilizing a QAPI quality model and are proactively collecting data, evaluating their performance, and making and monitoring program improvements, they would be better prepared to comply with the QAPI requirements. However, for the purpose of this burden analysis, we assume that all facilities would need to develop a QAPI program.

Based on our experience with other Medicare providers that have developed QAPI programs, we estimate that, on average, it would take 56 hours for the facility to develop and document a comprehensive, data-driven QAPI program designed to monitor and evaluate performance of all services and programs of the facility, including services provided under contract or arrangement.

We estimate that the facility administrator/coordinator would be largely responsible for developing the overall QAPI program and would spend approximately 30 hours on this activity; the director of nursing and a registered nurse would each spend approximately 10 hours each to review and provide input on clinical services activities; a physician would spend approximately 4 hours to review the program plan and provide medical direction and input; and one office assistant would spend approximately 2 hours to prepare and distribute draft and final program plans. We estimate that this would require a total of 878,696 burden hours for all 15,691 facilities (56 hours × 15,691 facilities) to develop a QAPI program.

We estimate that the cost for the administrator/coordinator would be $2,400 ($80 × 30 hours). We estimate the cost for the director of nursing would be $800 ($80 × 10 hours). We estimate that the cost for an RN would be $580 ($58 per hour × 10 hours). We estimate that the cost for the physician would be $688 ($172 × 4 hours). We estimate that the cost for an office assistant would be $58 ($29 × 2 hours). The estimated one-time cost for each facility would total $4,526. The total one-time cost for all 15,691 facilities would be $71,017,466.

We anticipate that the ongoing, annual burden for each facility to collect and analyze data for QAPI activities would be 20 hours. We anticipate that to document the improvement activities would require 20 hours. We estimate the total annual burden hours for all facilities would be 627,640 (40 hours × 15,691 facilities). We anticipate that the staff time would be distributed as follows:

Administrator/Coordinator to collect and analyze data: 10 hours × $80 an hour = $800; to implement and document improvement projects: 4 hours × $80 = $320. (Total cost of $1,120)

Director of Nursing: 4 hours to collect and analyze data × $80 an hour = $320; to implement and document improvement projects: 10 hours × $80 an hour = $800. (Total cost of $1,120)

RN: 4 hours to collect and analyze data and 6 hours to implement and document improvement projects; 10 hours × $58 an hour = $580.

Physician: 1 hour to analyze data × $172 an hour = $172

Office Assistant: 1 hour collect and analyze data × $29 an hour = $29

We estimate that the annual cost for each facility would be $3,021. The total annual cost for all facilities would be $47,402,511 ($3,021 × 15,691).

B. ICRs Regarding Compliance and Ethics Program (§ 483.85)

Proposed § 483.85 would require the operating organization for each SNF and NF to have in operation a compliance and ethics program that would be effective in preventing and detecting criminal, civil, and administrative violations under the Act and promoting quality of care no later than 1 year after the effective date of the final rule. Each compliance and ethics program must contain at least the eight required elements in proposed § 483.85(c). The operating organization for each facility must also review its compliance and ethics program annually, and revise its program, as needed. Furthermore, proposed § 483.85(d) has additional requirements for operating organizations that operate five or more facilities.

For the purpose of determining a burden for this proposed rule, we have estimated a burden based on the number of SNF and NF operating organizations. Once this rule is finalized and becomes effective, it would be enforced through the survey process. We expect that the operating organization would develop the compliance and ethics program in collaboration with staff at their facilities and then share the implementation of the program with its operating facilities. Since it would be the individual facilities that would be surveyed and not the operating organization, operating organizations would need to ensure that the appropriate documentation is available at all of their individual facilities in order to demonstrate compliance with all of the relevant requirements in this proposed rule. Therefore, the burden we have assessed for the operating organization would encompass their working with staff at their individual facilities.

The current regulations for SNFs and NFs do not contain any requirements for a compliance and ethics program. However, SNFs and NFs, as well as all other health care facilities, must comply with all applicable statutes, regulations, and other mandatory guidance or face criminal, civil, or administrative sanctions. In addition, as discussed previously, the OIG had issued voluntary guidance about compliance and ethics programs for SNFs and NFs in 2000 and 2008. We also believe that it is standard practice for SNFs and NFs to have high-level personnel, such as the administrator, director of nursing, or the facilities director be responsible for ensuring that the facility is in compliance with all of the applicable federal, state, and local laws. We believe that many, if not all, of the operating organizations for SNFs and NFs already have some type of compliance program in operation. Furthermore, since many of the proposed required components for the compliance and ethics programs are very similar to many of the listed elements for the programs in the OIG's voluntary guidance documents published in 2000 and 2008, we believe the compliance and ethics programs that are already being used by many nursing homes include many, if not all, of the components proposed in this rule. However, since adherence to the OIG's guidance was voluntary and did not impose mandatory obligations, we also believe that some of these existing programs may not have all, or perhaps any, of the required components or may not be documented or included in the facility's standards, policies, or procedures. Therefore, we believe that all of the operating organizations for the SNFs and NFs would need to review their current programs and possibly revise or, in some cases, develop new sections for their programs in order to comply with the requirements in this proposed rule.

According to the Medicare Provider Enrollment, Chain, and Ownership System (PECOS) as of March 2015, there are 9,023 SNFs and NFs that are part of a multi-facility operating organization (an operating organization with 2 or more facilities). Furthermore based on PECOS data, for purposes of this regulation, we estimate that there are 7,445 total operating organizations (387 operating organizations with 5 or more facilities, 437 operating organizations with 2 to 4 facilities, and 6,621 operating organizations with single facilities). Based on our experience with SNFs and NFs, we expect that the administrator and the director of nursing would primarily be involved in

developing the operating organization's compliance and ethics program. Thus, in determining the burden for all of the requirements in proposed § 483.85, except for § 483.85(d), we will analyze the burden based on an administrator and the director of nursing performing the necessary tasks and activities. If the operating organization has a designated compliance officer, we expect that he or she would take the lead in developing the entire program with the assistance of the administrator and the director of nursing as needed or when required. Since we have estimated that the compliance officer and the director of nursing would receive about the same amount of compensation, $80 an hour, and that the necessary activities would require about the same numbers of hours, we believe our estimates would be about the same regardless of whether these tasks and activities were performed by the administrator and the director of nursing or by the compliance officer with the assistance of the administrator and the director of nursing.

As described previously, nursing homes must already ''be in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility'' (proposed § 483.85(b)). Thus, we expect that nursing homes are already performing many of the tasks and activities necessary to a compliance program and spending hours of their time on compliance issues, especially the nursing homes in multi-facility operating organizations. However, we are not certain that most nursing homes have formal programs that comply with the requirements in this proposed rule. Thus, we believe that nursing homes would sustain a burden associated with the requirement to develop a program that complied with this proposed rule from the resources needed for each facility to review, revise, and, if needed, develop new sections for the operating organization's compliance and ethics program.

We estimate that complying with this requirement would require 10 burden hours from the administrator and 10 burden hours from the director of nursing for a total of 20 burden hours from these individuals at an estimated cost of $1,600 (20 hours × $80 hourly wage). In addition, since we are proposing that compliance and ethics programs should now be mandatory, we expect that facilities would have an attorney review their programs to ensure they are in compliance with the requirements in this rule. The cost of having an attorney review the operating organization's program will vary depending on whether the operating organization has in-house counsel or has to hire an attorney at a law firm. For the purposes of determining the burden, we will assume that each operating organization has in-house counsel. We expect that an attorney would need to review the facility's compliance and ethics program, make recommendations, and approve the final program. We estimate this would require 4 burden hours at an estimated cost of $492 ($123 hourly wage × 4 hours).

Based on this data, we estimate it would require a total of 24 burden hours (10 hours for an administrator + 10 hours for the director of nursing + 4 hours for an attorney) for each operating organization to develop a compliance and ethics program that complied with the requirements in this proposed rule at a cost of $2,092 ($1,600 for the administrator and director of nursing + $492 for an attorney). Therefore, we estimate it would require 178,680 annual burden hours (24 burden hours for each operating organization × 7,445 operating organizations) at a cost of $15,574,940 ($2,092 for each operating organization × 7,445 operating organizations) for all facilities to comply with this requirement.

Each operating organization would also need to develop the policies and procedures necessary to implement the operating organization's compliance and ethics program. The burden associated with this requirement would be the resources needed to review and revise any existing policies and procedures and, if needed, develop new policies and procedures. Based on our experience with SNFs and NFs, we expect that the administrator, director of nursing, or perhaps both of these individuals would develop these policies and procedures. We estimate that it would require 10 burden hours for each operating organization to comply with this requirement at a cost of $800 ($80 hourly wage for a health services manager × 10 hours). Therefore, we estimate that for all 7,445 operating organizations to comply with this requirement, it would require 74,450 burden hours (10 burden hours for each operating organization × 7,445 operating organizations) at a cost of $5,956,000 ($800 per operating organization × 7,445 operating organizations).

In addition to developing the compliance and ethics program, each operating organization would be required to develop training materials and/or other publications to disseminate information about the program to its entire staff, individuals providing services under a contractual arrangement, and volunteers, consistent with their expected roles. As stated previously, we believe that nursing homes are already performing many of the tasks necessary for a compliance program and spending many hours on compliance issues. Thus, we expect that many operating organizations already have some of the materials and/or other publications that would be needed to comply with this requirement. The burden associated with this requirement would be the resources needed to review and revise any existing materials and, if needed, develop new materials to comply with this requirement. Based on our experience with operating organizations, we expect that the compliance liaison (nursing staffs) would be involved in these activities.

We believe that the compliance liaison would need 8 hours to develop these materials. Thus, we estimate it would require 8 burden hours for each operating organization to comply with this requirement at a cost of $464 ($58 hourly wage × 8 hours). Therefore, based on the previous estimate, for all 7,445 operating organizations to comply with this requirement it would require 59,560 burden hours (8 hours × 7,445 operating organizations) at a cost of $3,454,480 ($464 per operating organization × 7,445 operating organizations).

We also propose in § 483.85(e) that the operating organization for each facility must review its compliance and ethics program annually, and revise its program, as needed. Thus, after nursing homes develop their compliance and ethics programs, these facilities would need to review and revise their programs, as needed, in the subsequent years. Based on our experience with other healthcare facilities, we expect that most facilities are already periodically reviewing their programs, policies, and procedures. However, since an effective compliance and ethics program requires that a facility stay up-to-date with all SNF and NF requirements to reduce the prospect of criminal, civil, and administrative violations and promote quality of care, we believe that the facility would require more time to review this program as compared to its other programs, policies, and procedures that it must periodically review. In addition, since it is common for there to be changes in laws, regulations, and other requirements, we expect that most SNFs and NFs would need to make at least some revisions annually. Even if there are no changes in the applicable laws, regulations, or other requirements, SNFs and NFs may need to make changes in

their training materials or other publications.

We expect that the administrator or the director of nursing, or perhaps both, would be responsible for reviewing this program annually to ensure it was up-to-date and in compliance with all of the relevant federal and state laws, regulations, and other guidance. We expect that to comply with this requirement would require 5 hours from the administrator and 5 hours from the director of nursing for 10 burden hours at a cost of $800 ($80 hourly wage for administrator and director of nursing × 10 hours). Therefore, based on the previous estimate, for all 7,445 facilities to comply with this requirement would require 74,450 burden hours (10 hours × 7,445 operating organizations) at a cost of $5,956,000 ($800 per facility × 7,445 operating organizations).

Based upon the previous estimates, for the first year that this requirement is in effect, it would require 42 burden hours (24 hours for developing the program + 10 hours for developing policies and procedures + 8 hours for developing training materials, publication or both) at a cost of $3,356 ($2,092 for developing the program + $800 for developing policies and procedures + $464 for developing training materials, publication or both) for each operating organization to comply with this requirement. Based on the estimates shown previously in this section, for all 7,445 operating organizations to comply with these requirements it would require 312,690 burden hours (42 hours per operating organization × 7,445 operating organizations) at an estimated cost of $24,985,420 ($3,356 per operating organization × 7,445 operating organizations). For all subsequent years, we estimate to comply with the information collection would annually require 10 burden hours at a cost of $800. For all 7,445 operating organizations, it would require 74,450 (10 hours × 7,445 facilities) burden hours at an estimated cost of $5,956,000 ($800 per operating organization × 7,445 operating organizations).

C. ICRs Regarding Training Requirements (§ 483.95)

Each facility is already required to complete a performance review of every NA at least once every 12 months, and must provide in-service education based on the outcome of these reviews. The proposed requirement at § 483.95(f)(1) would require a facility to include dementia management and abuse prevention in their regular in-service education for all NAs.

Section § 483.75(e)(8)(iii) of the current regulations already requires that NAs who provide services to individuals with cognitive impairments receive in-service training to address the care of the cognitively impaired. Based on the existing requirements, facilities already conduct training for some NAs on caring for residents who are cognitively impaired. Additionally, the current requirement at § 483.75(e)(8)(ii) states that NAs must receive in-service training that addresses areas of weakness as determined in their performance reviews and may address the special needs of residents, as determined by the facility staff. Thus NAs receive annual training in dementia management and abuse prevention only if the training is indicated by their performance reviews.

Because this proposed rule would specifically require facilities to provide dementia management and abuse prevention training to all NAs, each facility would need to review their training procedures and materials to ensure that they are complying with the new requirements. For example, facilities may currently provide the in-service training (as identified from the performance review) utilizing an individual, targeted approach. In this proposed rule, all NAs would be required to receive this training annually, and the facility would need to evaluate whether another format might be more appropriate.

Since we are not proposing to increase the time needed to provide this training, we are not adding additional burden for the staff to train the NAs, since the existing requirements for facilities require them to provide in-service training to all NAs at least once every 12 months. We estimate that the burden associated with complying with this requirement would be a one-time burden due to the resources required to review and, if necessary, modify the existing training materials to apply to all NAs, regardless of identified performance weaknesses. We expect that these activities would require the involvement of a RN or a LPN. Based on our experience with facilities, we anticipate that it would take each facility 4 hours to review and modify their existing training materials. Based on an hourly rate of $58 for an RN that includes fringe benefits, we estimate that this would require 62,764 burden hours (4 hours × 15,691 facilities) at a cost of $3,640,312 ($232 per facility × 15,691 facilities).

Table 1 below summarizes the estimated annual reporting and recordkeeping burdens for this proposed rule.

TABLE 1—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS

Regulation section(s)	OMB Control No.	Number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 483.75(a)	0938—New	15,691	15,691	56	878,696	**	71,017,466	0	71,017,466
§ 483.75(b)(2)	0938—New	15,691	15,691	40	627,640	**	47,402,511	0	47,402,511
§ 483.85(b)	0938—New	7,445	7,445	24	178,680	**	15,574,940	0	15,574,940
§ 483.85(c)	0938—New	7,445	7,445	10	74,450	**	5,956,000	0	5,956,000
§ 483.85(d)(1)	0938—New	7,445	7,445	8	59,560	**	3,454,480	0	3,454,480
§ 483.85(e)	0938—New	7,445	7,445	10	74,450	**	5,956,000	0	5,956,000
§ 483.95	0938—New	15,691	15,691	4	62,764	**	3,640,312	0	3,640,312
Totals		23,136	76,853		1,956,240				106,001,709

** The hourly labor wages are discussed in detail earlier in this section.

There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 1.

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.

Comments must be received on or by September 14, 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 preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis (RIA)

A. Introduction

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. We estimate the total projected cost of this rule would be $729,495,614 million in the first year. This results in an estimated first-year cost of approximately $ 46,491 per facility and a subsequent-year cost of $40,685 per facility on 15,691 LTC facilities. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

B. Statement of Need

CMS had not comprehensively reviewed the entire set of requirements for participation it imposes on LTC facilities in many years. CMS staff as well as stakeholders identified problematic requirements over the years. Accordingly, we decided to conduct a review of the requirements in an effort to improve the quality of life, care, and services in facilities, optimize resident safety, reflect current professional standards, and improve the logical flow of the regulations. Based on our analysis, we decided to pursue those regulatory revisions that would reflect the advances that have been made in healthcare delivery and that would improve resident safety.

C. Anticipated Impacts on SNFs and NFs

There are about 15,691 SNFs and NFs that are certified by Medicare and Medicaid. We use these figures to estimate the potential impacts of the proposed rule. In addition, we have used the same data source for the RIA that we used to develop the PRA burden estimates. As stated in the COI section, we obtained all salary information from the May 2014 National Occupational Employment and Wage Estimates, United States by the BLS at *http://www.bls.gov/oes/current/oes_nat.htm* and all salary estimates include benefits and overhead package worth 48 percent of the base salary. The analysis below overlaps with the COI section for some requirements and much of the economic impact of the rule would be due to the cost for facilities to comply with the information collection requirements. The COI section contains more technical and legal detail, therefore readers may wish to consult both sections on some topics.

This proposed rule would require facilities to review their current practices and make changes to be in compliance with the health and safety standards as set forth in this proposed rule. Many of the proposals in this rule are current and standard medical or business practices and as a result do not pose an additional burden or new cost to facilities. We have made several assumptions and estimates in order to assess the time that it would take for a facility to comply with the proposed provisions and the associated costs of compliance.

Resident Rights § 483.10

Notification of Changes to Care Plan (§ 483.10(b)(5)(F))

As noted above, current requirements already require that a resident, to the extent practicable, participate in the development of his or her care plan and be informed of the need to significantly alter treatment. We believe that the involvement and notification would include an opportunity to see the care plan. Periodic review after development of the care plan is also already required. However, we propose a new right for the resident, the right to sign the care plan. The intent is to ensure that the resident, to the extent practicable and consistent with the resident's choices, demonstrates his or her participation in and review of his or her care planning and that participation is evident to caregivers, surveyors, and other interested parties. We estimate that it should take a caregiver, probably a nurse, no more than an additional 2 minutes per resident, to obtain a resident signature. We estimate that this may occur up to four times per year per resident. Based on an estimated 1,382,201 residents per year, the resulting burden would be $9,620,119 for all nursing homes. ($58 hourly wage for a nurse × .03 hour per occurrence × 1,382,201 residents × 4 occurrences per year = $9,620,119).

Notification of a Need To Select a New Physician (§ 483.10(c)(3) and § 483.11(c)(2))

The facility would have to inform the resident if the facility determines that the physician chosen by the resident is unable or unwilling to comply with regulatory requirements, discuss alternatives, and honor the resident's preferences. Under current requirements, the facility must already ensure that the resident is informed of the name, specialty, and way of contacting the physician responsible for his or her care. We have no basis upon which we can quantify how often this occurs or how often a facility would need to obtain an alternate provider. We believe that these conversations will be accomplished, and in most cases already occur, in the course of routine communication between a resident and caregivers. Thus, we do not believe this creates any new burden.

If a resident requests an item or service for which the facility will charge, the facility must inform the resident both orally and in writing of

the charge. This requirement is modified to specify orally and in writing; the previous requirement was just 'to inform.' We expect that ''informing' has typically been accomplished orally; therefore the burden would be in providing the written information at the time the oral information is given. We anticipate that this written information would most often be in the form of a list of standard charges for frequently requested items and the cost would be the cost of photocopying or printing the list. In infrequent cases, an individualized cost page may be needed. We estimate that a facility would spend no more than $50 per year on average to print the notices. We estimate the cost of a notice to be $0.10/page (based on the per page photocopying cost established at 45 CFR 5.43(c) for FOIA requests) with no more than 500 notices required per facility per year for a total estimated cost of $784,550 ($50 printing cost × 15,691 facilities) annually for all facilities.

Internet Access (§ 483.10(h)(2))

Proposed 483.10(h)(2) proposes to require that a resident has the right to reasonable access and privacy for electronic communications such as email and video communications and internet research. This requirement is proposed in a way that the facility is not required to provide internet access to any greater extent than the facility already has internet access (that is, a facility that has no internet access due to logistical deterrents is not required to overcome those obstacles based on this requirement) and the facility is allowed to transfer any additional expense to the resident if any additional expense is incurred. The facility is not obligated to provide each resident an individual means of access (that is, a personal computer or tablet). A community computer with associated rules for sharing, such as is commonly done in public libraries, may be an appropriate model. While we allow the facility to pass additional costs to the resident, we anticipate that some facilities may incur an initial hardware cost that is not attributable to an individual resident. In addition, we expect there will be minimal ongoing maintenance/replacement costs for the shared devices. Finally, we do not believe this will add to the supervision burden for facility staff, as appropriate resident supervision is already required, but it may require a Director of Nursing (DON) or Nursing Home Administrator (NHA) to establish rules for use. We estimate this would require quarter of an hour of DON or NHA time to develop in those facilities that do not already have a policy established. We believe that up to ten percent of facilities will need to develop an internet policy in the first year, at a total cost of $31,382 (($80 hourly wage for a DON or NHA × .25 hours) × (0.10 × 15,691 facilities) = $31,382).

Facility Obligations (§ 483.11)

Mutually Agreeable Facility Representative (§ 483.11(d)(3)(iii))

Facilities are currently required to provide a facility representative to participate in resident and family groups. Any added burden is in establishing an individual who is mutually agreed to. We believe it is most likely that the DON will select a representative and obtain group agreement by providing a name or names to the group and the group will respond. We estimate that this should generally consume no more than an additional 15 minutes of the DONs time in most cases. We believe some, and perhaps many, facilities already have such mutually agreed upon representatives; however, for estimation purposes, we estimate an additional 15 minutes of DON time at a cost of $80 per hour for 15,691 facilities, resulting in a total cost of $313,820.

Visitation Related Notices (§ 483.11(d)(2))

We believe that—(1) these notices are periodically reviewed and updated as a standard business practice, (2) the DON and Nursing Home Administrator will develop the associated policy, and (3) visitation is already addressed in the notice of rights and services. While we believe that the notice of rights and services is or should be periodically reviewed by each nursing facility as a standard practice, we expect that the notice will need to be updated on a one-time basis specifically to include the new visitation policy. We estimate that an office clerk will require no more than 30 minutes to update the notice and that will cost each facility approximately $14.50 ($29 hourly wage for an office clerk × .5 hour = $14.50) or a total of $227,520 for all facilities ($10.50 × 15,691 = $227,520).

Posting of Contact Information (§ 483.11(e)(5))

The facility must post a list of names and contact information. This information must already be gathered for the notice of legal rights, so the new burden is limited to the posting. This means printing out and placing the notice in an appropriate location and/or on an accessible Web site and perhaps updating the information annually. Based on other current requirements, the location for this information should already be identified and an office clerk should be able to update, print and post a listing in 10 minutes. We estimate this will cost each facility approximately $4.93 or a total of $77,357 for all facilities. ($29 hourly wage for an office clerk × .17 of an hour × 15,691 facilities = $77,357).

Medicaid Eligibility (§ 483.11(e)(11)(i))

The facility must provide notice to each Medicaid-eligible resident, in writing, at the time of admission and when the resident becomes eligible for Medicaid. This means some residents will require a second notice. As the notice is already required once, the burden is in providing the notice an additional time. We anticipate that this will affect only a subset of residents (those eligible but not yet receiving Medicaid) and that the notice will be unchanged from the admission notice. Thus the burden is in identifying eligible residents and delivering the second notice. We anticipate that this will require a social worker no more than 3 minutes per eligible resident. Based on a data analysis by AHCA, approximately 64 percent of nursing home residents are already Medicaid recipients (that is, Medicaid is the payor of record); 14 percent are covered by Medicare and 22 percent have another payor. Of those, only the 36 percent who are not receiving Medicaid may require the second notice of Medicaid eligibility. We assume that a portion of those will require ongoing care and become eligible for Medicaid. We also assume that some of those residents will apply for Medicaid at or shortly after admission or as a result of the first notice and not require the second notice. For burden calculation purposes, we estimate that 20 percent of nursing home residents (slightly more than half of those not already receiving Medicaid) will require a second notice of Medicaid eligibility. The per facility cost will vary significantly according to facility size and resident mix and will be about $2.20 per resident who requires notification, or $608,168 for all such residents across all 15,691 facilities. (($44 hourly wage for social worker × .05 of an hour) × (.20 estimate percent of all nursing home residents who will require a second notice × 1,382,201 nursing home residents) = $608,168).

Update the Description of Legal Rights (§ 483.11(e)(13))

Our proposed changes will require that facilities review and possibly update their description of legal rights to include additional names and contact information as well as some additional

language to meet the requirements of the revised regulatory language. Collecting and verifying some of this information may require some additional research. We anticipate that a social worker would need 45 minutes to review information and conduct the necessary research and an office clerk would need an additional 15 minutes to update the notice. The cost per facility is estimated at $30 per facility or a total of $631,563 for all facilities. (($44 hourly wage for a social worker × .75 of an hour) + ($29 hourly wage for an office clerk × .25 of an hour) × 15,691 facilities = $631,563).

Grievances (§ 483.11(h)(1))

A facility must make information regarding the grievance process and how to file a grievance available to residents. We believe this information is already included in the notice of legal rights, but it may need reviewed and updated. It would take an office clerk approximately 10 minutes to review and update the notice. This would cost each facility $4.93 or a total of $77,357 for all facilities. ($29 hourly wage for an office clerk × .17 of an hour × 15,691 facilities = $77,357).

Transitions of Care (§ 483.15)

Notice of Transfer (§ 483.15(b)(4))

The notice is already created for the resident; this requirement poses an additional burden of printing a copy of the notice and sending it to the Office of the State Long-Term Care Ombudsman or, if a secure means of electronic transmission is available, sending a notice electronically. We estimate the burden of this requirement to be $.10 per notice to make a copy, and $.58 for a single pre-stamped first class envelope (USPS retail) plus 5 minutes for an office clerk to address and mail the notice. This will apply primarily to residents who are involuntarily discharged from the facility and does not include residents who request the transfer or who are transferred on an emergency basis to an acute care facility. We estimate this notice may need to be sent to the Office of the State Long-Term Care Ombudsman for one third of all nursing home residents, resulting in a cost of $1,243,981 for all facilities. The per-facility cost will vary significantly according to facility size and number of transfers out of each facility. (($.10 + $.58 + ($29 hourly wage for an office clerk × .08 of an hour)) × (.3 percentage of nursing home residents for whom a copy of a transfer notice needs sent to the Office of the State Long-Term Care Ombudsman × 1,382,201 nursing home residents) = $1,243,981).

Update Transfer Notices (§ 483.15(b)(7))

The proposed requirement requires the facility to update transfer notices if information in the notice changes and to provide the updated information to the resident. We believe that the updates already occur informally and estimate that updating the notice and providing it to the resident will require a social worker an additional 5 minutes per notice. As discussed above, this requirement will apply primarily to residents who are involuntarily discharged from the facility and does not include resident who request the transfer or who are transferred on an emergency basis to an acute care facility. We estimate this notice may need to be updated once for up to one third of nursing home residents who are transferred. The resulting cost is $1,459,604 for all facilities. (($44 hourly wage for a social worker × .08 of an hour) × (.3 percent of nursing facility residents × 1,382,201 nursing facility residents) = $1,459,604). The per-facility cost will vary significantly according to facility size and number of transfers out of each facility.

We believe the DON or administrator would perform a comprehensive review of all required notices after all the cumulative changes noted above are made and that this cumulative review would require approximately 30 minutes at a cost of $40 per facility or $627,640 for all facilities ($80 hourly wage for a NHA or DON × .5 of an hour × 15,691 facilities = $627,640).

Comprehensive Resident Centered Care Planning (§ 483.21)

Additional Members of the IDT (§ 483.21(b)(2)(ii))

We would require that a NA, member of nutrition services, and social worker participate on the IDT. We believe that this requirement would add to the current duties of each of these staff members and therefore would be a new economic cost to each facility. Communications about the status of a resident are a part of standard job duties. We envision that these staff members are already regularly discussing resident's needs and their plans of care. When assessing the amount of burden associated with this requirement, we believe that this requirement would only produce an incremental increase in the staff time necessary to participate on the IDT. In addition, we do not specify the type of communication the IDT must use. IDT members may use electronic communication as well as informal discussions to participate in IDT meetings. We estimate that participation on the IDT would add an additional one hour of staff time to the duties of a NA, member of food services, and social worker. While we do not require that a dietitian participate on the IDT, for purposes of estimating the cost we use the salary of a dietitian to represent the participation of a member of food services. We estimate that this requirement would cost $97,911,840 ($120 hourly wage ($23 NA hourly wage +$53 dietitian hourly wage +$44 social worker hourly wage = $120) × 52 hours (1hour per week × 52 weeks) × 15,691 facilities).

Discharge Planning (§ 483.21(c)(1)(vii))

We would require that, for residents who are transferred to another SNF or who are discharged to a HHA, IRF, or LTCH, facilities assist residents and their resident representatives in selecting a post-acute care provider by using data that includes, but is not limited to SNF, HHA, IRF, or LTCH standardized patient assessment data, data on quality measures, and data on resource use. The facility also must ensure that the post-acute care standardized patient assessment data, data on quality measures, and data on resource use is relevant and applicable to the resident's goals of care and treatment preferences. We believe that a social worker would be responsible for compiling the standardized data, reviewing the resident's preferences/goals, and pulling data that applies to these preferences/goals. We estimate that it would take a social worker approximately one hour of staff time to compile and review the data in order to align the data with each resident's preferences/goals. This staff time would only be required for those residents who are transferred to another SNF or discharged from the nursing home. We are unable to determine the average number of residents who are transferred to another SNF or discharged from a nursing home annually. We believe that a conservative estimate would be that if there are an estimated 1,382,201 residents per year in nursing homes, possibly a third of these residents are discharged or transferred to another SNF on an annual basis. Therefore, we estimate that this requirement would cost $20,272,252 ($44 social worker hourly wage × 1 hour staff time × 460,733 residents discharged or transferred to another SNF annually).

Physician Services (§ 483.30)

Practitioner Evaluation of a Resident (§ 483.30(e))

We believe that a physician, NP, CNS or PA often evaluate in person a

resident prior to hospital transfer unless a delay in transfer places the resident at risk. However, we also believe that there are instances when an evaluation does not occur and could prevent an avoidable hospital transfer. We estimate that it will require a physician, NP, CNS, or PA 30 minutes to evaluate a resident prior to transfer. For purposes of estimating this cost we will use the hourly wage of a physician. Research shows that more than 15 percent of long-term nursing home residents are hospitalized in any given 6 month period and approximately 40 percent of nursing home to hospital transfers are considered inappropriate (David C. Grabowski, A. James O'Malley and Nancy R. Barhydt, The Costs And Potential Savings Associated With Nursing Home Hospitalizations, Health Affairs, 26, no.6 (2007):1753–1761). If we use 30 percent to estimate the number of in-person evaluations required per year (15 percent per 6 months), the resulting calculation provides a lower bound estimate of $35,660,786 (($172 hourly wage for a physician × .5 of an hour) × (30 percent of facility residents who require an in-person evaluation prior to transfer × 1,382,201 facility residents) = $35,660,786).[1]

Nursing Services (§ 483.35)

Competency Requirements (§ 483.35, § 483.60)

Our focus on competency requirements requires identification of and documentation of training, certification, and similar records in an existing personnel file or training record for direct care personnel. This specifically includes nursing services and food and nutrition services but may apply to any direct care provider. Initial competency requirements would be identified via facility assessment with documentation of individual accomplishments managed by an administrative position, likely an office clerk, as an addition to existing documentation. We estimate the incremental burden of adding the additional information to existing files (paper or electronic) at 8 hours per year per facility, or $232. The cost for all facilities is estimated at $3,640,312. ($29 office clerk hourly wage × 8 hours per facility × 15,691 facilities = $3,640,312)

[1] We refer to this estimate as a lower bound because the input that is available—residents who are hospitalized—may be lower (due to repeat admissions) than the input that would be most appropriate for this calculation—the number of hospitalizations.

Food and Nutrition (§ 483.60)

Requirements for Food Service Directors (§ 483.60(a)(2))

The proposed provision establishes requirements for directors of food and nutrition services hired after the effective date of these requirements or, for current directors of food and nutrition services, within 5 years of the effective date of these requirements. We would require that the director of food and nutrition services be certified as a certified dietary manager, certified food service manager or similar national certification for food service management and safety from a national certifying body; or has an associate's or higher degree in food service management or hospitality from an accredited institution of higher learning, or meets established state requirements. Many states already establish additional staff qualifications for food service directors and we expect that most facilities already hire food service directors that meet the proposed requirements. We anticipate that some hiring officials may spend some additional time recruiting appropriate candidates for the food service manager position and verifying credentials, although we believe this is a small percentage of facilities. When necessary, we estimate this will require an extra hour of the NHA's time. The burden is imposed only on those facilities needing to hire a food service manager after the effective date of the regulation. We anticipate that this will affect less than 10 percent of all facilities during the five-year time horizon we are analyzing in this regulatory impact analysis. The cost per affected facility is approximately $80 and the total cost for all affected facilities is estimated to be $125,528. (($80 NHA hourly wage × 1 hour) × (.1 percentage of affected facilities × 15,691 facilities) = $125,528).

Menu Options (§ 483.60(c))

We expect that our proposed requirement for menus to reflect the cultural and ethnic needs of residents would require that menus be updated by a qualified dietitian or other clinically qualified nutrition professional in the course of routine reviews and updates. Additional time would include the dietitian or other clinically qualified nutrition professional reviewing the facility assessment for pertinent factors and reviewing and updating the menus. We anticipate this would require 1 to 4 hours, on average 2 hours, depending on the size of the facility and complexity of resident needs. While we believe that some facilities already meet this requirement, for estimation purposes, we multiply the $53 hourly wage of a qualified dietitian or other clinically qualified nutrition professional for 2 hours for 15,691 facilities, for a total cost of $1,663,246.

Facility Assessment (§ 483.70(e))

The proposed provision establishes requirements for each LTC facility to conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. LTC facilities must already determine and plan for what staffing they will need, as well as the other resources that will be required to care for their residents and operate their facilities. Thus, we believe that conducting and documenting a facility assessment is a standard business practice and will not include a burden for this requirement in the impact analysis.

QAPI (§ 483.75)

We have proposed to require that each facility develop a QAPI program. In addition to the QAPI requirement related ICR costs discussed in the COI section, we expect that facilities would incur additional costs that would be dependent upon the projects they selected for their quality improvement activities. In turn, the projects would be dependent upon resident needs, and the type, complexity, and quality of services already provided by the facility. Facilities would have the flexibility to determine their quality performance improvement activities based on their assessment of needs of their residents and their prioritized performance improvement projects. For example, a facility that chose, as one of its projects, to improve residents' nutritional status and satisfaction with the facility's food services could incur costs for higher quality, more palatable food. A facility that chose, as one of its projects, to improve nurse aides' interactions with residents suffering from dementia could incur costs for nurse aide training and/or additional nurse aide staffing. A facility that chose, as one of its projects, to improve residents' psychosocial well-being could incur costs for conversion of double rooms to single rooms, and additional social worker, and/or increased social activities for residents. Because the number, degree, and costs of these activities are difficult, if not impossible, to quantify, we have calculated only the cost of the QAPI ICRs ($118,419,977 upfront) that would be associated with the QAPI requirements (discussed in the COI section of the preamble). However, we encourage the public to comment on the

potential costs for facilities of their quality improvement projects. We estimate that the ongoing annual cost for each facility to comply with the QAPI requirements would be $3,021 for each facility and for all facilities would be $47,402,511 ($3,021 × 15,691). (This discussion is detailed in the COI section.)

Infection Control (§ 483.80)

Infection Prevention and Control Officer (§ 483.80(b))

Facilities and their staffs are currently required to have an infection control program (§ 483.65). In this rule, we are proposing that each facility must also designate one individual as the infection prevention and control officer (IPCO) for whom the infection prevention and control program (IPCP) is a major responsibility. The IPCO would be responsible for assessing the current program, making any changes to the IPCP necessary to comply with the program's requirements, and implementing and managing the IPCP. This individual would also be required to be a member of the facility's QAA committee. The percentage of the RN FTE that would be required at each facility will vary greatly. We believe that each facility would have to determine the appropriate percentage based upon it facility assessment, especially its assessment of the acuity of its resident population. A facility with a generally healthy population of elderly individuals would likely require many fewer hours than a facility with a large percentage of subacute residents or residents that are on ventilators. For the purposes of determining an estimate, we believe that the average facility would designate a registered nurse (RN) to be the IPCO and that individual would need to commit about 15 percent of a full time equivalent position (FTE) to his or her responsibilities under the IPCP. We estimate that this would require 15 percent of one RN FTE for each of the 15,691 facilities for a total cost of $283,944,336 (15% of an RN FTE × $58 average hourly wage for an RN × 2,080 hours (40 hours a week × 52 weeks = 2,080 hours) × 15,691 facilities = $283,944,336). We request comment on the time and other costs that would be associated with rule-induced improvements in infection control procedures if any, put into practice by facility personnel other than the IPCO.

Compliance and Ethics Program (§ 483.85)

Compliance Officer and Compliance Liaison Activities (§ 483.85)

We propose to require facilities to develop a compliance and ethics program. As discussed in the COI section, we estimate the ICR burden associated with developing this program to be $24,985,420. We estimate that in carrying out this program the compliance officer (similar to an administrator) in each of the 387 organizations operating 5 or more facilities would commit 30 percent of an full time equivalent (FTE) in the compliance program operation, for a total cost of $19,319,040 (30% of FTE × 2080 × $80 × 387). We also estimate that in carrying out this program the compliance liaison (nursing staffs) in each of 7,879 facilities would commit 10 percent of an FTE, at a total cost of $95,052,256 (10% of FTE × 2080 × $58 × 7879).

Annual Review of Program (483.85(e))

As detailed in the COI section, we propose to require each facility to review their compliance and ethics program annually. Therefore, for subsequent years we estimate to comply with the ICR requirement to review and, if necessary, revise the operating organization's program annually would cost an estimated $5,956,000.

Physical Environment (§ 483.90)

Resident Rooms (§ 483.90(d)(1)(i))

For facilities that receive approval of construction or reconstruction plans by State and local authorities or are newly certified or undergoing reconstruction, we would require that resident rooms accommodate no more than two residents. A review of CASPER data on the number of new providers per fiscal year from 2008 to 2013 reveals an annually declining number of new facilities, down from 225 new providers in 2008 to 172 in 2012, with only 144 new providers as of August 2013. Of those, the majority were for-profit facilities of 99 beds or less. We further note the overall number of facilities has also declined slightly (by less than 2 percent) but steadily over the same period. A number of states already have requirements similar to those proposed and represent an average of 7 percent of new providers for the years we reviewed. Therefore, we expect that these requirements will affect fewer than 140 facilities annually. We do not have statistics on the number of providers per year who undertake reconstruction. Although we know that semi-private rooms will increase constructions costs, we were unable to find data regarding the incremental increased cost to the facility of semi-private rooms versus configurations that accommodate up to four residents. We welcome data on this issue and on the question of whether this provision of the rule creates an incentive for facilities to avoid or delay otherwise beneficial renovations.

Toilet Facilities (§ 483.90(e))

For resident rooms newly constructed or undergoing reconstruction, we would require that each room have its own bathroom equipped with at least a toilet, sink and shower. A review of CASPER data on the number of new providers per fiscal year from 2008 to 2013 reveals an annually declining number of new facilities, down from 225 new providers in 2008 to 172 in 2012, with only 144 new providers as of August 2013. Of those, the majority were for-profit facilities of 99 beds or less. We further note the overall number of facilities has also declined slightly (by less than 2 percent) but steadily over the same period. In addition, several states require direct access and limit the number of rooms or residents who may be served by a toilet, lavatory (sink), and/or shower or bath. Given the decline in new facilities and the impact of state regulation, we estimate that this provision will impact fewer than 150 providers per year. We do not have statistics on the number of providers per year who undertake reconstruction. Although we are aware that ensuring each resident bedroom has an adjacent bathroom may increase construction costs, we were unable to find data regarding neither the number of facilities that do not currently have bathrooms adjacent to each resident room nor the incremental cost of adding bathrooms adjacent to each resident room in new or reconstruction. We welcome data on this issue and on the question of whether this provision of the rule creates an incentive for facilities to avoid or delay otherwise beneficial renovations.

Training Requirements (§ 483.95)

General Training Topics (§ 483.95a)

We are proposing that facilities develop and/or update training materials to include topics on communication, resident rights, facility obligations, abuse, neglect, exploitation, infection control, and its QAPI program. We would require that these training topics be provided for all new and existing staff; individuals providing services under a contractual arrangement; and volunteers, consistent

with their expected roles and that they be able to demonstrate competency in these topic areas. We would also expect each facility to keep a record of these trainings. To reduce regulatory burden and create a reasonable requirement we have not specified the amount or types of training that a facility must provide. There are various free online training tools and resources that facilities can use to assist them in complying with this requirement. For example, the Agency for Healthcare Research and Quality (AHRQ) released a set of training modules to help educate nursing home staff on key patient safety concepts to improve the safety of nursing home residents (*http://www.ahrq.gov/professionals/systems/long-term-care/resources/facilities/ptsafety/*). In addition to the web based materials, instructor and student handbooks can be sent to facilities at no additional cost. Therefore, we believe that the cost associated with this requirement would be limited to the staff time required to review and update their current training materials.

Based on our experience with facilities, we expect that all facilities have some type of training program. However, we expect that each facility would need to compare their training programs to their facilities assessments as required at proposed § 483.70(e) and ensure they cover the above training topics. We expect that complying with this requirement would require the involvement of a RN and the infection control and prevention officer (ICPO). We expect that a RN would spend more time reviewing, revising and/or developing new sections for the training program. The ICPO would need to weigh in on the infection control training related topics. We estimate that it would require 8 (6 for the RN ($58/hr) and 2 for the ICPO ($58/hr)) burden hours for each facility to develop a training program at a cost of $464. Thus, for all facilities to comply, it would cost an estimated $7,280,624 ($464 estimated cost for each facility × 15,691 facilities). We believe that the training would be considered part of regular on-ongoing training for the staff of each facility.

Compliance and Ethics Program Training (§ 483.95(f))

We require that SNF and NF operating organizations include as part of their compliance and ethics program an effective way to communicate their program's standards, policies, and procedures. We believe that all operating organizations would need to develop training materials and/or other publications to comply with the training requirement. Our rule proposes, higher standards for organizations operating 5 or more facilities, therefore for the purposes of the RIA our cost estimates differentiate by organization size. We estimate that training staff in organizations operating 1 to 4 facilities would mainly require the duties of a RN at a cost of $900,740 for all 7,765 facilities (6,621 single facilities operating organizations + 1,144 facilities in operating organizations with 2 to 4 facilities = 7,765 facilities) × 2 hours × $58 average hourly wage for a RN = $900,740). For the training in operating organizations with 1 to 4 facilities, we expect that operating organizations would be able to minimize these training costs by including the training on their compliance and ethics program with any current trainings or in-services that they already conduct for their staff. In addition, these facilities could also include this information in publication, print or electronic, that are available to their staff.

We estimate that training staff in organizations operating 5 or more facilities would require 2 hours of time of a compliance officer (similar to an administrator) conducting the training at the organizational level (387 organizations) at a cost of $61,920 (387 × 2 × $80 = $61,920) and 2 hours of time of a compliance liaison (similar to an RN) at the facility level (7,879 facilities × 2 × $58 = $913,964), for a total cost of $975,884 ($61,920 + $913,964 = $975,884).

Dementia Management and Abuse Prevention Training § 483.95(g)

This proposed rule would implement section 6121 of the Affordable Care Act which requires dementia management and abuse prevention training to be included in the current mandatory on-going training requirements for nurse aides. Facilities would have the flexibility to determine the length of the training and the format of the training. Since we have not increased the minimum hours for training, we anticipate that facilitates would maximize their on-going training efforts to improve outcomes through a more efficient training program by modifying their current training program to ensure that all NAs receive annual training in dementia management and abuse prevention. In addition, we believe that the majority of facilities would need to acquire training materials to either update or supplement what they are currently using to train NAs. There are numerous online tools available to facilities at no cost. For the sole purpose of complying with section 6121 of the Affordable Care Act and ensuring that nurse aides receive regular training on caring for residents with dementia and on preventing abuse. CMS has published an online hand in hand tool kit that provides a detailed training series for nursing homes on dementia education and abuse prevention (*http://www.cms-handinhandtoolkit.info/*). CMS, supported by a team of training developers and subject matter experts, created this training to address the need for nurse aides' annual in-service training on these important topics. The mission of the hand in hand training is to provide nursing homes with a high-quality training program that emphasizes person-centered care in the care of persons with dementia and the prevention of abuse. Given the availability of these materials, we have not assessed a cost burden associated with acquiring training materials for this requirement, however, as discussed in the COI section, we estimate that it would cost facilities an estimated $3,640,312 to review and update their current in-service training material.

D. Summary of Impacts

Table 2 below presents a summary of the section by section estimated costs to comply with the requirements of this proposed rule.

TABLE 2—SECTION BY SECTION SUMMARY OF ESTIMATED COST FROM ICR AND RIA TO COMPLY WITH THE REQUIREMENTS CONTAINED IN THIS PROPOSED RULE

Regulatory area	Section	First year total cost	Total cost in year 2 and thereafter
Resident Rights	483.10	$10,436,051	$10,436,051
Facility Obligations	483.11	1,935,785	999,345
Transitions of Care	483.15	3,331,225	3,331,225
Comprehensive Resident Centered Care Planning	483.21	118,184,092	118,184,092
Physician Services	483.30	35,660,786	35,660,786

TABLE 2—SECTION BY SECTION SUMMARY OF ESTIMATED COST FROM ICR AND RIA TO COMPLY WITH THE REQUIREMENTS CONTAINED IN THIS PROPOSED RULE—Continued

Regulatory area	Section	First year total cost	Total cost in year 2 and thereafter
Nursing Services	483.35	3,640,312	3,640,312
Food and Nutrition Services	483.60	1,788,774	1,663,246
QAPI	483.75	118,419,977	47,402,511
Infection Control	483.80	283,944,336	283,944,336
Compliance and Ethics Program	483.85	139,356,716	120,327,296
Training	483.95		
General Training Topics	483.95(a)	7,280,624	7,280,624
Compliance and Ethics Training	483.95(f)	1,876,624	1,876,624
Dementia Management and Abuse Training	483.95(g)	3,640,312	3,640,312
Total		729,495,614	638,386,760

E. Alternatives Considered

The requirements for long-term care facilities have not been comprehensively updated in many years. The effective and efficient delivery of health care services has changed substantially in that time. We believe the changes we have proposed are necessary to ensure the requirements are consistent with current standards of practice and continue to meet statutory obligations and ensure that residents receive care that maintains or enhances each resident's quality of life and attains or maintains the resident's highest practicable physical, mental, and psychosocial well-being. Below we discuss the alternatives that we considered when developing this proposed rule.

1. Scope of Proposed Revisions

We considered only proposing those requirements that are required by statute. Specifically, the Affordable Care Act included provisions regarding dementia and abuse training, QAPI program, and compliance and ethics program, and the IMPACT Act requires that we issue regulations regarding discharge planning. Taking this approach would be less burdensome on the LTC community overall. However despite the many changes in the delivery of health care services, the requirements for LTC care facilities have not been comprehensively updated in many years. Our proposed revisions address several issues, such as avoidable hospitalizations, staffing concerns, infection control, and behavioral health. In addition, we believed that it was necessary to modernize the regulations to reflect advances such as electronic communications and health information technology. Overall, we believe that a general reorganization and comprehensive revision would ensure the requirements are consistent with current standards of practice and continue to meet statutory obligations, while also assisting individuals who are less familiar with these regulations to find information within the requirements. We believe the changes we have proposed are necessary to ensure that residents receive care that maintains or enhances each resident's quality of life and attains or maintains the resident's highest practicable physical, mental, and psychosocial well-being. Therefore, we determined it would be most effective to make comprehensive changes at this time.

2. Psychotropic Drugs

We considered not proposing to revise the existing requirements that apply to antipsychotic drugs to psychotropic drugs. This approach would be less burdensome for nursing homes. However, we are concerned that the current requirements are insufficient to protect the health and safety of nursing home residents. We learned that while some residents are being taken off of anti-psychotics, they are then prescribed other medications that are continuing to affect their mental processes and behavior. We are also concerned that drugs, other than anti-psychotics, that affect mental processes or behavior can be prescribed in ways that benefit of the staff and not necessarily the resident's health. In addition, in cases where medication is originally prescribed for the resident's benefit, we are concerned that the resident could remain on these types of medications even after non-pharmacological interventions or gradual reductions in the medication could have either eliminated the reason for the medication or at least reduced the amount of medication required by the resident. Thus, we believe that all psychotropic medications should be subject to the proposed requirements to protect the health and safety of nursing home residents.

We also considered various definitions for psychotropic drugs. The definition would determine the types of medications that specific requirements in this proposed rule would apply to and the burden they would place on the LTC facilities and health care providers. After reviewing different definitions, we are proposing to define a psychotropic drug as any drug that affects brain activities associated with mental processes and behavior. We have included a list of drug categories that are typically considered psychotropic drugs in the literature, that is, anti-psychotic, anti-depressant, anti-anxiety, hypnotic, and opioid analgesics. We have also included any other drugs that have effects similar to those drugs in these categories. We believe that this provision is necessary so that drugs used for ''off-label'' use would be subject to the regulatory requirements. We acknowledge that this is a broad definition and may result in additional burden for the facilities. However, we also believe this definition encompasses all of the drugs that could be used to control a resident's mental processes and behavior. We are specifically requesting comments on the scope of our proposal.

3. Binding Arbitration

We considered not proposing any requirements concerning binding arbitration agreements. Taking this approach would certainly be less burdensome to the facilities. However, stakeholders raised specific concerns about nursing homes either requiring or pressuring nursing home residents to sign these agreements and, therefore, waiving the right to pursue resolution of a dispute with the nursing home in court. We share the stakeholders' concern that some nursing homes may be requiring residents to sign agreements for binding arbitration as a requirement for admission into the facility. In addition, if the nursing home

is not requiring the agreement as a condition of admission, some facilities may be requesting the resident to sign the agreement without fully explaining the rights the resident is waiving and the consequences of that waiver. We believe that nursing home residents need to be fully aware of the right they are waiving (the right to seek relief in a court for a dispute between the resident and the facility) if a nursing home requests they sign an agreement for binding arbitration. Thus, we have proposed specific requirements if a nursing home chooses to request that a resident sign an agreement for binding arbitration. These requirements include, among other things, that the nursing home must explain the agreement to the resident in a form and manner that he or she understands, and that the resident acknowledge that they understand the agreement. We have also proposed specific requirements for the agreement, including that admission to the facility cannot be contingent upon the resident signing the agreement, the agreement must be entered into voluntarily, and the arbitration must be conducted by a neutral arbitrator in a venue convenient to both parties. In addition, we have also proposed that the agreement not contain any language that prohibits or discourages the resident or anyone else from communicating with Federal, State, or local officials, including but not limited to surveyors, health department employees, and representatives of the Office of the State Long-Term Care Ombudsman. We believe this requirement is essential so that residents and others who have knowledge of their care are not discouraged from speaking with surveyors and others from whom the resident can seek assistance. In addition, another individual can sign the agreement for the resident only if allowed by state law and the individual has no interest in the facility. Thus, we believe these comprehensive requirements are needed so that residents understand the right they are waiving by signing an agreement for binding arbitration and that the arbitration will be conducted in a neutral and fair manner.

We also considered prohibiting binding arbitration agreements. This would be more burdensome to the LTC facilities. However, it would remove the choice to agree to binding arbitration from the resident. Alternative dispute resolution, which includes arbitration, is favored by the courts and provides both parties, the resident and the nursing home, with advantages. Arbitration can result in disputes being resolved faster and in a less burdensome manner for both parties. There have also been court decisions that have upheld these agreements in cases involving nursing home residents. However, we are concerned that despite the protections we have proposed in this rule, some nursing home residents and potential residents may feel pressured to sign these agreements. For example, in cases where a potential resident or their family have the time to do research and visit multiple homes, a resident may feel he or she can more easily refuse to sign an agreement for binding arbitration. However, if the resident is hospitalized and needs to locate a facility quickly, they may feel more pressure to accept such an agreement. Thus, we have also requested comments on whether agreements for binding arbitration should be prohibited.

4. In-Person Physician Evaluation Before Transfer

We considered not proposing to require an in-person evaluation of a resident prior to an unscheduled, non-emergency transfer of a resident to a hospital. However, in concert with improved communication requirements, an evaluation of a resident by a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist prior to a resident's transfer may identify options that could allow some residents to be treated in place and avoid unnecessary hospitalizations.

5. Additional Changes

We also considered proposing additional changes. In some cases, we determined that an issue was not adequately developed for us to make an evidenced-based proposal. In several of these cases, we have specifically solicited comments so that we are better informed. For example, we considered requiring all facilities to implement a hazard analysis and critical control point program for food and nutrition services, but instead chose to request comments so that we better understand the potential benefits and impact, particularly on small facilities. We may consider these topics in future rule-making.

We also considered more prescriptive changes in several areas. Throughout this rule, we focused on supporting person-centered approaches and innovative care delivery models. This requires that we allow flexibility in the regulatory language. Where possible, we chose a more flexible option to ensure that proposed regulatory requirements could be accommodated across the spectrum of facility sizes and resident populations. This particularly applied in our consideration of options to address nurse staffing. In that area, we specifically considered establishing minimum nurse hours per resident day, establishing minimum nurse to resident ratios, requiring that an RN be present in every facility either 24 hours a day or 16 hours a day, and requiring that an RN be on-call whenever an RN is not present in the facility instead of or in addition to imposing a competency-based staffing requirement that takes into consideration the acuity, diagnoses, and number of residents in the facility. All of the options not chosen had high associated burdens, with options for RN staffing changes ranging from in excess of $1,000,000,000 to over $5,000,000,000 total to implement across likely affected facilities, based on the current statutory minimum staffing requirements. Earlier in this preamble, we specifically invited comments on the costs of mandating a 24 hour RN presence, the benefits of a mandatory 24 hour RN presence, including cost savings and improved resident outcomes, as well as any unintended consequences of implementing this requirement. We will reconsider these options in light of future research, recommendations, and the availability of more valid and reliable payroll-based staffing data.

We also considered adding more requirements to the qualifications for a social worker in § 483.70(p). We considered requiring a masters of social work (MSW) for the social worker. We also considered requiring that the social worker also have a certification related to clinical work or gerontology. We did not propose these requirements because we are concerned that increasing the qualifications for social workers in nursing homes may result in access issues. We have received input that some nursing homes already have difficulty in hiring qualified social workers. We would welcome comments related to qualification for the social worker, especially whether state licensure should remain the threshold requirement or if additional requirements are appropriate.

F. Benefits of Proposed Rule

This proposed rule would implement comprehensive changes intended to update the current requirements for long-term care facilities and create new efficiencies and flexibilities for facilities. In addition, these changes will support improved resident quality of life and quality of care. Quality of life in particular can be difficult to translate into dollars saved. However, there is a body of evidence suggesting the factors that improve quality of life may also

increase the rate of improvement in quality and can have positive business benefits for facilities. Many of the quality of life improvements we propose are grounded in the concepts of person-centered care and culture change. These changes not only result in improved quality of life for the resident, they can result in improvements in the caregiver's quality of work life and in savings to the facility. Savings can be accrued through reduced turnover, decreased use of agency labor and decreased worker compensation costs. Although these savings are difficult to quantify, we believe that they must be lower in magnitude than the costs borne by facilities; otherwise, facilities would change their policies even in the absence of this rulemaking.

In addition to proposing changes that are likely to have long-term positive impacts on quality of life and quality of care, we have proposed several changes that may mitigate the costs associated with implementing some of our proposed requirements. For example, including the use of electronic health records in these regulations may reduce the burden on facilities when providing a resident with a copy of his or her clinical record. We believe that the option to provide an electronic copy of the record may reduce the amount of time a staff person is taken away from other duties to copy the medical records. We do not have data on how many medical records requests are made each year, nor do we have empirical data on the time difference, thus we have no way to estimate the magnitude of these savings. However, to understand the possible magnitude of the savings, let us assume that 2 percent of residents request their record each year (27,644). We further assume that, on average, it takes an office clerk 15 minutes to make a page by page copy of a medical record. If twenty-five percent of residents (6,911) requesting a copy of their medical record accept an electronic copy in lieu of a paper record or if the paper copy can be printed from an electronic record rather than copied page by page and it takes an office clerk 5 minutes to make an electronic copy, the facility saves 10 minutes of clerk time per record. The annual savings would be $24,189. We believe this is likely a conservative estimate.

Another area that may produce substantial savings is our proposal to allow physicians to delegate to a qualified dietitian or other clinically qualified nutrition professional the task of prescribing diet, including therapeutic diets, to the extent allowed by state law. We further believe that dietitians or other clinically qualified nutrition professional are already performing resident dietary assessments and making dietary recommendations to the physician who then evaluates the recommendations and writes orders to implement them. We do not currently have data to estimate the savings that this could produce in SNFs and NFs. However, we believe that it will allow for better use of both physician and dietitian time.

We also propose to allow physicians to delegate to qualified therapists the task of prescribing physical, occupational, speech language, or respiratory therapies, but as with dietitians, we have no empirical evidence with which to quantify a cost savings. Again, however, we believe that this allows better use of both physician and therapist time.

With respect to dental services, we propose to modify the language relating to dental services to remove references to a dentist's office and replace these references to 'dental services location.' This more explicitly accommodates options for dental care such as dental schools or provision of dental hygiene services on site at a facility. Based on the literature we reviewed, improved dental health as a result of improved access to dental care is highly likely to result in improved health and well-being of facility residents, including potentially fewer hospitalizations and less unanticipated weight loss. We have no definitive data on the direct reduction in hospitalizations and other complications stemming from or exacerbated by poor dental care and poor dental hygiene, but given the relationship of poor dental care and poor dental hygiene to other illnesses, savings are quite possible. Furthermore, reducing the number of hospitalization through these preventative actions would also reduce our estimated burden for requiring practitioner evaluation of a resident prior to a hospital transfer. Finally, improved dental care and oral hygiene would likely result in improved quality of life. However, we have no basis on which to calculate these savings and therefore do not quantify them.

We have also made a number of changes in the area of food and nutrition services. These changes are expected to have multiple impacts, ranging from the improved nutritional status of residents to reduced food waste by the facility, to reductions in the incidence of food-borne illness. In FY 2012, there were over 9,000 deficiency citations associated with food and nutrition services. The most commonly cited deficiency in this grouping was, by far, associated with food sanitation. Out of 6,828 surveys, there were 5,490 citations for deficiencies in food procurement, storage, preparation, and service-sanitary, affecting 31.80 percent of providers. Proposed improvements in food and nutrition services have the potential to improve resident quality of life. They may also result in a reduced incidence of food-borne illness, which could result in substantial savings. We invite comment, data and analysis on this issue, including the related question of whether the activities for which costs were estimated in the cost section, above, are sufficient to generate the benefits discussed here.[2]

We are concurrently proposing to strengthen requirements related to infection control. While a reduction in the incidence of healthcare associated infections would likely impact hospitalization of residents, as discussed below, it will also impact the care required for residents who remain in the facility. An effective infection prevention and control program can, among other benefits, identify infections early and prevent their spread. Several illness-causing organisms are of particular concern in nursing homes. For example, Norovirus may cause illness following a very low infection dose. The illness is characterized by nausea, sudden onset of projectile vomiting (particularly in children), watery, non-bloody diarrhea, abdominal cramping, chills, body aches and fatigue. Dehydration is a common complication, especially in the elderly. The illness usually lasts two to three days. Outbreaks can impact residents and/or staff and cause significant inconvenience and cost. (Overview of the management of norovirus outbreaks in hospitals and nursing homes, compiled by the Wisconsin Division of Public Health, Bureau of Communicable Diseases, Communicable Disease Epidemiology Section, February 2004. Retrieved from *http://www.publichealthmdc.com/environmental/food/documents/ManagementofNorovirusInfectionOutbreaksinHospitalsand*

[2] It is logical to assume that the requirement for nursing, food service and other competency either necessitates hiring more competent staff who command a higher wage—the cost of which would be included in the cost section—or the competency provision is essentially unnecessary because staff are already competent—in which case, there would be no benefits to facilities or their residents. As regards the menu options provision, the cost section mentions two hours of effort per facility. It might be plausible that a two-hour review would be sufficient to confirm that there is nothing in need of revision (in which case there are no benefits). However, if a review uncovers that there is potential for benefits due to menu revisions, then there will be further costs, such as training for food service workers or higher costs of raw ingredients.

NursingHomes.pdf). These illnesses can result in higher acuity of residents and increased care needs as well as increased use of either overtime or temporary staff to replace ill staff. Improved prevention, detection, and mitigation of illnesses can result in substantial savings to a facility. Unfortunately, specific rates of infection and the associated cost to treat residents or to replace absent staff have not been clearly quantified in available literature or data. We invite comment, data and analysis on this issue, including on the question of how actions of a facility's infection prevention and control officer affect the practices of other facility personnel, and whether such effects are sufficient to yield infection control benefits.

We note that we made several changes that target reducing avoidable or unnecessary hospitalizations. We make proposals regarding improved communication of critical information, in-person evaluation or residents prior to transfer, competency-based care assignments, training, and systemic quality improvement. We believe that even a small reduction in the number of unnecessary hospitalizations could result in substantial savings, however, we have not quantified potential savings.

Currently, the regulations require that the nurse's station be equipped to receive resident calls. Our proposal to require a communications system that allows residents to call for assistance through a communications system that relays the call directly to a staff person or centralized staff area from each bedside and from toilet and bathing facilities provides added flexibility and efficiency. Eliminating the requirement for a ''nurses' station'' better accommodates a decentralized care model, better reflects current practice, and may improve response times. However, we have no basis upon which to calculate specific cost savings that this flexibility would provide.

This does not take into account dollar amounts from improved resident quality of life or improved staff work life. Reduced costs from improved staff satisfaction resulting in reduced turnover, decreased use of agency labor and decreased worker compensation costs could be substantial. The cost of turnover among nurse aides was estimated at $2,500 per occurrence in 2008 (Frampton, Susan, et al. ''Making the Case for Change'' Long-Term Care Improvement Guide 2010, retrieved from *http://www.residentcenteredcare.org/Pages/About%20the%20guide.html*). According to 2014 BLS statistics, there are over 1.4 million nurse aides employed in the United States; over 616,000 are employed in nursing facilities. AHCA reported in 2010 that the national turnover rate for certified nurse assistants (nurse aides) was 43 percent.

According to the American Nurses Association, the cost of recruiting and replacing an RN is 1.1 to 1.6 times an annual nurse's salary (*http://www.nursingworld.org/SafeStaffingFactsheet.aspx*). According to a 2009 survey by the American Health Care Association (*http://www.ahcancal.org/research_data/staffing/Documents/staffsurvey_2009_full_report.pdf*), the turnover rate for staff RNs was 46.7 percent and for administrative RNs was 36.3 percent. 2014 BLS data shows that over 140,000 RNs are employed in nursing care facilities at an annual mean wage of $62,440. Additional savings would accrue as a result of reduced turnover of other personnel such as licensed practical or vocational nurses, reduced use of agency staff and decreased worker compensation costs. One 2012 study found that over 60 percent of all nurse aides working in the United States reported being injured once in the study year. Further, the report found that certain workers were more likely to have a workplace injury, including those who were new, changed jobs more frequently, reported poor job preparation, and who had inadequate time to provide personal care. Khatutsky, G., Wiener, J. M., Anderson, W. L., & Porell, F.W. (2012). Work-related injuries among certified nursing assistants working in U.S. nursing homes. RTI Press publication No. RR–0017–1204. Research Triangle Park, NC: RTI Press. Retrieved from *www.rti.org/rtipress*). Some of our proposals, such as nurse aide training and competency requirements, would address some of these issues. However, the savings are not easily estimated. Cumulative, modest impacts from proposed changes could result in savings, in addition to the improvements in quality of life for residents. In addition to the more specific requests related to food service and infection control, we invite general comment, data and analysis on whether the actions whose costs are estimated elsewhere in the regulatory impact analysis are sufficient to yield the benefits discussed in this section.

G. Cost to the Federal Government

If these requirements are finalized, CMS will update the interpretive guidance, update the survey process, and make IT systems changes. In order to implement these new standards, we anticipate initial federal start-up costs between $15 to20 million. Once implemented, improved surveys to review the new requirements will require an estimated $15 to20 million annually in federal costs. CMS will continue to examine and seeks comment on the potential impacts to both Medicare and Medicaid.

H. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circular/a004/a-4.pdf*), we have prepared an accounting statement.

TABLE 3—ACCOUNTING STATEMENT

Category	Estimates	Units		
		Year dollar	Discount rate	Period covered
Benefits				
Qualitative	Improve in quality of life and quality of care			
Costs				
Annualized Monetized ($million/year)	659 658	2015 2015	7% 3%	2016–2020 2016–2020
Qualitative	Unquantified possible cost associated with the toilet requirement			

Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most nursing homes are small entities as that term is used in the RFA (include small businesses, nonprofit organizations, and small governmental jurisdictions). The great majority of nursing and residential care facilities are small entities; either by being nonprofit organizations or by meeting the Small Business Administration's (SBA) definition of a small business having revenues of less than $25.5 million in any 1 year (see the SBA's Web site at *http://www.sba.gov/content/small-business-size-standards*). Therefore, the Secretary has determined that this proposed rule will have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This proposed rule pertains solely to SNFs and NFs. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that is approximately $141 million. This proposed rule contains mandates that would impose a one-time net cost of approximately $766,822,783 (after including savings of $24,189). Thus, we have assessed the various costs and benefits of this proposed rule. This proposed rule would not mandate any new requirements for state, local or tribal governments. For the private sector facilities, the regulatory impact section, together with the remainder of the preamble, constitutes the analysis required under UMRA.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have determined that this proposed rule does not contain policies that have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have Federalism implications as defined in the Executive Order 13132 and, consequently, a Federalism summary impact statement is not required.

Congressional Review Act

This proposed regulation 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.*) and has been transmitted to the Congress and the Comptroller General for review.

I. Conclusion

The proposed requirements in this proposed rule would update the existing requirements for long-term care facilities to reflect current standards of practice. In addition, proposed changes would provide added flexibility to providers, potentially improve efficiency and effectiveness, potentially enhance resident quality of care and quality of life, and potentially improve clinical outcomes. The analysis above, together with the remainder of this preamble, provides a Regulatory Impact Analysis.

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

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 482

Grant programs-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.926 [Amended]

■ 2. In § 405.926, amend paragraph (f) by removing the reference ''§ 483.12'' and add in its place, the reference ''§§ 483.5(n) and 483.15''.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 3. The authority citation for part 431 continues to read as follows:

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

§ 431.206 [Amended]

■ 4. In § 431.206, amend paragraph (c)(3) by removing the reference ''§ 483.12'' and adding in its place the reference ''§ 483.15''.

§ 431.213 [Amended]

■ 5. In § 431.213, amend paragraph (h) by removing reference ''§ 483.12 (a)(5)(ii)'' and adding in its place the reference ''§ 483.15(b)(4)(ii) and (b)(8)'' and by removing the reference ''§ 483.12 (a)(5)(i)'' and adding in its place the reference ''§ 483.15(b)(4)(i) of this chapter''.

PART 447—PAYMENTS FOR SERVICES

■ 6. The authority citation for part 447 continues to read as follows:

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

§ 447.253 [Amended]

■ 7. In § 447.253, amend paragraph (b)(1)(iii)(B) by removing the reference ''§ 483.30(c)'' and adding in its place the reference ''§ 483.35(e)''.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 8. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 9. In § 482.58, paragraphs (b)(1) through (8) are revised and paragraph (b)(9) is added to read as follows:

§ 482.58 Special requirements for hospital providers of long-term care services (''swing-beds'').

* * * * *

(b) * * *

(1) Resident rights (§ 483.10(a)(4)(iv), (b), (c), (d)(1), (d)(3), (e)(8), (g), and (h)(3)).

(2) Facility responsibilities (§ 483.11(d)(1)(i), (d)(1)(iii), (d)(4), (e)(11), (e)(12), (e)(14)(iii), and (f)(1)(i)).

(3) Transitions of care (§ 483.5(n), § 483.15(b)(1), (b)(2), (b)(3)(i) through(iii), (b)(4), (b)(5)(i) through (vii), and (b)(7)).

(4) Freedom from abuse, neglect and exploitation (§ 483.12).

(5) Patient activities (§ 483.25(c)).

(6) Social services (§ 483.40(d) and § 483.75(p)).

(7) Discharge planning (§ 483.20(e)).

(8) Specialized rehabilitative services (§ 483.65).

(9) Dental services (§ 483.55).

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 10. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7j, and 1395hh.

■ 11. Section 483.1 is amended by revising paragraphs (a)(1) introductory text, (a)(3), and (b) and adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 483.1 Basis and scope.

(a) * * *

(1) Sections 1819(a), (b), (c), (d), and (f) of the Act provide that—

* * * * *

(3) Sections 1919(a), (b), (c), (d), and (f) of the Act provide that nursing facilities participating in Medicaid must meet certain specific requirements.

(4) Sections 1128I(b) and (c) require that—

(i) Skilled nursing facilities or nursing facility have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations.

(ii) The Secretary establish and implement a quality assurance and performance improvement program for facilities, including multi-unit chains of facilities.

(5) Section 1150B establishes requirements for reporting to law enforcement crimes occurring in federally funded LTC facilities.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a Skilled Nursing Facility in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

■ 12. Section 483.5 is amended by—

■ a. Removing the paragraph designations for paragraphs (a), (b), (c), (d), (e), and (f) and placing the definitions in alphabetical order.

■ b. Adding introductory text.

■ c. Revising the definition of ''common area''.

■ d. Amending the definition of ''composite distinct part'' by adding paragraph (2)(v).

■ e. Amending the definition of ''Facility'' by removing the italicized word ''*defined*''.

■ f. Adding the new definitions of ''abuse'', ''adverse event'', ''exploitation'', ''licensed health professional'', ''misappropriation of resident property'', ''neglect'', ''nurse aide'', ''person-centered care'', ''resident representative'', ''sexual abuse'', and ''transfer and discharge'' in alphabetical order.

The revisions and additions read as follows:

§ 483.5 Definitions.

As used in this subpart, the following definitions apply:

Abuse. Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This presumes that instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. *Willful,* as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

Adverse event. An adverse event is an untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk thereof.

Common area. Common areas are areas in the facility where residents may gather together with other residents, visitors, and staff or engage in individual pursuits, apart from their residential rooms. This includes but is not limited to living rooms, dining rooms, activity rooms, outdoor areas, and meeting rooms where residents are located on a regular basis.

Composite distinct part. * * *

(2) * * *

(v) Use of composite distinct parts to segregate residents by payment source or on a basis other than care needs is prohibited.

* * * * *

Exploitation. Means the unfair treatment or use of a resident or the taking of a selfish or unfair advantage of a resident for personal gain, through manipulation, intimidation, threats, or coercion.

* * * * *

Licensed health professional. A licensed health professional is a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

* * * * *

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings

or money without the resident's consent.

Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or mental illness.

Nurse aide. A nurse aide is any individual providing nursing or nursing-related services to residents in a facility. This term may also include an individual who provides these services through an agency or under a contract with the facility, but is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in § 488.301 of this chapter.

Person-centered care. For purposes of this subpart, person-centered care means to focus on the resident as the locus of control and support the resident in making their own choices and having control over their daily lives.

Resident representative. For purposes of this subpart, the term resident representative means an individual of the resident's choice who has access to information and participates in healthcare discussions or a personal representative with legal standing, such as a power of attorney, legal guardian, or health care surrogate appointed or designated in accordance with state law. If selected as the resident representative, the same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

Sexual abuse is non-consensual sexual contact of any type with a resident.

Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

■ 13. Section 483.10 is revised to read as follows:

§ 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility, including those specified in this section.

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights as required under this subpart.

(3) A resident has the right to designate a representative, in accordance with State law.

(i) The resident representative has the right to exercise the resident's rights to the extent those rights are delegated to the resident representative.

(ii) The resident retains the right to exercise those rights not delegated to a resident representative, including the right to revoke a delegation of rights, except as limited by State law.

(4) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident devolve to and are exercised by the resident representative appointed under State law to act on the resident's behalf.

(i) The resident may exercise his or her rights to the extent not prohibited by court order.

(ii) The court-appointed resident representative exercises the resident's rights to the extent judged necessary by a court of competent jurisdiction, in accordance with State law.

(iii) The resident's wishes and preferences must be considered in the exercise of rights by the representative.

(iv) To the extent practicable, the resident must be provided with opportunities to participate in the care planning process.

(5) In the case of a resident who has not been adjudged incompetent by the state court, any legal surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

(b) *Planning and implementing care.* The resident has the right to be informed of, and participate in, his or her treatment, including:

(1) The right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

(2) The right to be informed, in advance, of the care to be furnished and the disciplines that will furnish care.

(3) The right to be informed in advance of the risks and benefits of proposed care, of treatment and treatment alternatives or treatment options and to choose the alternative or option he or she prefers.

(4) The right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive as specified in § 483.11(e)(6).

(5) The right to participate in the development and implementation of his or her person-centered plan of care, including but not limited to:

(i) The right to participate in the planning process, including the right to identify individuals or roles to be included in the planning process, the right to request meetings and the right to request revisions to the person-centered plan of care.

(ii) The right to participate in establishing the expected goals and outcomes of care, the type, amount, frequency, and duration of care, and any other factors related to the effectiveness of the plan of care.

(iii) The right to be informed, in advance, of changes to the plan of care.

(iv) The right to receive the services and/or items included in the plan of care.

(v) The right to see the care plan, including the right to sign after changes to the plan of care.

(6) The right to self-administer medications if the interdisciplinary team has determined that this practice is clinically appropriate in accordance with § 483.11(b)(2).

(7) Nothing in this paragraph should be construed as the right of the resident to receive the provision of medical treatment or medical services deemed medically unnecessary or inappropriate.

(c) *Choice of attending physician.* The resident has the right to choose his or her attending physician.

(1) The physician must be licensed to practice, and

(2) The physician must meet the professional credentialing requirements of the facility.

(3) If the physician chosen by the resident refuses to or does not meet requirements specified in this part, the facility may seek alternate physician participation as specified in § 483.11(c) to assure provision of appropriate and adequate care and treatment.

(d) *Respect and dignity.* The resident has a right to be treated with respect and dignity, including:

(1) The right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(2) The right to retain and use personal possessions, including furnishings, and clothing, as space

permits, unless to do so would infringe upon the rights or health and safety of other residents.

(3) The right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences except when to do so would endanger the health or safety of the resident or other residents.

(4) The right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(5) The right to share a room with his or her roommate of choice when practicable, when both residents live in the same facility and both residents consent to the arrangement.

(6) The right to receive notice before the resident's room or roommate in the facility is changed.

(7) The right to refuse to transfer to another room in the facility, if the purpose of the transfer is to relocate:

(i) A resident of a SNF from the distinct part of the institution that is a SNF to a part of the institution that is not a SNF, or

(ii) A resident of a NF from the distinct part of the institution that is a NF to a distinct part of the institution that is a SNF.

(8) A resident's exercise of the right to refuse transfer does not affect the resident's eligibility or entitlement to Medicare or Medicaid benefits.

(e) *Self-determination.* The resident has the right to self-determination, including but not limited to the right to—

(1) Choose activities, schedules (including sleeping and waking times), health care and providers of health care services consistent with his or her interests, assessments, and plan of care;

(2) Interact with members of the community and participate in community activities both inside and outside the facility;

(3) Receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation, and in a manner that does not impose on the rights of another resident, including the individuals specified in § 483.11(d);

(4) Organize and participate in resident groups in the facility;

(5) Participate in family groups;

(6) Have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility;

(7) Participate in other activities, including social, religious, and community activities that do not interfere with the rights of other residents in the facility;

(8) Choose to or refuse to perform services for the facility subject to the facility requirements in § 483.11(d)(4);

(9) Manage his or her financial affairs. This includes the right to know, in advance, what charges a facility may impose against a resident's personal funds as specified in § 483.11(d)(6)(ii);

(10) Make choices about aspects of his or her life in the facility that are significant to the resident.

(f) *Access to information.* (1) The resident has the right to be informed of his or her rights and of all rules and regulations governing resident conduct and responsibilities during his or her stay in the facility.

(2) The resident has the right to receive notices verbally (meaning spoken) and in writing (including Braille) in a format and a language he or she understands, including

(i) Required notices as specified in § 483.11(e);

(ii) Information and contact information for State and local advocacy organizations, including but not limited to the State Long-Term Care Ombudsman program (established under section 712 of the Older Americans Act of 1965, as amended 2006 (42 U.S.C. 3001 et seq) and the protection and advocacy system (as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);

(iii) Information regarding Medicare and Medicaid eligibility and coverage;

(iv) Contact information for the Aging and Disability Resource Center (established under Section 202(a)(20)(B)(iii) of the Older Americans Act); or other No Wrong Door Program

(v) Contact information for the Medicaid fraud control unit; and

(vi) Information and contact information for filing grievances or complaints about abuse, neglect, misappropriation of resident property in the facility, and non-compliance with § 489.102 of this chapter.

(3) The resident has the right to access medical records pertaining to him or herself,—

(i) Upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such medical records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, including current medical records, within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her medical records for inspection, to purchase, a copy of the medical records or any portions thereof (including in an electronic form or format when such medical records are maintained electronically) upon request and 2 working days advance notice to the facility. The facility may impose a reasonable, cost-based fee on the provision of copies, provided that the fee includes only the cost of:

(A) Labor for copying the medical records requested by the individual, whether in paper or electronic form;

(B) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and

(C) Postage, when the individual has requested the copy be mailed.

(4) The resident has the right to—

(i) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility; and

(ii) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) *Privacy and confidentiality.* The resident has a right to personal privacy and confidentiality of his or her personal and medical records.

(1) This includes the right to privacy in his or her verbal (that is, spoken), written, and electronic communications, including the right to send and promptly receive unopened mail and other letters, packages and other materials delivered to the facility for the resident, including those delivered through a means other than a postal service.

(2) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(3) The resident has a right to a secure and confidential medical record.

(4) The resident has the right to refuse the release of personal and medical records except as provided at § 483.70(i)(2) or other applicable federal or state laws.

(h) *Communication.* (1) The resident has the right to have reasonable access to the use of a telephone, including TTY and TDD services, and a place in the facility where calls can be made without being overheard. This includes the right to retain and use a cellular phone at the resident's own expense.

(2) The resident has the right to have reasonable access to and privacy in their use of electronic communications such

as email and video communications and for internet research.

(i) If the access is available to the facility.

(ii) At the resident's expense, if any additional expense is incurred by the facility to provide such access to the resident.

(3) The resident has the right to send and receive mail, and to receive letters, packages and other materials delivered to the facility for the resident through a means other than a postal service, including the right to:

(i) Privacy of such communications consistent with paragraph (g)(1) of this section; and

(ii) Access to stationery, postage, and writing implements at the resident's own expense.

(i) *Safe environment.* The resident has a right to a safe, clean, comfortable and homelike environment in accordance with § 483.11(g), including but not limited to receiving treatment and supports for daily living safely.

(j) *Grievances.* (1) The resident has the right to voice grievances to the facility or other agency or entity that hears grievances without discrimination or reprisal and without fear of discrimination or reprisal. Such grievances include those with respect to care and treatment which has been furnished as well as that which has not been furnished.

(2) The resident has the right to prompt efforts by the facility to resolve grievances in accordance with § 483.11(h).

■ 14. Section 483.11 is added to subpart B to read as follows:

§ 483.11 Facility responsibilities.

A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident as specified in § 483.10, including, but not limited to the following obligations:

(a) *Exercise of rights.* (1) The facility must ensure that the resident can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.

(2) The facility must provide equal access to quality care regardless of diagnosis, severity of condition, or payment source. A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all residents regardless of payment source.

(3) The facility must treat the decisions of a resident representative as the decisions of the resident to the extent required by the court or delegated by the resident, in accordance with applicable law.

(4) The facility shall not extend the resident representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident, in accordance with applicable law.

(5) If the facility has reason to believe that a resident representative is making decisions or taking actions that are not in the best interests of a resident, the facility may report such concerns as permitted and shall report such concerns when and in the manner required under State law.

(b) *Planning and implementing care.* (1) The facility shall inform the resident of the right to participate in his or her treatment and shall support the resident in this right, consistent with § 483.10(b). The planning process must:

(i) Facilitate the inclusion of the resident or resident representative.

(ii) Include an assessment of the resident's strengths and needs.

(iii) Incorporate the resident's personal and cultural preferences in developing goals of care.

(2) The interdisciplinary team, as defined by § 483.21(b)(2)(ii), is responsible for determining if resident self-administration of medications is clinically appropriate.

(c) *Attending physician.* (1) The facility must ensure that each resident remains informed of the name, specialty, and way of contacting the physician and other primary care professionals responsible for his or her care.

(2) The facility must inform the resident if the facility determines that the physician chosen by the resident is unable or unwilling to meet requirements specified in this part and the facility seeks alternate physician participation to assure provision of appropriate and adequate care and treatment. The facility must discuss the alternative physician participation with the resident and honor the resident's preferences, if any, among options.

(3) If the resident subsequently selects another attending physician who meets the requirements specified in this part, the facility must honor that choice.

(d) *Self-determination.* The facility must promote and facilitate resident self-determination through support of resident choice as specified in § 483.10(e) and as follows:

(1) The facility must:

(i) Provide immediate access to any resident by:

(A) Any representative of the Secretary,

(B) Any representative of the State,

(C) Any representative of the Office of the State long term care ombudsman, (established under section 712 of the Older Americans Act of 1965, as amended 2006 (42 U.S.C. 3001 *et seq.*);

(D) The resident's individual physician,

(E) Any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*),

(F) Any representative of the agency responsible for the protection and advocacy system for individuals with mental illness (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000 (42 U.S.C. 10802); and

(G) The resident representative.

(ii) Provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;

(iii) Provide immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable clinical and safety restrictions and the resident's right to deny or withdraw consent at any time;

(iv) Provide reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(2) The facility must have written policies and procedures regarding the visitation rights of residents, including those setting forth any clinically necessary or reasonable restriction or limitation or safety restriction or limitation that the facility may need to place on such rights and the reasons for the clinical or safety restriction or limitation. A facility must meet the following requirements:

(i) Inform each resident (or resident representative, where appropriate) of his or her visitation rights, including any clinical or safety restriction or limitation on such rights, when he or she is informed of his or her other rights under this section.

(ii) Inform each resident of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse (including a same-sex spouse), a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

(iii) Not restrict, limit, or otherwise deny visitation privileges on the basis of

race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(iv) Ensure that all visitors enjoy full and equal visitation privileges consistent with resident preferences.

(3) The facility must provide a resident or family group, if one exists, with private space; and

(i) Staff or visitors may attend meetings only at the group's invitation;

(ii) The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings;

(iii) The facility must consider the views of a resident or family group and act upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.

(A) This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.

(B) The facility must be able to demonstrate their response and rationale for such response.

(4) The facility must not require a resident to perform services for the facility. The resident may perform services for the facility, if he or she chooses, when—

(i) The facility has documented the resident's need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(5) The facility must not require residents to deposit their personal funds with the facility. If a resident chooses to deposit personal funds with the facility, the facility must adhere to the following requirements.

(i) *Management of personal funds.* Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in this section.

(ii) *Deposit of funds.*

(A) In general:

(*1*) Except as set out in paragraph (d)(5)(ii)(B)(*1*) of this section, the facility must deposit any residents' personal funds in excess of $100 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(*2*) The facility must maintain a resident's personal funds that do not exceed $100 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(B) Residents whose care is funded by Medicaid:

(*1*) The facility must deposit the residents' personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(*2*) The facility must maintain personal funds that do not exceed $50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(iii) *Accounting and records.* (A) The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf. (B) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(C) The individual financial record must be available to the resident through quarterly statements and upon request.

(iv) *Notice of certain balances.* The facility must notify each resident that receives Medicaid benefits—

(A) When the amount in the resident's account reaches $200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(B) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(v) *Conveyance upon discharge, eviction, or death.* Upon the discharge, eviction, or death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the resident, or in the case of death, the individual or probate jurisdiction administering the resident's estate, in accordance with State law.

(vi) *Assurance of financial security.* The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(6) The facility must not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See § 447.15 of this chapter, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

(i) *Services included in Medicare or Medicaid payment.* During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

(A) Nursing services as required at § 483.35.

(B) Food and Nutrition services as required at § 483.60.

(C) An activities program as required at § 483.25(c).

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing assistance, and basic personal laundry.

(F) Medically-related social services as required at § 483.40(d).

(G) Hospice services elected by the resident and paid for under the Medicare Hospice Benefit or paid for by Medicaid under a state plan.

(ii) *Items and services that may be charged to residents' funds.* Listed below in paragraphs (d)(6)(ii)(A) through (L) of this section are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if they are not required to achieve the goals stated in the resident's care plan, if the facility informs the

resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(A) Telephone, including a cellular phone.

(B) Television/radio, personal computer or other electronic device for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Cost to participate in social events and entertainment outside the scope of the activities program, provided under § 483.25(c).

(J) Noncovered special care services such as privately hired nurses or aides.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Except as provided below, specially prepared or alternative food requested instead of the food and meals generally prepared by the facility, as required by § 483.60.

(*1*) The facility may not charge for special foods and meals, including medically prescribed dietary supplements, ordered by the resident's health care provider, as these are included per § 483.60.

(*2*) In accordance with § 483.60(c) through (f), when preparing foods and meals, a facility must take into consideration residents' needs and preferences and the overall cultural and religious make-up of the facility's population.

(iii) *Requests for items and services.* (A) The facility can only charge a resident for any noncovered item or service if such item or service is specifically requested by the resident.

(B) The facility must not require a resident to request any item or service as a condition of admission or continued stay.

(C) The facility must inform, orally and in writing, the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(e) *Information and communication.* (1) With the exception of information described in paragraph (e)(2) of this section, the facility must ensure that information is provided to each resident in a form and manner the resident can access and understand, including in an alternative format or in a language that the resident can understand. Summaries that translate information described in paragraph (e)(2) of this section may be made available to the patient at their request and expense in accordance with applicable law.

(2) The facility must:

(i) Provide the resident with access to medical records pertaining to him or herself, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such medical records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, within 24 hours (excluding weekends and holidays); and

(ii) Allow the resident to purchase, after receipt of his or her medical records for inspection, a copy of the medical records or any portions thereof (including in an electronic form or format when such medical records are maintained electronically) upon request and 2 working days advance notice to the facility.

(iii) The facility may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(A) Labor for copying the medical records requested by the individual, whether in paper or electronic form;

(B) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media; and

(C) Postage, when the individual has requested the copy be mailed.

(3) The facility must make reports with respect to any surveys, certifications, and complaint investigations conducted by Federal or State surveyors during the 3 preceding years available for any individual to review upon request and any plan of correction in effect with respect to the facility available for examination in a place readily accessible to and in a form understandable by residents, and must post a notice of its availability.

(4) The facility must post, in a form and manner accessible and understandable to residents, resident representatives and support person:

(i) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State agencies and advocacy groups, such as the State survey and certification agency, the State licensure office, adult protective services where state law provides for jurisdiction in long-term care facilities, the Office of the State Long-Term Care Ombudsman program, the protection and advocacy network, home and community based service programs, and the Medicaid fraud control unit; and

(ii) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the requirements specified in 42 CFR part 489 subpart I (Advance Directives).

(5) The facility must comply with the requirements specified in 42 CFR part 489, subpart I (Advance Directives).

(i) These requirements include provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical or surgical treatment and, at the resident's option, formulate an advance directive.

(ii) This includes a written description of the facility's policies to implement advance directives and applicable State law.

(iii) Facilities are permitted to contract with other entities to furnish this information but are still legally responsible for ensuring that the requirements of this section are met.

(iv) If an adult individual is incapacitated at the time of admission and is unable to receive information or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's resident representative in accordance with State law.

(v) The facility is not relieved of its obligation to provide this information to the individual once he or she is able to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(6) The facility must display in the facility written information, and provide to residents and applicants for admission, oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(7) *Notification of changes.* (i) A facility must immediately inform the resident; consult with the resident's physician; and notify the resident representative(s) when there is—

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-

threatening conditions or clinical complications);

(C) A need to alter treatment significantly (that is, a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.15(b)(1)(ii).

(ii) When making notification under paragraph (e)(7)(i) of this section, the facility must ensure that all pertinent information specified in § 483.15(b)(2) is available and provided upon request to the physician.

(iii) The facility must also promptly notify the resident and the resident representative, if any, when there is—

(A) A change in room or roommate assignment as specified in § 483.10(d)(6); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (e)(10) of this section.

(iv) The facility must record and periodically update the address (mailing and email) and phone number of the resident representative(s).

(8) *Admission to a composite distinct part.* A facility that is a composite distinct part (as defined in § 483.5 must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under § 483.15(b)(9).

(9) The facility must provide a notice of rights and services to the resident prior to or upon admission and during the resident's stay.

(i) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility.

(ii) The facility must also provide the resident with the State-developed notice of Medicaid rights and obligations, if any.

(iii) Receipt of such information, and any amendments to it, must be acknowledged in writing;

(10) The facility must:

(i) Inform each Medicaid-eligible resident, in writing, at the time of admission to the nursing facility and when the resident becomes eligible for Medicaid of—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each Medicaid-eligible resident when changes are made to the items and services specified in paragraphs (e)(10)(i)(A) and (B) of this section.

(11) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare/Medicaid or by the facility's per diem rate.

(i) Where changes in coverage are made to items and services covered by Medicare and/or by the Medicaid State plan, the facility must provide notice to residents of the change as soon as is reasonably possible;

(ii) Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing at least 60 days prior to implementation of the change.

(iii) If a resident dies or is hospitalized or is transferred and does not return to the facility, the facility must refund to the resident, resident representative, or estate, as applicable, any deposit or charges already paid, less the facility's per diem rate, for the days the resident actually resided or reserved or retained a bed in the facility, regardless of any minimum stay or discharge notice requirements.

(iv) The facility must refund to the resident or resident representative any and all refunds due the resident within thirty days from the resident's date of discharge from the facility.

(v) Where the facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract must not conflict with the requirements of these regulations.

(12) The facility must furnish to each resident a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (d)(5) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment of resources under section 1924(c) of the Social Security Act.

(iii) A list of names, addresses (mailing and email), and telephone numbers of all pertinent State regulatory and informational agencies, resident advocacy groups such as the State survey and certification agency, the State licensure office, the State Long-Term Care Ombudsman program, the protection and advocacy agency, adult protective services where state law provides for jurisdiction in long-term care facilities, the local contact agency for information about returning to the community and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning any suspected violation of state or federal nursing facility regulations, including but not limited to resident abuse, neglect, misappropriation of resident property in the facility, non-compliance with the advance directives requirements and requests for information regarding returning to the community.

(13) The facility must protect and facilitate that resident's right to communicate with individuals and entities within and external to the facility, consistent with § 483.10(h), including reasonable access to:

(i) A telephone, including TTY and TDD services;

(ii) The internet, to the extent available to the facility; and

(iii) Stationery, postage, writing implements and the ability to send mail.

(f) *Privacy and confidentiality.* (1) The facility must respect the resident's right to personal privacy, including privacy in his or her verbal (meaning spoken), written and electronic communications.

(i) This includes ensuring that a resident can send and promptly receive mail that is unopened; as well as receive, unopened, letters, packages and other materials delivered to the facility for the resident through a means other than a postal service.

(ii) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) The facility must comply with the residents' rights in § 483.10(g)(3) regarding his or her medical records.

(3) The facility must allow representatives of the Office of the State Long-Term Care Ombudsman to examine a resident's medical, social, and administrative records in accordance with State law.

(g) *Safe environment.* The facility must provide:

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal

belongings to the extent possible. This includes ensuring:

(i) That the resident can receive care and services safely.

(ii) That the physical layout of the facility maximizes independence and does not pose a safety risk.

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 483.90(d)(2)(iv);

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71–81 °F; and

(7) For the maintenance of comfortable sound levels.

(h) *Grievances.* (1) The facility must make information on how to file a grievance or complaint available to the resident, including the information required under paragraph (f)(2) of this section.

(2) The facility must make prompt efforts to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(3) The facility must establish a grievance policy to ensure the prompt resolution of all grievances regarding the residents' rights contained in § 483.10. Upon request, the provider must give a copy of the grievance policy to the resident. The grievance policy must include:

(i) Notifying resident individually or through postings in prominent locations throughout the facility of the right to file grievances verbally (meaning spoken) or in writing; the right to file grievances anonymously; the contact information of the grievance official with whom a grievance can be filed, that is, his or her name, business address (mailing and email) and business phone number; a reasonable expected time frame for completing the review of the grievance; the right to obtain a written decision regarding his or her grievance; and the contact information of independent entities with whom grievances may be filed, that is, the pertinent State agency, Quality Improvement Organization, State Survey Agency and State Long-Term Care Ombudsman program or protection and advocacy system;

(ii) Identifying a Grievance Official who is responsible for overseeing the grievance process, receiving and tracking grievances through their conclusion; leading any necessary investigations by the facility; maintaining the confidentiality of all information associated with grievances, for example, the identity of the resident for those grievances submitted anonymously; issuing written grievance decisions to the resident; and coordinating with State and Federal agencies as necessary in light of specific allegations;

(iii) As necessary, taking immediate action to prevent further potential violations of any resident right while the alleged violation is being investigated;

(iv) Immediately reporting all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider, to the administrator of the provider; and as required by State law;

(v) Ensuring that all written grievance decisions include the date the grievance was received, a summary statement of the resident's grievance, the steps taken to investigate the grievance, a summary of the pertinent findings or conclusions regarding the resident's concern(s), a statement as to whether the grievance was confirmed or not confirmed, any corrective action taken or to be taken by the facility as a result of the grievance, and the date the written decision was issued;

(vi) Taking appropriate corrective action in accordance with State law if the alleged violation of the residents' rights is confirmed by the facility or if an outside entity having jurisdiction, such as the State survey and certification agency, Quality Improvement Organization, or local law enforcement agency confirms a violation of any of these residents' rights within its area of responsibility; and

(vii) Maintaining evidence demonstrating the results of all grievances for a period of no less than three years from the issuance of the grievance decision.

(i) *Contact with external entities.* A facility must not prohibit or in any way discourage a resident from communicating with Federal, State, or local officials, including, but not limited to, Federal and State surveyors, other Federal or State health department employees, including representatives of the Office of the State Long-Term Care Ombudsman and of the protection and advocacy system, regarding any matter, whether or not subject to arbitration or any other type of judicial or regulatory action.

■ 15. Section 483.12 is revised to read as follows:

§ 483.12 Freedom from abuse, neglect, and exploitation.

The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.

(a) The facility must—

(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(2) Not employ or otherwise engage individuals who—

(i) Have been found guilty of abuse, neglect, misappropriation of property, or mistreatment by a court of law;

(ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; or

(iii) Have had a disciplinary action taken against a professional license by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of resident property.

(3) Report to the State nurse aide registry or licensing authorities any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff.

(b) The facility must develop and implement written policies and procedures that:

(1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property,

(2) Establish policies and procedures to investigate any such allegations, and

(3) Include training as required at paragraph § 483.95.

(4) Establish coordination with the QAPI program required under § 483.75.

(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Social Security Act. The policies and procedures must include but are not limited to the following elements.

(i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements.

(A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility.

(B) Each covered individual shall report not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

(ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act.

(iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(1) and (2) of the Act.

(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:

(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately to the administrator of the facility and to other officials (including to the State survey and certification agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.

(2) Have evidence that all alleged violations are thoroughly investigated.

(3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.

(4) Report the results of all investigations to the administrator or his resident representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

§ 483.13 [Removed]

■ 16. Remove § 483.13.

■ 17. Section 483.15 is revised to read as follows:

§ 483.15 Transitions of care.

Transitions of care include admissions to and discharges or transfers to or from a SNF or NF. This section also addresses bed-hold policies and therapeutic leave.

(a) *Admissions policy.* (1) The facility must establish and implement an admissions policy.

(2) The facility must—

(i) Not request or require residents or potential residents to waive their rights as set forth in this subpart and in applicable State, Federal or local licensing or certification laws, including but not limited to their rights to Medicare or Medicaid; and

(ii) Not request or require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(iii) Not request or require residents or potential residents to waive potential facility liability for losses of personal property

(3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(4) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—

(i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term ''nursing facility services'' so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(5) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

(6) A nursing facility must disclose and provide to a resident or potential resident, at or prior to time of admission, notice of special characteristics or service limitations of the facility.

(7) A nursing facility that is a composite distinct part as defined in § 483.5(c) must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under paragraph (b)(10) of this section.

(b) *Transfer and discharge*—(1) *Facility requirements*—(i) *Equal access to quality care.* (A) A facility must establish, maintain and implement identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;

(B) The facility may charge any amount for services furnished to non-Medicaid residents unless otherwise limited by state law and consistent with the notice requirement in § 483.11(e)(11)(i) and (e)(12) describing the charges; and

(C) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(ii) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment does not apply unless the resident does not submit the necessary paperwork for third party payment or until the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(F) The facility ceases to operate.

(iii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter.

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (b)(1)(i)(A) through (F) of

this section, the facility must ensure that the transfer or discharge is documented in the resident's clinical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's clinical record must include:

(A) The basis for the transfer per paragraph (b)(1)(ii).

(B) In the case of paragraph (b)(1)(ii)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation must be made by—

(A) The resident's physician when transfer or discharge is necessary under paragraph (b)(1)(i)(A) or (B) of this section; and

(B) A physician when transfer or discharge is necessary under paragraph (b)(1)(i)(C) or (D) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Demographic information including but not limited to name, sex, date of birth, race, ethnicity, and preferred language.

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) History of present illness/reason for transfer including primary care team contact information.

(E) Past medical/surgical history, including procedures.

(F) Active diagnoses/Current problem list and status.

(G) Laboratory tests and the results of pertinent laboratory and other diagnostic testing.

(H) Functional status.

(I) Psychosocial assessment, including cognitive status.

(J) Social Supports

(K) Behavioral Health Issues

(L) Medications.

(M) Allergies, including medication allergies.

(N) Immunizations.

(O) Smoking status.

(P) Vital signs.

(Q) Unique device identifier(s) for a patient's implantable device(s), if any.

(R) Comprehensive Care plan goals, including health concerns, assessment and plan, resident preferences, interventions, including efforts to meet resident needs, and resident status.

(iv) This requirement may be satisfied by the discharge summary providing it meets the requirements of § 483.21(c) and includes at a minimum the information specified in paragraph (b)(2)(iii) of this section.

(3) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. Subject to the resident's agreement, the facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's clinical record in accordance with paragraph (b)(2) of this section; and

(iii) Include in the notice the items described in paragraph (b)(5) of this section.

(4) *Timing of the notice.* (i) Except as specified in paragraphs (b)(4)(ii) and (b)(8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under paragraph (b)(1)(ii)(C) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (b)(1)(ii)(D) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (b)(1)(ii)(B) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (b)(1)(ii)(A) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) *Contents of the notice.* The written notice specified in paragraph (b)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is expected to be transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State, the name, address (mailing and email), and telephone number of the State entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 10802); and

(vii) For nursing facility residents with mental illness, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) *Changes to the notice.* If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) *Orientation for transfer or discharge.* A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) *Notice in advance of facility closure.* In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at § 483.70(l).

(9) *Room changes in a composite distinct part.* Room changes in a facility that is a composite distinct part (as defined in § 483.5) are subject to the requirements of § 483.10(d)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

(c) *Notice of bed-hold policy and readmission*—(1) *Notice before transfer.* Before a nursing facility transfers a resident to a hospital or the resident goes on therapeutic leave, the nursing facility must provide written information to the resident or resident representative that specifies—

(i) The duration of the state bed-hold policy, if any, during which the resident is permitted to return and resume residence in the nursing facility;

(ii) The reserve bed payment policy in the state plan, under § 447.40 of this chapter, if any;

(iii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (c)(3) of this section, permitting a resident to return; and

(iv) The information specified in paragraph (c)(3) of this section.

(2) *Bed-hold notice upon transfer.* At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and the resident representative written notice which specifies the duration of the bed-hold policy described in paragraph (c)(1) of this section.

(3) *Permitting resident to return to facility.* A nursing facility must establish and follow a written policy on permitting residents to return to the facility after they are hospitalized or placed on therapeutic leave. The policy must provide for the following.

(i) A resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility to their previous room if available or immediately upon the first availability of a bed in a semi-private room if the resident—

(A) Requires the services provided by the facility; and

(B) Is eligible for Medicaid nursing facility services.

(ii) A resident who is hospitalized or placed on therapeutic leave with an expectation of returning to the facility must be notified in writing by the facility when the facility determines that the resident cannot be readmitted to the facility, the reason the resident cannot be readmitted to the facility, and the information specified in paragraphs (b)(5)(iv) through (vii) of this section.

(4) *Readmission to a composite distinct part.* When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in § 483.5), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

§ 483.20 [Amended]

■ 18. In § 483.20—

■ a. Revise paragraph (b)(1) introductory text.

■ b. Revise paragraphs (b)(1)(xvi) and (xviii).

■ c. Revise paragraph (e).

■ d. Remove paragraphs (k) and (l).

■ e. Redesignate paragraph (m) as paragraph (k).

■ f. Revise newly designated paragraph (k).

The revisions read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) * * *

(1) *Resident assessment instrument.* A facility must make a comprehensive assessment of a resident's needs, strengths, goals, life history and preferences, using the resident assessment instrument (RAI) specified by CMS. The assessment must include at least the following:

* * * * *

(xvi) Discharge planning.

* * * * *

(xviii) Documentation of participation in assessment. The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care/direct access staff members on all shifts.

* * * * *

(e) *Coordination.* A facility must coordinate assessments with the preadmission screening and resident review (PASARR) program under Medicaid in subpart C of this part to the maximum extent practicable to avoid duplicative testing and effort. Coordination includes—

(1) Incorporating the recommendations from the PASARR level II determination and the PASARR evaluation report into a resident's assessment, care planning, and transitions of care.

(2) Referring all level II residents and all residents with newly evident or possible serious mental illness, intellectual disability, or a related condition for level II resident review upon a significant change in status assessment.

* * * * *

(k) *Preadmission screening for individuals with mental illness and individuals with intellectual disability.* (1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—

(i) Mental illness as defined in paragraph (k)(3)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission,

(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, whether the individual requires specialized services; or

(ii) Intellectual disability, as defined in paragraph (k)(3)(ii) of this section, unless the State intellectual disability or developmental disability authority has determined prior to admission—

(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, whether the individual requires specialized services for intellectual disability.

(2) *Exceptions.* For purposes of this section—

(i) The preadmission screening program under paragraph (k)(1) of this section need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(ii) The State may choose not to apply the preadmission screening program under paragraph (k)(1) of this section to the admission to a nursing facility of an individual—

(A) Who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(B) Who requires nursing facility services for the condition for which the individual received care in the hospital, and

(C) Whose attending physician has certified, before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(3) *Definition.* For purposes of this section—

(i) An individual is considered to have mental illness if the individual has a serious mental illness as defined in § 483.102(b)(1).

(ii) An individual is considered to have an intellectual disability if the individual has an intellectual disability as defined in § 483.102(b)(3) or is a person with a related condition as described in § 435.1010 of this chapter.

(4) A nursing facility must notify the state mental health authority or state intellectual disability authority, as applicable, promptly after a significant change in the mental or physical condition of a resident who has mental illness or intellectual disability for resident review.

■ 19. Section 483.21 is added to read as follows:

§ 483.21 Comprehensive person-centered care planning.

(a) *Baseline care plans.* (1) The facility must develop a baseline care plan for each resident that includes the instructions needed to provide effective

and person-centered care of the resident that meet professional standards of quality care. The baseline care plan must—

(i) Be developed within 48 hours of a resident's admission.

(ii) Include the minimum healthcare information necessary to properly care for a resident including, but not limited to—

(A) Initial goals based on admission orders.

(B) Physician orders.

(C) Dietary orders.

(D) Therapy services.

(E) Social services.

(F) PASARR recommendation, if applicable.

(2) The facility may develop a comprehensive care plan in place of the baseline care plan if the comprehensive care plan—

(i) Is developed within 48 hours of the resident's admission.

(ii) Meets the requirements set forth in paragraph (b) of this section (excepting paragraph (b)(2)(i) of this section).

(b) *Comprehensive care plans.* (1) The facility must develop a comprehensive person-centered care plan for each resident, consistent with § 483.10(b)(1) and § 483.11(b)(1), that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan must describe the following—

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 483.25 or § 483.40; and

(ii) Any services that would otherwise be required under § 483.25 or § 483.40 but are not provided due to the resident's exercise of rights under § 483.10, including the right to refuse treatment under § 483.10(b)(4).

(iii) Any specialized services or specialized rehabilitative services the nursing facility will provide as a result of PASARR recommendations. If a facility disagrees with the findings of the PASARR, it must indicate its rationale in the resident's medical record.

(iv) In consultation with the resident and the resident's representative(s)—

(A) The resident's goals for admission and desired outcomes.

(B) The resident's preference and potential for future discharge. Facilities must document whether the resident's desire to return to the community was assessed and any referrals to local contact agencies and/or other appropriate entities, for this purpose.

(C) Discharge plans in the comprehensive care plan, as appropriate, in accordance with the requirements set forth in paragraph (c) of this section.

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment.

(ii) Prepared by an interdisciplinary team, that includes but is not limited to—

(A) The attending physician.

(B) A registered nurse with responsibility for the resident.

(C) A nurse aide with responsibility for the resident.

(D) A member of food and nutrition services staff.

(E) A social worker.

(F) To the extent practicable, the participation of the resident and the resident's representative(s). An explanation must be included in a resident's medical record if the participation of the resident and their resident representative is determined not practicable for the development of the resident's care plan.

(G) Other appropriate staff or professionals in disciplines as determined by the resident's needs or as requested by the resident.

(iii) Reviewed and revised by the interdisciplinary team after each assessment, including both the comprehensive and quarterly review assessments.

(3) The services provided or arranged by the facility, as outlined by the comprehensive care plan, must—

(i) Meet professional standards of quality.

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(iii) Be culturally-competent and trauma-informed.

(c) *Discharge planning*—(1) *Discharge planning process.* The facility must develop and implement an effective discharge planning process that focuses on the resident's discharge goals and preparing residents to be active partners in post-discharge care, effective transition of the resident from SNF to post-SNF care, and the reduction of factors leading to preventable readmissions. The facility's discharge planning process must—

(i) Ensure that the discharge needs of each resident are identified and result in the development of a discharge plan for each resident.

(ii) Include regular re-evaluation of residents to identify changes that require modification of the discharge plan. The discharge plan must be updated, as needed, to reflect these changes.

(iii) Involve the interdisciplinary team, as defined by § 483.20(b)(2)(ii), in the ongoing process of developing the discharge plan.

(iv) Consider caregiver/support person availability and the resident's or caregiver's/support person(s) capacity and capability to perform required care, as part of the identification of discharge needs.

(v) Involve the resident and resident representative in the development of the discharge plan and inform the resident and resident representative of the final plan.

(vi) Address the resident's goals of care and treatment preferences.

(vii) Document that a resident has been asked about their interest in receiving information regarding returning to the community.

(A) If the resident indicates an interest in returning to the community, the facility must document any referrals to local contact agencies or other appropriate entities made for this purpose.

(B) Facilities must update a resident's comprehensive care plan and discharge plan, as appropriate, in response to information received from referrals to local contact agencies or other appropriate entities.

(C) If discharge to the community is determined to not be feasible, the facility must document who made the determination and why.

(viii) For residents who are transferred to another SNF or who are discharged to a HHA, IRF, or LTCH, assist residents and their resident representatives in selecting a post-acute care provider by using data that includes, but is not limited to SNF, HHA, IRF, or LTCH standardized patient assessment data, data on quality measures, and data on resource use to the extent the data is available. The facility must ensure that the post-acute care standardized patient assessment data, data on quality measures, and data on resource use is relevant and applicable to the resident's goals of care and treatment preferences.

(ix) Document, complete on a timely basis based on the resident's needs, and include in the clinical record, the evaluation of the resident's discharge needs and discharge plan. The results of the evaluation must be discussed with the resident or resident's representative. All relevant resident information must be incorporated into the discharge plan to facilitate its implementation and to avoid unnecessary delays in the resident's discharge or transfer.

(2) *Discharge summary.* When the facility anticipates discharge a resident must have a discharge summary that

includes, but is not limited to, the following:

(i) A recapitulation of the resident's stay that includes, but is not limited to, diagnoses, course of illness/treatment or therapy, and pertinent lab, radiology, and consultation results.

(ii) A final summary of the resident's status to include items in paragraph (b)(1) of § 483.20, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or resident's representative.

(iii) Reconciliation of all pre-discharge medications with the resident's post-discharge medications (both prescribed and over-the-counter).

(iv) A post-discharge plan of care that is developed with the participation of the resident and, with the resident's consent, his or her family, which will assist the resident to adjust to his or her new living environment. The post-discharge plan of care must indicate where the individual plans to reside, any arrangements that have been made for the resident's follow up care and any post-discharge medical and non-medical services.

■ 20. Section 483.25 is revised to read as follows:

§ 483.25 Quality of care and quality of life.

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care.

(a) Based on the comprehensive assessment of a resident and consistent with the resident's needs and choices, the facility must provide the necessary care and services to ensure that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that such diminution was unavoidable. This includes the facility ensuring that:

(1) A resident is given the appropriate treatment and services to maintain or improve his or her ability to carry out the activities of daily living, including those specified in paragraph (b) of this section,

(2) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene, and

(3) Personnel provide basic life support, including CPR, to a resident requiring such emergency care prior to the arrival of emergency medical personnel and subject to the resident's advance directives.

(b) *Activities of daily living.* (1) Hygiene—bathing, dressing, grooming, and oral care,

(2) Mobility—transfer and ambulation,

(3) Elimination-toileting,

(4) Dining-eating, including meals and snacks,

(5) Communication, including

(i) Speech,

(ii) Language,

(iii) Other functional communication systems.

(c) *Activities.* (1) The facility must provide, based on the comprehensive assessment and care plan and the preferences of each resident, an ongoing program to support residents in their choice of activities, both facility-sponsored group and individual activities and independent activities, designed to meet the interests of and support the physical, mental, and psychosocial well-being of each resident, encouraging both independence and interaction in the community.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who—

(i) Is licensed or registered, if applicable, by the State in which practicing; and

(ii) Is:

(A) Eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990; or

(B) Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a therapeutic activities program; or

(C) Is a qualified occupational therapist or occupational therapy assistant; or

(D) Has completed a training course approved by the State.

(d) *Special care issues.* Based on the comprehensive assessment of a resident, the facility must ensure that residents receive treatment and care, in accordance with professional standards of practice and the residents choices, related to the following special concerns—

(1) *Restraints.* The facility must ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. When the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.

(2) *Bed rails.* The facility must ensure correct installation, use and maintenance of bed rails, including but not limited to the following elements.

(i) Attempt to use alternatives prior to installing a side or bed rail.

(ii) Assess resident for risk of entrapment from bed rails prior to installation.

(iii) Review the risks and benefits of bed rails with the resident or resident representative and obtain informed consent prior to installation

(iv) Ensure that the resident's size and weight are appropriate for the bed's dimensions.

(v) Follow the manufacturers' recommendations and specifications for installing and maintaining bed rails.

(3) *Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(i) In making appointments, and

(ii) By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(4) *Skin integrity*—(i) *Pressure ulcers.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(A) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and

(B) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.

(ii) *Foot care.* To ensure that residents receive proper treatment and care to maintain mobility and good foot health, the facility must:

(A) Provide foot care and treatment, in accordance with professional standards of practice, including to prevent complications from the resident's medical condition(s) and

(B) If necessary, assist the resident in making appointments with a qualified person, and arranging for transportation to and from such appointments.

(5) *Mobility.* (i) The facility must ensure that a resident who enters the facility without limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(ii) A resident with limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(iii) A resident with limited mobility receives appropriate services, equipment, and assistance to maintain or improve mobility with the maximum practicable independence unless a reduction in mobility is demonstrably unavoidable.

(6) *Incontinence.* (i) The facility must ensure that resident who is continent of bladder and bowel on admission receives services and assistance to maintain continence unless his or her clinical condition is or becomes such that continence is not possible to maintain.

(ii) For a resident with urinary incontinence, based on the resident's comprehensive assessment, the facility must ensure that—

(A) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary;

(B) A resident who enters the facility with an indwelling catheter or subsequently receives one is assessed for removal of the catheter as soon as possible unless the resident's clinical condition demonstrates that catheterization is necessary and

(C) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(iii) For a resident with fecal incontinence, based on the resident's comprehensive assessment, the facility must ensure that a resident who is incontinent of bowel receives appropriate treatment and services to restore as much normal bowel function as possible.

(7) *Colostomy, ureterostomy, or ileostomy care.*

(8) *Assisted nutrition and hydration.* (Includes naso-gastric and gastrostomy tubes, both percutaneous endoscopic gastrostomy and percutaneous endoscopic jejunostomy, and enteral fluids). Based on a resident's comprehensive assessment, the facility must ensure that a resident—

(i) Maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and protein levels, unless the resident's clinical condition demonstrates that this is not possible or resident preferences indicate otherwise;

(ii) Is offered sufficient fluid intake to maintain proper hydration and health; and

(iii) Is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet.

(iv) A resident who has been able to eat enough alone or with assistance is not fed by enteral methods unless the resident's clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident; and

(v) A resident who is fed by enteral means receives the appropriate treatment and services to restore, if possible, oral eating skills and to prevent complications of enteral feeding including but not limited to aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers.

(9) *Parenteral fluids.*

(10) *Accidents.* The facility must ensure that—

(i) The resident environment remains as free of accident hazards as is possible; and

(ii) Each resident receives adequate supervision and assistance devices to prevent accidents.

(11) *Respiratory care, including tracheostomy care and tracheal suctioning.* See § 483.65 re: Specialized rehabilitative services.

(12) *Prostheses.*

(13) *Pain management.*

(14) *Dialysis.*

(15) *Trauma-informed care.* The facility must ensure that residents who are trauma survivors receive culturally-competent, trauma-informed care in accordance with professional standards of practice and accounting for residents' experiences and preferences in order to eliminate or mitigate triggers that may cause re-traumatization of the resident.

■ 21. In the table below, each section and paragraph indicated in the first column is redesignated as the section and paragraph indicated in the second column:

Existing CFR section	New CFR section
§ 483.30	§ 483.35
§ 483.35	483.60
§ 483.40	483.30
§ 483.45	483.65
§ 483.60	483.45
§ 483.65	483.80
§ 483.70	483.90
§ 483.75	483.70

■ 22. In newly redesignated § 483.30—

■ a. Revise the introductory text.

■ b. Revise paragraph (b)(3).

■ c. Redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

■ d. Amend newly designated paragraph (f)(1) introductory text by removing the reference ''paragraph (e)(2)'' and adding in its place the reference ''paragraph (f)(4)''.

■ e. Add a new paragraph (e).

■ f. Amend newly redesignated paragraph (f) by further redesignating paragraph (f)(2) as paragraph (f)(4).

■ g. Add new paragraphs (f)(2) and (f)(3).

The revisions and additions read as follows:

§ 483.30 Physician services.

A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician. A physician, physician assistant, nurse practitioner, or clinical nurse specialist must provide orders for the resident's immediate care and needs.

* * * * *

(b) * * *

(3) Sign and date all orders with the exception of influenza and pneumococcal vaccines, which may be administered per physician-approved facility policy after an assessment for contraindications.

* * * * *

(e) *Availability of a physician, physician assistant, nurse practitioner, or clinical nurse specialist to evaluate resident for non-emergent transfer to a hospital.* The facility must provide or arrange for an in-person evaluation of a resident by a physician, a physician assistant, nurse practitioner, or clinical nurse specialist prior to transferring the resident to a hospital.

(1) The evaluation must occur expeditiously once the potential need for a transfer is identified.

(2) This requirement does not apply in emergency situations where the health or safety of the individual would be endangered.

(f) * * *

(2) A physician may delegate the task of writing dietary orders, consistent with § 483.60, to a qualified dietitian or other clinically qualified nutrition professional who—

(i) Is acting within the scope of practice as defined by State law; and

(ii) Is under the supervision of the physician.

(3) A physician may delegate the task of writing therapy orders, consistent with § 483.65, to a qualified therapist who—

(i) Is acting within the scope of practice as defined by State law; and

(ii) Is under the supervision of the physician.

* * * * *

■ 23. In newly redesignated § 483.35—

■ a. Revise the introductory text.
■ b. Amend paragraph (a)(1)(i) by removing the reference ''paragraph (c)'' and adding in its place the reference ''paragraph (e)''.
■ c. Revise paragraph (a)(1)(ii).
■ d. Add paragraphs (a)(3) and (4).
■ e. Amend paragraphs (b)(1) and (b)(2) by removing the reference ''paragraph (c) or (d)'' and adding in its place the reference ''paragraph (e) or (f)''.
■ f. Redesignate paragraphs (c), (d) and (e) as paragraphs (e), (f), and (g), respectively.
■ g. Add new paragraphs (c) and (d).
■ h. Revise redesignated paragraphs (e)(6) and (7).
■ i. Revise redesignated paragraphs (f)(1)(iv) and (v).

The revisions and additions read as follows:

§ 483.35 Nursing services.

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e).

(a) * * *

(1) * * *

(ii) Other nursing personnel, including but not limited to nurse aides.

* * * * *

(3) The facility must ensure that licensed nurses have the specific competencies and skill sets necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(4) Providing care includes but is not limited to assessing, evaluating, planning and implementing resident care plans and responding to resident's needs.

* * * * *

(c) *Proficiency of nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(d) *Requirements for facility hiring and use of nursing aides*—(1) *General rule.* A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii)(A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151 through 483.154; or

(B) That individual has been deemed or determined competent as provided in § 483.150(a) and (b).

(2) *Non-permanent employees.* A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (d)(1) (i) and (ii) of this section.

(3) *Minimum competency.* A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual—

(i) Is a full-time employee in a State-approved training and competency evaluation program;

(ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program; or

(iii) Has been deemed or determined competent as provided in § 483.150(a) and (b).

(4) *Registry verification.* Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless—

(i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or

(ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(5) *Multi-State registry verification.* Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act that the facility believes will include information on the individual.

(6) *Required retraining.* If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(7) *Regular in-service education.* The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. In-service training must comply with the requirements of § 483.95(g).

(e) * * *

(6) The State agency granting a waiver of such requirements provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with developmental disabilities or mental illnesses; and

(7) The nursing facility that is granted such a waiver by a State notifies residents of the facility and their resident representatives of the waiver.

(f) * * *

(1) * * *

(iv) The Secretary provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with developmental disabilities or mental illnesses; and

(v) The facility that is granted such a waiver notifies residents of the facility and their resident representatives of the waiver.

* * * * *

■ 24. Section 483.40 is added to read as follows:

§ 483.40 Behavioral health services.

Each resident must receive and the facility must provide the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) The facility must have sufficient direct care/direct access staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with § 483.70(e). These competencies and skills sets include,

but are not limited to, knowledge of and appropriate training and supervision for:

(1) Caring for residents with mental illnesses and psychosocial disorders, as well as residents with a history of trauma and/or post-traumatic stress disorder, that have been identified in the facility assessment conducted pursuant to § 483.70(e), and

(2) Implementing non-pharmacological interventions.

(b) Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who displays or is diagnosed with mental or psychosocial adjustment difficulty, or who has a history of trauma and/or post-traumatic stress disorder, receives appropriate treatment and services to correct the assessed problem or to attain the highest practicable mental and psychosocial well-being, and

(2) A resident whose assessment did not reveal or who does not have a diagnosis of a mental or psychosocial adjustment difficulty or a documented history of trauma and/or post-traumatic stress disorder does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that development of such a pattern was unavoidable.

(c) If rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, and rehabilitative services for mental illness and intellectual disability, are required in the resident's comprehensive plan of care, the facility must—

(1) Provide the required services, including specialized rehabilitation services as required in § 483.45; or

(2) Obtain the required services from an outside resource (in accordance with § 483.75(g) of this part) from a Medicare and/or Medicaid provider of specialized rehabilitative services.

(d) The facility must provide medically-related social services to attain or maintain the highest practicable mental and psychosocial well-being of each resident.

■ 25. In newly redesignated § 483.45—

■ a. Amend the introductory text by removing the reference ''§ 483.75(h) of this part'' and add in its place the reference ''§ 483.70(g)''.

■ b. Redesignate paragraph (c)(2) as paragraph (c)(4).

■ c. Add new paragraphs (c)(2) and (3).

■ d. Revise newly designated paragraph (c)(4).

■ e. Redesignate paragraphs (d) and (e) as paragraphs (g) and (h), respectively.

■ f. Add new paragraphs (d), (e), and (f).

The additions and revisions read as follows:

§ 483.45 Pharmacy services.

* * * * *

(c) * * *

(2) This review must include a review of the resident's medical chart at least every 6 months and:

(i) When the resident is new, that is the individual has not previously been a resident in that facility; or

(ii) When the resident returns or is transferred from a hospital or other facility; and

(iii) During each monthly drug regimen review when the resident has been prescribed or is taking a psychotropic drug, an antibiotic, or any drug the QAA Committee has requested be included in the pharmacist's monthly drug review.

(3) A psychotropic drug is any drug that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:

(i) Anti-psychotic;

(ii) Anti-depressant;

(iii) Anti-anxiety;

(iv) Hypnotic;

(v) Opioid analgesic; and

(vi) Any other drug that results in effects similar to the drugs listed in paragraphs (c)(3)(i) through (v) of this section.

(4) The pharmacist must report any irregularities to the attending physician and the facility's medical director and director of nursing, and these reports must be acted upon.

(i) Irregularities include, but are not limited to, any drug that meets the criteria set forth in paragraph (d) of this section for an unnecessary drug.

(ii) Any irregularities noted by the pharmacist during this review must be documented on a separate, written report that is sent to the attending physician and the facility's medical director and director of nursing and lists, at a minimum, the resident's name, the relevant drug, and the irregularity the pharmacist identified.

(iii) The attending physician must document in the resident's medical record that the identified irregularity has been reviewed and what, if any, action has been taken to address it. If there is to be no change in the medication, the attending physician should document his or her rationale in the resident's medical record.

(d) *Unnecessary drugs—General.* Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(1) In excessive dose (including duplicate drug therapy); or

(2) For excessive duration; or

(3) Without adequate monitoring; or

(4) Without adequate indications for its use; or

(5) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(6) Any combinations of the reasons stated in paragraphs (d)(1) through (5) of this section.

(e) *Psychotropic drugs.* Based on a comprehensive assessment of a resident, the facility must ensure that—

(1) Residents who have not used psychotropic drugs are not given these drugs unless the medication is necessary to treat a specific condition as diagnosed and documented in the clinical record;

(2) Residents who use psychotropic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs;

(3) Residents do not receive psychotropic drugs pursuant to a PRN order unless that medication is necessary to treat a diagnosed specific condition that is documented in the clinical record; and

(4) PRN orders for psychotropic drugs are limited to 48 hours and cannot be continued beyond that time unless the resident's physician or primary care provider documents the rationale for this continuation in the resident's clinical record.

(f) *Medication errors.* The facility must ensure that its—

(1) Medication error rates are not five percent or greater; and

(2) Residents are free of any significant medication errors.

* * * * *

■ 26. A new § 483.50 is added and is amended as follows:

■ a. Section heading is added.

■ b. New paragraphs (a) and (b) are redesignated from paragraphs (j) and (k) of newly redesignated § 483.70.

■ c. Newly designated paragraphs (a)(2)(i), (a)(2)(ii), (b)(2)(i) and (b)(2)(ii) are revised.

The additions and revisions read as follows:

§ 483.50 Laboratory, radiology, and other diagnostic services.

(a) * * *

(2) * * *

(i) Provide or obtain laboratory services only when ordered by a physician; physician assistant; nurse practitioner or clinical nurse specialist in accordance with State law, including scope of practice laws.

(ii) Promptly notify the ordering physician, physician assistant, nurse

practitioner, or clinical nurse specialist of laboratory results that fall outside of clinical reference ranges in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's orders.

* * * * *

(b) * * *

(2) * * *

(i) Provide or obtain radiology and other diagnostic services only when ordered by a physician; physician assistant; nurse practitioner or clinical nurse specialist in accordance with State law, including scope of practice laws.

(ii) Promptly notify the ordering physician, physician assistant, nurse practitioner, or clinical nurse specialist of results that fall outside of clinical reference ranges in accordance with facility policies and procedures for notification of a practitioner or per the ordering physician's orders.

* * * * *

■ 27. Section 483.55 is amended by—

■ a. Amending paragraph (a)(1) by removing the reference ''§ 483.75(h) of this part'' and adding in its place the reference ''§ 483.70(g)''.

■ b. Redesignating paragraph (a)(3) and (4) as paragraphs (a)(4) and (5), respectively.

■ c. Adding a new paragraph (a)(3).

■ d. Revising newly redesignated paragraph (a)(4) introductory text and (a)(4)(ii).

■ e. Revising newly redesignated paragraph (a)(5).

■ f. Amending paragraph (b)(1) introductory text by removing the reference ''§ 483.75(h) of this part'' and adding in its place the reference ''§ 483.70(g)''.

■ g. Revising paragraph (b)(2) introductory text, (b)(2)(ii), and (b)(3).

■ h. Adding paragraphs (b)(4) and (5).

The revisions and additions read as follows:

§ 483.55 Dental services.

* * * * *

(a) * * *

(3) May not charge a resident for the loss or damage of dentures determined in accordance with facility policy to be the facility's responsibility;

(4) Must if necessary or if requested, assist the resident—

* * * * *

(ii) By arranging for transportation to and from the dental services location; and

(5) Promptly, within three days, refer residents with lost or damaged dentures for dental services. If a referral does not occur within three days, the facility must provide documentation of the extenuating circumstances that led to the delay.

(b) * * *

(2) Must, if necessary or if requested, assist the resident—

* * * * *

(ii) By arranging for transportation to and from the dental services locations;

(3) Must promptly, within three days, refer residents with lost or damaged dentures for dental services. If a referral does not occur within three days, the facility must provide documentation of the extenuating circumstances that led to the delay;

(4) May not charge a resident for the loss or damage of dentures determined in accordance with facility policy to be the facility's responsibility; and

(5) Must assist residents who are eligible and wish to participate to apply for reimbursement of dental services as an incurred medical expense under the State plan.

■ 28. Newly redesignated § 483.60 is revised to read as follows:

§ 483.60 Food and nutrition services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets his or her daily nutritional and special dietary needs, taking into consideration the preferences of each resident.

(a) *Staffing.* The facility must employ sufficient staff with the appropriate competencies and skills sets to carry out the functions of the food and nutrition service, taking into consideration resident assessments, individual plans of care and the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e). This includes:

(1) A qualified dietitian or other clinically qualified nutrition professional either full-time, part-time, or on a consultant basis. A qualified dietitian or other clinically qualified nutrition professional is one who is qualified based on:

(i) Meeting State requirements to practice dietetics, including licensure or certification, or

(ii) If the state does not have requirements, registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics, or

(iii) For dietitians hired or contracted with prior to [effective date of final rule], meets these requirements no later than 5 years after [effective date of final rule] or as required by state law.

(2) If a qualified dietitian or other clinically qualified nutrition professional is not employed full-time, the facility must designate a person to serve as the director of food and nutrition services who:

(i) For designations prior to [effective date of final rule], meets the following requirements no later than 5 years after [effective date of final rule], is:

(A) A certified dietary manager; or

(B) A certified food service manager, or

(C) Has similar national certification for food service management and safety from a national certifying body; or

(D) Has an associate's or higher degree in food service management or hospitality from an accredited institution of higher learning; or

(ii) In States that have established standards for food service managers or dietary managers, meets State requirements for food service managers or dietary managers, and

(iii) Receives frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional.

(3) *Support staff.* The facility must provide sufficient support personnel to safely and effectively carry out the functions of the food and nutrition service.

(b) A member of the Food and Nutrition Services staff must participate on the interdisciplinary team as required in § 483.21(b)(2)(ii).

(c) *Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with established national guidelines or industry standards.;

(2) Be prepared in advance;

(3) Be followed;

(4) Reflect the religious, cultural and ethnic needs of the residents, as well as input received from residents and resident groups;

(5) Be updated periodically;

(6) Be reviewed by the facility's dietitian or other clinically qualified nutrition professional for nutritional adequacy; and

(7) Nothing in this paragraph should be construed to limit the resident's right to make personal dietary choices.

(d) *Food and drink.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food and drink that is palatable, attractive, and at a safe and appetizing temperature;

(3) Food prepared in a form designed to meet individual needs;

(4) Food that accommodates resident allergies, intolerances, and preferences;

(5) Appealing substitutes of similar nutritive value to residents who choose not to eat food that is initially served or who request an alternative meal; and

(6) Drinks, including water and other liquids consistent with resident needs and preferences and sufficient to maintain resident hydration.

(e) *Therapeutic diets.* (1) Therapeutic diets must be prescribed by the attending physician.

(2) The attending physician may delegate to a registered or licensed dietitian the task of prescribing a resident's diet, including a therapeutic diet, to the extent allowed by State law.

(f) *Frequency of meals.* (1) Each resident must receive and the facility must provide at least three meals daily, at regular times comparable to normal mealtimes in the community or in accordance with resident needs, preferences, requests, and plan of care.

(2) Suitable, nourishing alternative meals and snacks must be available for residents who want to eat at non-traditional times or outside of scheduled meal service times and in accordance with the resident plan of care.

(g) *Assistive devices.* The facility must provide special eating equipment and utensils for residents who need them and appropriate assistance to ensure that the resident can use the assistive devices when consuming meals and snacks.

(h) *Paid feeding assistants*—(1) *State-approved training course.* A facility may use a paid feeding assistant, as defined in § 488.301 of this chapter, if—

(i) The feeding assistant has successfully completed a State-approved training course that meets the requirements of § 483.160 before feeding residents; and

(ii) The use of feeding assistants is consistent with State law.

(2) *Supervision.* (i) A feeding assistant must work under the supervision of a registered nurse (RN) or licensed practical nurse (LPN).

(ii) In an emergency, a feeding assistant must call a supervisory nurse for help.

(3) *Resident selection criteria.* (i) A facility must ensure that a feeding assistant provides dining assistance only for residents who have no complicated feeding problems.

(ii) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

(iii) The facility must base resident selection on the interdisciplinary team's assessment and the resident's latest assessment and plan of care. Appropriateness for this program should be reflected in the comprehensive care plan.

(i) *Food safety requirements.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(i) This may include food items obtained directly from local producers, subject to applicable State and local laws or regulations.

(ii) This provision does not prohibit or prevent facilities from using produce grown in facility gardens, subject to compliance with applicable safe growing and food-handling practices.

(iii) This provision does not preclude residents from consuming foods not procured by the facility.

(2) Store, prepare, distribute, and serve food in accordance with professional standards for food service safety.

(3) Have a policy regarding use and storage of foods brought to residents by family and other visitors to ensure safe and sanitary storage, handling, and consumption, and

(4) Dispose of garbage and refuse properly.

■ 29. In newly redesignated 483.65, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 483.65 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, respiratory therapy, and rehabilitative services for mental illness and intellectual disability or services of a lesser intensity as set forth at § 483.120(c), are required in the resident's comprehensive plan of care, the facility must—

* * * * *

(2) Obtain the required services from an outside resource (in accordance with § 483.70(g)) from a Medicare and/or Medicaid provider of specialized rehabilitative services.

* * * * *

■ 30. Section 483.67 is added to read as follows:

§ 483.67 Outpatient rehabilitation services.

If the facility provides outpatient rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services must meet the needs of the patients in accordance with acceptable standards of practice and the facility must meet the following requirements.

(a) *Organization and staffing.* (1) The organization of the service must be appropriate to the scope of the services offered.

(2) The facility must ensure the services are organized and staffed to ensure the health and safety of residents.

(b) *Personnel.* (1) The facility must assign one or more individuals to be responsible for outpatient rehabilitative services. The individual responsible for the outpatient rehabilitative services must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(2) The facility must have appropriate professional and nonprofessional personnel available at each location where outpatient services are offered, based on the scope and complexity of outpatient services.

(3) Physical therapy, occupational therapy, speech-language pathology or audiology services, if provided, must be provided by qualified physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, speech-language pathologists, or audiologists as defined in part 484 of this chapter.

(c) *Delivery of services.* (1) Services must only be provided under the orders of a qualified and licensed practitioner who is responsible for the care of the patient, acting within his or her scope of practice under state law.

(2) All rehabilitation services orders and progress notes must be documented in the patient's clinical record in accordance with the requirements at § 483.70(i).

(3) The provision of care and the personnel qualifications must be in accordance with national acceptable standards of practice.

■ 31. In newly redesignated § 483.70—

■ a. Revise paragraph (c).

■ b. Revise paragraph (d)(2).

■ c. Add paragraph (d)(3).

■ d. Revise paragraph (e).

■ e. Remove paragraphs (f), (j), (k), (m), (o), and (q).

■ f. Redesignate paragraphs (g), (h), (i), (l), (n), (p), (r), (s), and (t) as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (o), respectively.

■ g. Revise newly redesignated paragraphs (i)(1) introductory text, and (i)(2), (3), (4), and (5).

■ h. Revise newly redesignated paragraphs (j)(1)(i) and (ii).

■ i. Revise newly redesignated paragraph (m).

■ j. Add new paragraph (n).

■ k. Add new paragraph (p).

■ l. In the table below, for each newly redesignated paragraph indicated in the first and second columns, remove the reference indicated in the third column and add the reference indicated in the fourth column.

Paragraphs	Remove	Add
(g)(1)	(h)(2)	(g)(2).

Paragraphs	Remove	Add
(k)(3)	(p)(2)	(k)(2).
(m)	(r)	(l).
(o)(2) introductory text.	(t)(1)(i)	(o)(1)(i).

The revisions and additions read as follows:

§ 483.70 Administration.

* * * * *

(c) *Relationship to other HHS regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of disability (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455) and protection of individually identifiable health information (45 CFR parts 160 and 164). Violations of such other provisions may result in a finding of non-compliance with this paragraph.

(d) * * *

(2) The governing body appoints the administrator who is—

(i) Licensed by the State;

(ii) Responsible for management of the facility; and

(iii) Reports to and is accountable to the governing body.

(3) The governing body is responsible and accountable for the QAPI program, in accordance with § 483.75(f).

(e) *Facility assessment.* The LTC facility must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. The facility must review and update that assessment, as necessary, and at least annually. The facility must also review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment. The facility assessment must address or include:

(1) The facility's resident population, including, but not limited to,

(i) Both the number of residents and the facility's resident capacity;

(ii) The care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other pertinent facts that are present within that population;

(iii) The staff competencies that are necessary to provide the level and types of care needed for the resident population;

(iv) The physical environment, equipment, services, and other physical plant considerations that are necessary to care for this population; and

(v) Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.

(2) The facility's resources, including but not limited to,

(i) All buildings and/or other physical structures and vehicles;

(ii) Equipment (medical and non-medical);

(iii) Services provided, such as physical therapy, pharmacy, and specific rehabilitation therapies;

(iv) All personnel, including managers, staff (both employees and those who provide services under contract), and volunteers, as well as their education and/or training and any competencies related to resident care;

(v) Contracts, memorandums of understanding, or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies; and

(vi) Health information technology resources, such as systems for electronically managing patient records and electronically sharing information with other organizations.

(3) A facility-based and community-based risk assessment, utilizing an all-hazards approach.

* * * * *

(i) *Medical records.* (1) In accordance with accepted professional standards and practices, the facility must maintain medical records on each resident that are—

* * * * *

(2) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is—

(i) To the individual, or their resident representative where permitted by applicable law;

(ii) Required by Law;

(iii) For treatment, payment, or health care operations, as permitted by and in compliance with 45 CFR 164.506;

(iv) For public health activities, reporting of abuse, neglect, or domestic violence, health oversight activities, judicial and administrative proceedings, law enforcement purposes, organ donation purposes, research purposes, or to coroners, medical examiners, funeral directors, and to avert a serious threat to health or safety as permitted by and in compliance with 45 CFR 164.512.

(3) The facility must safeguard medical record information against loss, destruction, or unauthorized use;

(4) Medical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law; or

(iii) For a minor, three years after a resident reaches legal age under State law.

(5) The medical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The comprehensive plan of care and services provided;

(iv) The results of any preadmission screening and resident review evaluations and determinations conducted by the State;

(v) Physician's, nurse's, and other licensed professional's progress notes; and

(vi) Laboratory, radiology and other diagnostic services reports as required under § 483.50.

(j) * * *

(1) * * *

(i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician or, in an emergency situation, by another practitioner in accordance with facility policy and consistent with state law; and

(ii) Medical and other information needed for care and treatment of residents and, when the transferring facility deems it appropriate, for determining whether such residents can receive appropriate services or receive services in a less restrictive setting than either the facility or the hospital, or reintegrated into the community, will be exchanged between the providers, including but not limited to the information required under § 483.15(b)(2)(iii).

* * * * *

(m) Facility closure. The facility must have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure, as required at paragraph (l) of this section.

(n) *Binding arbitration agreements.* If the facility enters into an agreement for binding arbitration with its residents:

(1) The facility must ensure that:

(i) The agreement is explained to the resident in a form and manner that he

or she understands, including in a language the resident understands, and

(ii) The resident acknowledges that he or she understands the agreement.

(2) The agreement must:

(i) Be entered into by the resident voluntarily;

(ii) Provide for the selection of a neutral arbiter;

(iii) Provide for selection of a venue convenient to both parties.

(3) Admission to the facility must not be contingent upon the resident or the resident representative signing a binding arbitration agreement.

(4) The agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with Federal, State, or local officials, including but not limited to, Federal and State surveyors, other federal or state health department employees, and representatives of the Office of the State Long-Term Care Ombudsman, in accordance with § 483.11(i).

(5) The agreement may be signed by another individual if:

(i) Allowed by state law;

(ii) All of the requirements in this section are met; and

(iii) That individual has no interest in the facility.

* * * * *

(p) *Social worker.* Any facility with more than 120 beds must employ a qualified social worker on a full-time basis. A qualified social worker is:

(1) An individual with a minimum of a bachelor's degree in social work or a bachelor's degree in a human services field including, but not limited to, sociology, gerontology, special education, rehabilitation counseling, and psychology; and

(2) One year of supervised social work experience in a health care setting working directly with individuals.

■ 32. A new § 483.75 is added to read as follows:

§ 483.75 Quality assurance and performance improvement.

(a) *Quality assurance and performance improvement (QAPI) program.* Each LTC facility, including a facility that is part of a multiunit chain, must develop, implement, and maintain an effective, comprehensive, data-driven QAPI program that focuses on indicators of the outcomes of care and quality of life. The facility must:

(1) Maintain documentation and demonstrate evidence of its ongoing QAPI program that meets the requirements of this section;

(2) Present its QAPI plan to the State Agency Surveyor at the first annual recertification survey that occurs after [the effective date of this regulation];

(3) Present its QAPI plan to a State Agency or Federal surveyor at each annual recertification survey and upon request during any other survey and to CMS upon request; and

(4) Present documentation and evidence of its ongoing QAPI program's implementation and the facility's compliance with requirements to a State Agency, Federal surveyor or CMS upon request.

(b) *Program design and scope.* A facility must design its QAPI program to be ongoing, comprehensive, and to address the full range of care and services provided by the facility. It must:

(1) Address all systems of care and management practices;

(2) Include clinical care, quality of life, and resident choice;

(3) Utilize the best available evidence to define and measure indicators of quality and facility goals that reflect processes of care and facility operations that have been shown to be predictive of desired outcomes for residents of a SNF or NF.

(4) Reflect the complexities, unique care, and services that the facility provides.

(c) *Program feedback, data systems and monitoring.* A facility must establish and implement written policies and procedures for feedback, data collections systems, and monitoring, including adverse event monitoring. The policies and procedures must include, at a minimum, the following:

(1) Facility maintenance of effective systems to obtain and use of feedback and input from direct care/direct access workers, other staff, residents, and resident representatives, including how such information will be used to identify problems that are high risk, high volume, or problem-prone, and opportunities for improvement.

(2) Facility maintenance of effective systems to identify, collect, and use data from all departments, including but not limited to the facility assessment required at § 483.75(e) and including how such information will be used to develop and monitor performance indicators.

(3) Facility development, monitoring, and evaluation of performance indicators, including the methodology and frequency for such development, monitoring, and evaluation.

(4) Facility adverse event monitoring, including the methods by which the facility will systematically identify, report, track, investigate, analyze and use data and information relating to adverse events in the facility, including how the facility will use the data to develop activities to prevent adverse events.

(d) *Program systematic analysis and systemic action.* (1) The facility must take actions aimed at performance improvement and, after implementing those actions, measure its success, and track performance to ensure that improvements are realized and sustained.

(2) The facility will develop and implement policies addressing:

(i) How they will use a systematic approach (such as root cause analysis, reverse tracer methodology, or health care failure and effects analysis) to determine underlying causes of problems impacting larger systems;

(ii) Development of corrective actions that will be designed to effect change at the systems level to prevent quality of care, quality of life, or safety problems; and

(iii) How the facility will monitor the effectiveness of its performance improvement activities to ensure that improvements are sustained.

(e) *Program activities.* (1) The facility must set priorities for its performance improvement activities that focus on high-risk, high-volume, or problem-prone areas; consider the incidence, prevalence, and severity of problems in those areas; and affect health outcomes, resident safety, resident autonomy, resident choice, and quality of care.

(2) Performance improvement activities must track medical errors and adverse resident events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the facility.

(3) The facility must conduct distinct performance improvement projects. The number and frequency of improvement projects conducted by the facility must reflect the scope and complexity of the facility's services and available resources, as reflected in the facility assessment required at § 483.70(e). Improvement projects must include at least annually a project that focuses on high risk or problem-prone areas identified through the data collection and analysis described in paragraphs (c) and (d) of this section.

(f) *Governance and leadership.* The governing body and/or executive leadership (or organized group or individual who assumes full legal authority and responsibility for operation of the facility) is responsible and accountable for ensuring that:

(1) An ongoing QAPI program is defined, implemented, and maintained and addresses identified priorities.

(2) The QAPI program is sustained during transitions in leadership and staffing;

(3) The QAPI program is adequately resourced, including ensuring staff time, equipment, and technical training as needed;

(4) The QAPI program identifies and prioritizes problems and opportunities based on performance indicator data, and resident and staff input that reflects organizational processes, functions, and services provided to residents.

(5) Corrective actions address gaps in systems, and are evaluated for effectiveness; and

(6) Clear expectations are set around safety, quality, rights, choice, and respect.

(g) *Quality assessment and assurance.* (1) A facility must maintain a quality assessment and assurance committee consisting at a minimum of:

(i) The director of nursing services;

(ii) The Medical Director or his/her designee;

(iii) At least 3 other members of the facility's staff, at least one of who must be the administrator, owner, a board member or other individual in a leadership role; and

(iv) The infection control and prevention officer.

(2) The quality assessment and assurance committee reports to the facility's governing body, or designated person(s) functioning as a governing body regarding its activities, including implementation of the QAPI program required under paragraphs (a) through (e) of this section. The committee must:

(i) Meet at least quarterly and as needed to coordinate and evaluate activities under the QAPI program, such as identifying issues with respect to which quality assessment and assurance activities, including performance improvement projects required under the QAPI program, are necessary; and

(ii) Develop and implement appropriate plans of action to correct identified quality deficiencies; and

(iii) Regularly review and analyze data, including data collected under the QAPI program and data resulting from drug regimen reviews, and act on available data to make improvements.

(h) *Disclosure of information.* (1) A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.

(2) Demonstration of compliance with the requirements of this section may require State or Federal surveyor access to:

(i) Systems and reports demonstrating systematic identification, reporting, investigation, analysis, and prevention of adverse events;

(ii) Documentation demonstrating the development, implementation, and evaluation of corrective actions or performance improvement activities; and

(iii) Other documentation considered necessary by a State or Federal surveyor in assessing compliance.

(i) *Sanctions.* Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.

■ 33. Newly redesignated § 483.80 is revised to read as follows:

§ 483.80 Infection control.

The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.

(a) *Infection prevention and control program.* The facility must establish an infection prevention and control program (IPCP) that must include, at a minimum, the following elements:

(1) A system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contractual arrangement based upon the facility assessment conducted according to § 483.75(e) and following accepted national standards;

(2) Written standards, policies, and procedures for the program, which must include, but are not limited to:

(i) A system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility;

(ii) When and to whom possible incidents of communicable disease or infections should be reported;

(iii) Standard and transmission-based precautions to be followed to prevent spread of infections;

(iv) When isolation should be used for a resident;

(v) The circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease; and

(vi) The hand hygiene procedures to be followed by staff involved in direct resident contact,

(3) An antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.

(4) A system for recording incidents identified under the facility's IPCP and the corrective actions taken by the facility.

(b) *Infection prevention and control officer.* The facility must designate one individual as the infection prevention and control officer (IPCO) for whom the IPCP at that facility is a major responsibility. The IPCO must:

(1) Be a clinician who works at least part-time at the facility, and

(2) Have specialized training in infection prevention and control beyond their initial professional degree.

(c) *IPCO participation on quality assessment and assurance committee.* The person designated as the IPCO must be a member of the facility's quality assessment and assurance committee and report to the committee on the IPCP on a regular basis.

(d) *Influenza and pneumococcal immunizations*—(1) *Influenza.* The facility must develop policies and procedures to ensure that—

(i) Before offering the influenza immunization, each resident or the resident's representative receives education regarding the benefits and potential side effects of the immunization;

(ii) Each resident is offered an influenza immunization October 1 through March 31 annually, unless the immunization is medically contraindicated or the resident has already been immunized during this time period;

(iii) The resident or the resident's representative has the opportunity to refuse immunization; and

(iv) The resident's medical record includes documentation that indicates, at a minimum, the following:

(A) That the resident or resident's representative was provided education regarding the benefits and potential side effects of influenza immunization; and

(B) That the resident either received the influenza immunization or did not receive the influenza immunization due to medical contraindications or refusal.

(2) *Pneumococcal disease.* The facility must develop policies and procedures to ensure that—

(i) Before offering the pneumococcal immunization, each resident or the resident's representative receives education regarding the benefits and potential side effects of the immunization;

(ii) Each resident is offered a pneumococcal immunization, unless the immunization is medically contraindicated or the resident has already been immunized;

(iii) The resident or the resident's representative has the opportunity to refuse immunization; and

(iv) The resident's medical record includes documentation that indicates, at a minimum, the following:

(A) That the resident or resident's representative was provided education regarding the benefits and potential side effects of pneumococcal immunization; and

(B) That the resident either received the pneumococcal immunization or did not receive the pneumococcal immunization due to medical contraindication or refusal.

(e) *Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(f) *Annual review.* The facility will conduct an annual review of its IPCP and update their program, as necessary.

■ 34. Section 483.85 is added to read as follows:

§ 483.85 Compliance and ethics program.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Compliance and ethics program means, with respect to a facility, a program of the operating organization that—

(i) Has been reasonably designed, implemented, and enforced so that it is likely to be effective in preventing and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care; and

(ii) Includes, at a minimum, the required components specified in paragraph (c) of this section.

High-level personnel means individual(s) who have substantial control over the operating organization or who have a substantial role in the making of policy within the operating organization.

Operating organization means the individual(s) or entity that operates a facility.

(b) *General rule.* Beginning on [1 year after the effective date of the final rule], the operating organization for each facility must have in operation a compliance and ethics program (as defined in paragraph (a) of this section) that meets the requirements of this section.

(c) *Required components for all facilities.* The operating organization for each facility must develop, implement, and maintain an effective compliance and ethics program that contains, at a minimum, the following components:

(1) Established written compliance and ethics standards, policies, and procedures to follow that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under the Act and promote quality of care, which include, but are not limited to, the designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and disciplinary standards that set out the consequences for committing violations for the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers' expected roles.

(2) Assignment of specific individuals within the high-level personnel of the operating organization with the overall responsibility to oversee compliance with the operating organization's compliance and ethics program's standards, policies, and procedures, such as, but not limited to, the chief executive officer (CEO), members of the board of directors, or directors of major divisions in the operating organization.

(3) Sufficient resources and authority to the specific individuals designated in paragraph (c)(2) of this section to reasonably assure compliance with such standards, policies, and procedures.

(4) Due care not to delegate substantial discretionary authority to individuals who the operating organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under the Social Security Act.

(5) The facility takes steps to effectively communicate the standards, policies, and procedures in the operating organization's compliance and ethics program to the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers, consistent with the volunteers' expected roles. Requirements include, but are not limited to, mandatory participation in training as set forth at § 483.95(f) or orientation programs, or disseminating information that explains in a practical manner what is required under the program.

(6) The facility takes reasonable steps to achieve compliance with the program's standards, policies, and procedures. Such steps include, but are not limited to, utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under the Social Security Act by any of the operating organization's staff, individuals providing services under a contractual arrangement, or volunteers, having in place and publicizing a reporting system whereby any of these individuals could report violations by others anonymously within the operating organization without fear of retribution, and having a process for ensuring the integrity of any reported data.

(7) Consistent enforcement of the operating organization's standards, policies, and procedures through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect and report a violation to the compliance and ethics program contact identified in the operating organization's compliance and ethics program.

(8) After a violation is detected, the operating organization must ensure that all reasonable steps identified in its program are taken to respond appropriately to the violation and to prevent further similar violations, including any necessary modification to the operating organization's program to prevent and detect criminal, civil, and administrative violations under the Act.

(d) *Additional required components for operating organizations with five or more facilities.* In addition to all of the other requirements in paragraphs (a), (b), (c), and (e) of this section, operating organizations that operate five or more facilities must also include, at a minimum, the following components in their compliance and ethics program:

(1) A mandatory annual training program on the operating organization's compliance and ethics program that meets the requirements set forth in § 483.95(f).

(2) A designated compliance officer for whom the operating organization's compliance and ethics program is a major responsibility. This individual must report directly to the operating organization's governing body and not be subordinate to the general counsel, chief financial officer or chief operating officer.

(3) Designated compliance liaisons located at each of the operating organization's facilities.

(e) *Annual review.* The operating organization for each facility must review its compliance and ethics program annually and revise its program as needed to reflect changes in all applicable laws or regulations and within the operating organization and its facilities to improve its performance in deterring, reducing, and detecting violations under Act and in promoting quality of care.

■ 35. In newly redesignated § 483.90—

■ a. Revise paragraph (c).

■ b. Revise paragraphs (d)(1)(i) and (d)(2)(i).

■ c. Revise paragraph (e).

■ d. Revise paragraphs (f) introductory text and (f)(1).

■ e. Revise paragraph (g)(2).
■ f. Add paragraph (h)(5).

The revisions and additions read as follows:

§ 483.90 Physical environment.

* * * * *

(c) *Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, living, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's assessment and plan of care; and

(2) Maintain all mechanical, electrical, and patient care equipment in safe operating condition.

(3) Conduct regular inspection of all bed frames, mattresses, and bed rails, if any, as part of a regular maintenance program to identify areas of possible entrapment. When bed rails and mattresses are used and purchased separately from the bed frame, the facility must ensure that the bed rails, mattress, and bed frame are compatible.

(d) * * *

(1) * * *

(i) Accommodate no more than four residents. For facilities that receive approval of construction or reconstruction plans by State and local authorities or are newly certified after [effective date of final rule], bedrooms must accommodate no more than two residents.

* * * * *

(2) * * *

(i) A separate bed of proper size and height for the safety and convenience of the resident;

* * * * *

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities. For facilities that receive approval of construction or reconstruction plans from State and local authorities or are newly certified after [effective date of the final rule], each resident room must have its own bathroom equipped with at least a toilet, sink and shower.

(f) *Resident call system.* The facility must be adequately equipped to allow residents to call for staff assistance through a communication system which relays the call directly to a staff member or to a centralized staff work area from—

(1) Each resident's bedside; and

* * * * *

(g) * * *

(2) Be well ventilated;

* * * * *

(h) * * *

(5) Establish policies, in accordance with applicable Federal, State, and local laws and regulations, regarding smoking, including tobacco cessation, smoking areas and safety, including but not limited to non-smoking residents.

■ 36. Section 483.95 is added to subpart B to read as follows:

§ 483.95 Training requirements.

A facility must develop, implement, and maintain an effective training program for all new and existing staff; individuals providing services under a contractual arrangement; and volunteers, consistent with their expected roles. A facility must determine the amount and types of training necessary based on a facility assessment as specified at § 483.70(e). Training topics must include but are not limited to—

(a) *Communication.* A facility must include effective communications as mandatory training for direct care/direct access personnel.

(b) *Resident's rights and facility responsibilities.* A facility must ensure that staff members are educated on the rights of the resident and the responsibilities of a facility to properly care for its residents as set forth at § 483.10 and § 483.11, respectively.

(c) *Abuse, neglect, and exploitation.* In addition to the freedom from abuse, neglect, and exploitation requirements in § 483.12, facilities must also provide training to their staff that at a minimum educates staff on—

(1) Activities that constitute abuse, neglect, exploitation, and misappropriation of resident property as set forth at § 483.12.

(2) Procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property.

(d) *Quality assurance and performance improvement.* A facility must include as part of its QAPI program mandatory training that outlines and informs staff of the elements and goals of the facility's QAPI program as set forth at § 483.75.

(e) *Infection control.* A facility must include as part of its infection prevention and control program mandatory training that includes the written standards, policies, and procedures for the program as described at § 483.80(a)(2).

(f) *Compliance and ethics.* The operating organization for each facility must include as part of its compliance and ethics program, as set forth at § 483.85—

(1) An effective way to communicate that program's standards, policies, and procedures through a training program or in another practical manner which explains the requirements under the program.

(2) Annual training if the operating organization operates five or more facilities.

(g) *Required in-service training for nurse aides.* In-service training must—

(1) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year.

(2) Include dementia management training and resident abuse prevention training.

(3) Address areas of weakness as determined in nurse aides' performance reviews and facility assessment at § 483.70(e) and may address the special needs of residents as determined by the facility staff.

(4) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(h) *Required training of feeding assistants.* A facility must not use any individual working in the facility as a paid feeding assistant unless that individual has successfully completed a State-approved training program for feeding assistants, as specified in § 483.160.

(i) *Behavioral health.* A facility must provide behavioral health training consistent with the requirements at § 483.40 and as determined by the facility assessment at § 483.70(e).

§ 483.118 [Amended]

■ 37. In § 483.118, amend paragraphs (b)(1) and (c)(2)(i) by removing the reference ''§ 483.12(a)'' and adding in its place the reference ''§ 483.15(b)''.

§ 483.130 [Amended]

■ 38. In § 483.130, amend paragraphs (m)(5) and (m)(6) by removing the reference ''§ 483.12(a)'' and adding in its place the reference § 483.15(b)''.

§ 483.138 [Amended]

■ 39. In § 483.138, amend paragraphs (a) introductory text and (b)(1) by removing the reference ''§ 483.12(a)'' and adding in its place the reference ''§ 483.15(b)''.

§ 483.151 [Amended]

■ 40. In § 483.151, amend paragraph (a)(3) by removing the reference ''§ 483.75(e)'' and adding in its place the reference ''§ 483.35(c) and (d) and § 483.95(g)''.

§ 483.204 [Amended]

■ 41. In § 483.204, amend paragraph (b) by removing the reference ''§ 483.12 of this part'' and adding in its place the reference ''§ 483.15(h)''.

§ 483.206 [Amended]

■ 42. In § 483.206, amend paragraph (a) by removing the reference ''(See §§ 483.5 and 483.12(a)(1))'' and adding in its place the reference ''(See § 483.5)''.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 43. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

§ 485.635 [Amended]

■ 44. In § 485.635, amend paragraph (a)(3)(vii) by removing the reference ''§ 483.25(i)'' and adding in its place the reference ''§ 483.25(d)(8)''.

■ 45. In § 485.645, paragraphs (d)(1) through (9) are revised and paragraph (d)(10) is added to read as follows:

§ 485.645 Special requirements for CAH providers of long-term care services (''swing-beds'').

* * * * *

(d) * * *

(1) Resident rights (§ 483.10(a)(4)(iv), (b), (c), (d)(1), (d)(3), (e)(8), (g), and (h)(3)).

(2) Facility responsibilities (§ 483.11(d)(1)(i), (d)(1)(iii), (d)(4), (e)(11), (e)(12), (e)(14)(iii), and (f)(1)(i)).

(3) Transitions of care (§ 483.5(n), § 483.15(b)(1), (b)(2), (b)(3)(i) through (iii), (b)(4), (b)(5)(i) through (vii), and (b)(7)).

(4) Freedom from abuse, neglect and exploitation (§ 483.12).

(5) Patient activities (§ 483.25(c)), except that the services may be directed either by a qualified professional meeting the requirements of § 485.25(c)(2), or by an individual on the facility staff who is designated as the activities director and who serves in consultation with a therapeutic recreation specialist, occupational therapist, or other professional with experience or education in recreational therapy.

(6) Social services (§ 483.40(d) and § 483.75(p)).

(7) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), and § 483.21(b) and (c)), except that the CAH is not required to use the resident assessment instrument (RAI) specified by the State that is required under § 483.20(b), or to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b) of this chapter).

(8) Specialized rehabilitative services (§ 483.65).

(9) Dental services (§ 483.55).

(10) Nutrition (§ 483.25(d)(8) of this chapter).

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 46. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a-7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819. Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 488.56 [Amended]

■ 47. In § 488.56, paragraph (a) introductory text is amended by removing the reference ''§ 483.30'' and adding in its place the reference ''§ 483.35''.

■ 48. Section 488.301 is amended by revising the definitions of ''nurse aide'', ''paid feeding assistant'', and ''substandard quality of care'' to read as follows:

§ 488.301 Definitions.

* * * * *

Nurse aide means an individual, as defined in § 483.5(n) of this chapter.

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.60(h)(1) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

Substandard quality of care means one or more deficiencies related to participation requirements under § 483.10 ''Resident rights'', paragraphs (d) and (e); § 483.11 ''Facility Responsibilities'', paragraphs (d) and (g); § 483.12 ''Freedom from abuse, neglect, and exploitation''; § 483.25 ''Quality of care, and quality of life''; § 483.40 ''Behavioral health services'', paragraphs (b) and (d); § 483.45 ''Pharmacy services'', paragraphs (d), (e), and (f); and § 483.80 ''Infection control'', paragraph (d) of this chapter, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

* * * * *

§ 488.426 [Amended]

■ 49. In § 488.426, paragraph (b) is amended by removing the reference ''§ 483.75(r)'' and adding in its place the reference ''§ 483.70(l)'' and paragraph (c) is amended by removing the reference ''§ 483.75(r)(1)(ii)'' and adding in its place the reference ''§ 483.70(l)''.

§ 488.446 [Amended]

■ 50. In § 488.446, the introductory text is amended by removing the reference ''§ 483.75(r)'' and adding in its place the reference ''§ 483.70(l)''.

Dated: May 12, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 8, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–17207 Filed 7–13–15; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Parts 5, 91, 92, *et al.*
Affirmatively Furthering Fair Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 570, 574, 576, and 903

[Docket No. FR–5173–F–04]

RIN 2501–AD33

Affirmatively Furthering Fair Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD provides HUD program participants with an approach to more effectively and efficiently incorporate into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act, which is title VIII of the Civil Rights Act of 1968. The Fair Housing Act not only prohibits discrimination but, in conjunction with other statutes, directs HUD's program participants to take significant actions to overcome historic patterns of segregation, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination. The approach to affirmatively furthering fair housing carried out by HUD program participants prior to this rule, which involved an analysis of impediments to fair housing choice and a certification that the program participant will affirmatively further fair housing, has not been as effective as originally envisioned. This rule refines the prior approach by replacing the analysis of impediments with a fair housing assessment that should better inform program participants' planning processes with a view toward better aiding HUD program participants to fulfill this statutory obligation.

Through this rule, HUD commits to provide states, local governments, public housing agencies (PHAs), the communities they serve, and the general public, to the fullest extent possible, with local and regional data on integrated and segregated living patterns, racially or ethnically concentrated areas of poverty, the location of certain publicly supported housing, access to opportunity afforded by key community assets, and disproportionate housing needs based on classes protected by the Fair Housing Act. Through the availability of such data and available local data and knowledge, the approach provided by this rule is intended to make program participants better able to evaluate their present environment to assess fair housing issues such as segregation, conditions that restrict fair housing choice, and disparities in access to housing and opportunity, identify the factors that primarily contribute to the creation or perpetuation of fair housing issues, and establish fair housing priorities and goals.

DATES: *Effective Date:* August 17, 2015.

FOR FURTHER INFORMATION CONTACT: George D. Williams, Sr., Deputy Assistant Secretary for Policy, Legislatives Initiatives and Outreach, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5246, Washington, DC 20410; telephone number 866–234–2689 (toll-free) or 202–402–1432 (local). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) has not only prohibited discrimination in housing related activities and transactions but has also provided, through the duty to affirmatively further fair housing (AFFH), for meaningful actions to be taken to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing. Prior to this rule, HUD directed participants in certain HUD programs to affirmatively further fair housing by undertaking an analysis of impediments (AI) that was generally not submitted to or reviewed by HUD. This approach required program participants, based on general guidance from HUD, to identify impediments to fair housing choice within their jurisdiction, plan, and take appropriate actions to overcome the effects of any impediments, and maintain records of such efforts. Informed by lessons learned in localities across the country, and with program participants, civil rights advocates, other stakeholders, and the U.S. Government Accountability Office all commenting to HUD that the AI approach was not as effective as originally envisioned, in 2013 HUD initiated the rulemaking process to propose a new and more effective approach for program participants to use in assessing the fair housing issues and factors in their jurisdictions and regions and for establishing fair housing priorities and goals to address them.

The approach proposed by HUD in 2013, and adopted in this final rule, with revisions made in response to public comments, strengthens the process for program participants' assessments of fair housing issues and contributing factors and for the establishment of fair housing goals and priorities by requiring use of an Assessment Tool, providing data to program participants related to certain key fair housing issues, and instituting a process in which HUD reviews program participants' assessments, prioritization, and goal setting. While the statutory duty to affirmatively further fair housing requires program participants to take actions to affirmatively further fair housing, this final rule (as was the case in the proposed rule) does not mandate specific outcomes for the planning process. Instead, recognizing the importance of local decisionmaking, the new approach establishes basic parameters to help guide public sector housing and community development planning and investment decisions in being better informed about fair housing concerns and consequently help program participants to be better positioned to fulfill their obligation to affirmatively further fair housing.

Summary of Legal Authority

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619) declares that it is ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits, among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of ''race, color, religion, sex, familial status,[1] national origin, or handicap.'' [2] See 42 U.S.C. 3604 and 3605. Section 808(d) of the Fair Housing Act requires all executive branch departments and agencies administering housing and urban development programs and activities to administer these programs in a manner that affirmatively furthers fair housing. See 42 U.S.C. 3608.

[1] The term ''familial status'' is defined in the Fair Housing Act at 42 U.S.C. 3602(k). It includes one or more children who are under the age of 18 years being domiciled with a parent or guardian.

[2] Although the Fair Housing Act was amended in 1988 to extend civil rights protections to persons with ''handicaps,'' the term ''disability'' is more commonly used and accepted today to refer to an individual's physical or mental impairment that is protected under federal civil rights laws, the record of such an impairment, and being regarded as having such an impairment. For this reason, except where quoting from the Fair Housing Act, this preamble and final rule use the term ''disability.''

Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner affirmatively furthering the policies of the Fair Housing Act.

Summary of the Major Provisions of the Rule

The Affirmatively Furthering Fair Housing (AFFH) regulations promulgated by this final rule:

a. Replace the AI with a more effective and standardized Assessment of Fair Housing (AFH) through which program participants identify and evaluate fair housing issues, and factors contributing to fair housing issues (contributing factors);

b. Improve fair housing assessment, planning, and decisionmaking by HUD providing data that program participants must consider in their assessments of fair housing—designed to aid program participants in establishing fair housing goals to address these issues and contributing factors;

c. Incorporate, explicitly, fair housing planning into existing planning processes, the consolidated plan and PHA Plan, which, in turn, incorporate fair housing priorities and goals more effectively into housing, and community development decisionmaking;

d. Encourage and facilitate regional approaches to address fair housing issues, including collaboration across jurisdictions and PHAs; and

e. Provide an opportunity for the public, including individuals historically excluded because of characteristics protected by the Fair Housing Act, to provide input about fair housing issues, goals, priorities, and the most appropriate uses of HUD funds and other investments, through a requirement to conduct community participation as an integral part of the new assessment of fair housing process.

This new approach is designed to empower program participants and to foster the diversity and strength of communities by overcoming historic patterns of segregation, reducing racial or ethnic concentrations of poverty, and responding to identified disproportionate housing needs consistent with the policies and protections of the Fair Housing Act. The rule also seeks to assist program participants in reducing disparities in housing choice and access to housing and opportunity based on race, color, religion, sex, familial status, national origin, or disability, thereby expanding economic opportunity and enhancing the quality of life.

Summary of Benefits and Costs

HUD believes that the rule, through its improvements to the fair housing planning process, has the potential for substantial benefit not only for program participants but also for the communities they serve and the United States as a whole. The new approach put in place by this rule is designed to improve the fair housing planning process by providing better data and greater clarity to the steps that program participants must undertake to assess fair housing issues and contributing factors and establish fair housing priorities and goals to address them. The fair housing issues, contributing factors, goals, and priorities identified through this process will be available to help inform program participants' investments and other decisionmaking, including their use of HUD funds and other resources. These improvements should yield increased compliance with fair housing and civil rights laws and fewer instances of litigation pertaining to the failure to affirmatively further fair housing. Through this rule, HUD commits to provide states, local governments, PHAs, the communities they serve, and the general public, to the fullest extent possible, with local and regional data on patterns of integration and segregation, racially or ethnically concentrated areas of poverty, access to housing and key community assets that afford opportunity, and disproportionate housing needs based on characteristics protected by the Fair Housing Act. From these data, program participants should be better able to evaluate their present environment to assess fair housing issues, identify the significant contributing factors that account for those issues, set forth fair housing priorities and goals, and document these activities.

As detailed in the Regulatory Impact Analysis (found at *www.regulations.gov* under the docket number 5173–F–03–RIA), HUD does not expect a large aggregate change in compliance costs for program participants as a result of the proposed rule. Currently, HUD program participants are required to conduct an AI to fair housing choice, take appropriate actions to overcome the effects of identified impediments, and maintain records relating to the duty to affirmatively further fair housing. An increased emphasis on affirmatively furthering fair housing within the planning process may increase compliance costs for some program participants, but this final rule, as provided in Section III of this preamble, has strived to mitigate the increase of such costs. The net change in burden for specific local entities will depend on the extent to which they have been complying with the planning process already in place. The local entities that have been diligent in completing rigorous AIs may experience a net decrease in administrative burden as a result of the revised process. Program participants are currently required also to engage in outreach and collect data in order to meet the obligation to affirmatively further fair housing. As more fully addressed in the Regulatory Impact Analysis that accompanies this rule, HUD estimates compliance costs to program participants of $25 million annually, as well as resource costs to HUD of $9 million annually.

The rule covers program participants that are subject to a great diversity of local conditions and economic and social contexts, as well as differences in the demographics of populations, housing needs, and community investments. The rule provides for program participants to supplement data provided by HUD with available local data and knowledge and requires them to undertake the analysis of this information to identify barriers to fair housing. Also, the rule affords program participants considerable choice and flexibility in formulating goals and priorities to achieve fair housing outcomes and establishing the metrics that will be used to monitor and document progress. The precise outcomes of the proposed AFH planning process are uncertain, but the rule will enable each jurisdiction to plan meaningfully.

II. Background

A. Legal Authority

HUD's July 2013 proposed rule fully set out the legal basis for HUD's authority to issue regulations implementing the obligation to affirmatively further fair housing, but HUD believes it is important to restate such authority in this final rule.

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619), enacted into law on April 11, 1968, declares that it is ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of race, color, religion, sex, familial status, national origin, or handicap. See 42 U.S.C. 3601 *et seq.* In addition to prohibiting discrimination, the Fair Housing Act (42 U.S.C. 3608(e)(5))

requires that HUD programs and activities be administered in a manner to affirmatively further the policies of the Fair Housing Act. Section 808(d) of the Fair Housing Act (42 U.S.C. 3608(d)) directs other Federal agencies ''to administer their programs . . . relating to housing and urban development . . . in a manner affirmatively to further'' the policies of the Fair Housing Act, and to ''cooperate with the Secretary'' in this effort.

The Fair Housing Act's provisions related to ''affirmatively . . . further[ing]'' fair housing, contained in sections 3608(d) and (e) include more than the Act's anti-discrimination mandates. *NAACP, Boston Chapter* v. *HUD,* 817 F.2d 149 (1st Cir. 1987); see, *e.g., Otero* v. *N.Y. City Hous. Auth.,* 484 F.2d 1122 (2d Cir. 1973); *Shannon* v. *HUD,* 436 F.2d 809 (3d Cir. 1970).When the Fair Housing Act was originally enacted in 1968 and amended in 1988, major portions of the statute involved the prohibition of discriminatory activities (whether undertaken with a discriminatory purpose or with a discriminatory impact) and how private litigants and the government could enforce these provisions

In section 3608(d) of the Fair Housing Act, however, Congress went further by mandating that ''programs and activities relating to housing and urban development'' be administered ''in a manner affirmatively to further the purposes of this subchapter.'' This is not only a mandate to refrain from discrimination but a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied. Congress has repeatedly reinforced this mandate, requiring in the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will affirmatively further fair housing. See 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C–1(d)(16).[3]

In examining the legislative history of the Fair Housing Act and related statutes, courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds and other Federal funds do more than simply not discriminate: Recipients also must take actions to address segregation and related barriers for groups with characteristics protected by the Act, as often reflected in racially or ethnically concentrated areas of poverty. The U.S. Supreme Court, in one of the first Fair Housing Act cases it decided, referenced the Act's cosponsor, Senator Walter F. Mondale, in noting that ''the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.' '' *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 211 (1972).[4] The Act recognized that ''where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.'' 114 Cong. Rec. 2276–2707 (1968). As the First Circuit has explained, section 3608(d) and the legislative history of the Act show that Congress intended that ''HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.'' *NAACP, Boston Chapter* v. *HUD,* 817 F.2d at 154; See also *Otero* 484 F.2d at 1134 (section 3608(d) requires that ''[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat'').

The Act itself does not define the precise scope of the affirmatively furthering fair housing obligation for HUD's program participants. Over the years, courts have provided some guidance for this task. In the first appellate decision interpreting section 3608, for example, the U.S. Court of Appeals for the Third Circuit emphasized the importance of racial and socioeconomic data to ensure that ''the agency's judgment was an informed one'' based on an institutionalized method to assess site selection and related issues. *Shannon,* 436 F.2d at 821–22. In multiple other decisions, courts have set forth how the section applies to specific policies and practices of HUD program participants. See, *e.g., Otero,* 484 F.2d at 1132–37; *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43 (1st Cir. 2000); *U.S. ex rel. Anti-Discrimination Ctr.* v. *Westchester Cnty.,* 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009).

In addition to the statutes and court cases emphasizing the requirement of recipients of Federal housing and urban development funds and other Federal funds to affirmatively further fair housing, executive orders have also addressed the importance of complying with this requirement.[5]

B. HUD's July 19, 2013, Proposed Rule

On July 19, 2013, at 78 FR 43710, HUD published its proposed rule that described the new assessment of fair housing (AFH) process that would replace the AI. As stated in the July 19, 2013, rule, HUD proposed a process that should aid program participants to more effectively carry out the obligation to affirmatively further fair housing by more directly linking the identification of fair housing issues, prioritization, and goal setting to housing and community development planning processes currently undertaken by program participants and that is required as a condition of their receipt of HUD funds.

At the jurisdictional planning level, HUD requires program participants

[3] Section 104(b)(2) of the Housing and Community Development Act (HCD Act) (42 U.S.C. 5304(b)(2)) requires that, to receive a grant, the state or local government must certify that it will affirmatively further fair housing. Section 106(d)(7)(B) of the HCD Act (42 U.S.C. 5306(d)(7)(B)) requires a local government that receives a grant from a state to certify that it will affirmatively further fair housing. The Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) provides in section 105 (42 U.S.C. 12705) that states and local governments that receive certain grants from HUD must develop a comprehensive housing affordability strategy to identify their overall needs for affordable and supportive housing for the ensuing 5 years, including housing for homeless persons, and outline their strategy to address those needs. As part of this comprehensive planning process, section 105(b)(15) of NAHA (42 U.S.C. 12705(b)(15)) requires that these program participants certify that they will affirmatively further fair housing. The Quality Housing and Work Responsibility Act of 1998 (QHWRA), enacted into law on October 21, 1998, substantially modified the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act), and the 1937 Act was more recently amended by the Housing and Economic Recovery Act of 2008, Public Law 110–289 (HERA). QHWRA introduced formal planning processes for PHAs—a 5-Year Plan and an Annual Plan. The required contents of the Annual Plan included a certification by the PHA that the PHA will, among other things, affirmatively further fair housing.

[4] Reflecting the era in which it was enacted, the Fair Housing Act's legislative history and early court decisions refer to ''ghettos'' when discussing racially concentrated areas of poverty.

[5] Executive Order 12892, entitled ''Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,'' issued January 17, 1994, vests primary authority in the Secretary of HUD for all federal executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner that furthers the purposes of the Fair Housing Act. Executive Order 12898, entitled ''Executive Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' issued on February 11, 1994, declares that Federal agencies shall make it part of their mission to achieve environmental justice ''by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.''

receiving Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Emergency Solutions Grants (ESG), and Housing Opportunities for Persons With AIDS (HOPWA) formula funding to undertake an analysis to identify impediments to fair housing choice within the jurisdiction and take appropriate actions to overcome the effects of any impediments, and keep records on such efforts. See §§ 91.225(a)(1), 91.325(a)(1).[6] Similarly, PHAs must commit, as part of their planning process for PHA Plans and any plans incorporated therein, to examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require PHA involvement, maintain records reflecting those analyses and actions, and operate programs in a manner that is consistent with the applicable jurisdiction's consolidated plan. See §§ 903.7(o), 903.15.

Over the past several years, HUD reviewed the efficacy of these mechanisms to fulfill the affirmatively furthering fair housing mandate and concluded that the AI process could be improved to make it a more meaningful tool to integrate fair housing into program participants' planning efforts. HUD issued its Fair Housing Planning Guide (Planning Guide) in 1996 to provide extensive guidance on how to affirmatively further fair housing. However, HUD has not, in a systematic manner, offered to its program participants the data in HUD's possession that may better help them frame their fair housing analysis, and HUD generally did not require AIs to be submitted to HUD for review.

These observations are reinforced by a recent report by the U.S. Government Accountability Office (GAO) entitled ''HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans,'' GAO–10–905, Sept. 14, 2010. See *http://www.gao.gov/new.items/d10905.pdf* (GAO Report). In this report, the GAO found that there has been uneven attention paid to the AI by local communities in part because sufficient guidance and clarity were viewed as lacking. Specifically, GAO stated that it found that ''HUD's limited regulatory requirements and oversight'' contributed to many HUD program participants placing a ''low priority on ensuring that their AIs serve as effective planning tools.'' [7] In its recommendations, GAO emphasized that HUD could assist program participants by providing more effective guidance and technical assistance and the data necessary to prepare fair housing plans.

Stemming from substantial interaction with program participants and advocates, and in light of the GAO Report, HUD concluded that the current AI process was not well integrated into the planning efforts for expenditure of funds made by HUD program participants. HUD recognized that many program participants actively grapple with how issues involving race, national origin, disability, and other fair housing issues do and should influence grant decisions as part of housing and community development planning. HUD found that program participants often turned to outside consultants to collect data and conduct the analysis, but that program participants had little incentive or awareness to use this analysis as part of the investments and other decisions they made as part of the consolidated plan or PHA Plan processes. HUD further concluded that, in a time of limited resources, HUD could do more to support program participants in the process, especially through the provision of data, meaningful technical assistance, and additional guidance. All these findings led HUD to the decision to offer a new approach of linking fair housing issue identification, prioritization, and goal setting with program participants' traditional planning processes related to housing and community development.

To more effectively carry out its affirmatively furthering fair housing obligation, in the July 19, 2013, rule, HUD proposed a new AFH process to replace the AI process. As provided in the proposed rule, the new AFH process involved the following key features: (1) A new fair housing assessment tool; (2) the provision of nationally uniform data that would be the predicate for and would help frame program participants' assessment activities; (3) meaningful and focused direction regarding the purpose of the AFH and the standards by which it would be evaluated; (4) a more direct link between the AFH and subsequent program participant planning documents—the consolidated plan and the PHA Plan—that would tie fair housing planning into the priority setting, commitment of resources, and specification of activities to be undertaken; and (5) a new HUD review procedure based on clear standards that would facilitate the provision of technical assistance and reinforce the value and importance of fair housing planning activities.

As provided in the proposed rule, the new AFH process would be established in regulations in 24 CFR part 5, subpart A, with conforming amendments provided in the following regulations: 24 CFR part 91 (Consolidated Submission for Community Planning and Development Programs); 24 CFR part 92 (HOME Investment Partnerships Program); 24 CFR part 570 (Community Development Block Grants); 24 CFR part 574 (Housing Opportunities for Persons With AIDS); 24 CFR part 576 (Emergency Solutions Grants Program); and 24 CFR part 903 (Public Housing Agency Plans).

A more detailed discussion of HUD's July 19, 2013, proposed rule, including the specific AFH regulations and conforming amendments proposed, can be found at 79 FR 43716 through 43723. HUD refers interested parties to the preamble to the proposed rule for a detailed discussion of the proposed AFH process and the reasons for HUD's proposal of the features and elements of the new AFH process.

C. Proposed Assessment Tool

On September 26, 2014, at 79 FR 57949, HUD published in the **Federal Register**, the proposed ''Assessment Tool'' to be used by program participants to evaluate fair housing choice in their jurisdictions, to identify barriers to fair housing choice at the local and regional levels, and to set fair housing goals to overcome such barriers and advance fair housing choice. HUD published the proposed Assessment Tool for a period of 60 days in accordance with HUD's July 19, 2013, proposed rule, and in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

HUD appreciates the comments submitted on the proposed Assessment Tool, and will follow the September 2014 notice with a second notice soliciting comment for another 30-day period, as required by the Paperwork Reduction Act, and advise of changes made to the proposed Assessment Tool in response to the initial 60-day solicitation of comment.

[6] For these programs, the consolidated plan is intended as the program participant's comprehensive mechanism to gather relevant housing data, detail housing, homelessness, and community development strategies, and commit to specific actions. These are then updated through annual action plans.

[7] The GAO noted that close to 30 percent of the grantees from whom GAO sought documentation had outdated AIs and that almost 5 percent of the grantees were unable to provide AIs when requested.

In addition, it is important to note that the burden imposed by the Assessment Tool and additional Assessment Tools issued by HUD must, in accordance with the Paperwork Reduction Act, be renewed for approval by the Office of Management and Budget (OMB) every 3 years, at which point, the opportunity is also presented to assess whether the Assessment Tool is aiding fair housing planning as intended by this rule.

D. Solicitation of Comment on Proposed Staggered Submission of AFH

On January 15, 2015, at 80 FR 2062, HUD published in the **Federal Register** a document reopening the public comment period on the issue of providing a later submission deadline for certain entities. In this document, HUD advised that it was considering providing certain HUD program participants—States, Insular Areas, qualified PHAs, jurisdictions receiving a small CDBG grant—with the option of submitting their first AFH at a date later than would otherwise be required for program participants that are neither States, Insular Areas, qualified PHAs, nor grantees receiving a small CDBG grant, as proposed to be defined by the January 15, 2015, document.

For PHAs, section 2702 of title II of the Housing and Economic Recovery Act (HERA) [8] introduced a definition of ''qualified PHAs'' to exempt such PHAs, that is, PHAs that have a combined total of 550 or fewer public housing units and section 8 vouchers, are not designated as troubled under section 6(j)(2) of the 1937 Act, and do not have a failing score under the Section Eight Management Assessment Program (SEMAP) during the prior 12 months, from the burden of preparing and submitting an annual PHA Plan. Given that Congress has determined that qualified PHAs should have reduced administrative burdens, HUD proposed that it is appropriate to provide these agencies with more time to submit their first AFH.

With respect to small CDBG grants, there is no statutory definition on which HUD can rely as is the case for qualified PHAs. However, as noted in the January 15, 2015, document, in HUD's Congressional Justifications issued in support of HUD's Fiscal Years (FYs) 2013 and 2014 budget requests, HUD proposed to establish a minimum grant threshold of approximately $350,000, based on a percentage of the CDBG formula appropriation. Therefore, HUD proposed, similar to qualified PHAs, to delay the submission date of the first AFH for entitlement jurisdictions receiving a grant of 0.0125 percent of the CDBG formula appropriation or less.

With respect to States and Insular Areas, HUD advised that it decided to design a separate Assessment Tool for States and Insular Areas. HUD agreed with commenters responding to the Assessment Tool, published on September 26, 2014, that a separate Assessment Tool for States and Insular Areas would address commenters' concerns about the AFH approach being better suited for entitlement jurisdictions. HUD also advised that the separate Assessment Tool will not be provided for public comment as part of the second statutorily required public comment period on the Assessment Tool published on September 26, 2014. Rather, HUD will have the Assessment Tool for States and Insular Areas separately undergo the full notice and comment process (a 60-day notice and a 30-day notice) under the Paperwork Reduction Act, and this decision automatically means a later first AFH submission deadline for States and Insular areas.

Although not part of the January 15, 2015, document, in the preamble to the Assessment Tool published on September 26, 2014, HUD advised that the draft Assessment Tool for which public comment was sought is the Assessment Tool designed for use by entitlement jurisdictions and for joint submissions by entitlement jurisdictions and for PHAs where the entitlement jurisdiction is chosen as the lead entity. HUD clarified that the Assessment Tool is not the tool that will be used by regionally collaborating entitlement jurisdictions or PHAs that will not be making a joint submission, nor will it be used by States and Insular Areas. In brief, HUD committed to provide a separate Assessment Tool for PHAs. HUD also advised of its intention to develop program-specific participant Assessment Tools to be available for public comment at the time that HUD publishes the first Assessment Tool for its additional 30 days of public comment. HUD since decided to have the State and PHA Assessment Tools undergo the full notice and comment process under the Paperwork Reduction Act (a 60-day notice and a 30-day notice).

In response to the January 15, 2015, document HUD received 21 public comments. The majority of public commenters were supportive of a delayed submission of the first AFH for States, Insular Areas, qualified PHAs, and jurisdictions receiving small CDBG grants. Commenters, however, differed on where to draw the threshold for a small CDBG. Commenters suggested that the threshold should be drawn at $1 million. A commenter, commenting on the percentage that HUD proposed, suggested a percentage cutoff of 0.018 percent rather than HUD's suggested percentage of 0.0125. The commenter explained that this threshold would bring the cutoff to approximately $500,000, and at that level, administrative funds can be up to $100,000, an increase from $70,000, which is the amount that would be available to entitlement jurisdictions receiving $348,875—the amount under the HUD-proposed threshold. The public comments received in response to the January 15, 2015, document can be found at the following Web site: *http://www.regulations.gov/#!docketDetail;D=HUD-2015-0009.*

After consideration of the comments on the CDBG threshold, HUD has decided to set the threshold for a small CDBG grant at a FY 2015 grant of $500,000 or less. HUD believes that this dollar threshold is appropriate for providing a delayed first AFH submission for certain CDBG grantees. Therefore, as a result of HUD's January 15, 2015, proposal and in consideration of comments responding to that proposal, States, Insular Areas, qualified PHAs, and CDBG grantees receiving an FY 2015 CDBG grant of $500,000 or less will have a delayed first-AFH submission deadline, as will all PHAs, even those that are not qualified PHAs. For PHAs, the first AFH submission deadline will be based on when the PHA Assessment Tool has been approved by OMB—following HUD undertaking the notice and comment process required by the Paperwork Reduction Act—and announced by HUD as available for use.

III. Overview of Final Rule—Key Changes Made at Final Rule Stage

In the proposed rule, HUD solicited public comment on the new AFH process and included 19 issues for which HUD specifically solicited comment. In Section IV of this preamble, HUD provides a summary of the significant comments raised by the public comments and provides HUD's response to these issues. HUD received more than 1,000 public comments on the July 19, 2013, proposed rule. HUD appreciates all the questions raised, and suggestions and recommendations made by the public commenters. After review and consideration of the public comments and upon further consideration of issues by HUD, the following highlights key clarifications

[8] Public Law 110–289, 122 Stat. 2654, approved July 30, 2008, see 122 Stat. 2863.

and changes made by HUD in this final rule.

The final rule:

- Clarifies that HUD supports a balanced approach to affirmatively furthering fair housing by revising the ''Purpose'' section of the rule and the definition of ''affirmatively furthering fair housing.'' Also, HUD has created a new provision listing goals and priorities a program participant may take to affirmatively further fair housing, which may include, but are not limited to, place-based solutions and options to increase mobility for protected classes. (See §§ 5.150, 5.152, and 5.154.)
- Replaces the term ''proactive steps'' in the definition of ''affirmatively furthering fair housing'' with the term ''meaningful actions'' and defines ''meaningful actions.'' (See § 5.152.)
- Revises the definition of ''Assessment Tool'' to advise that the tool is not solely a single form or template, but refers to any form or template issued by HUD as an Assessment Tool for the AFH and includes instructions. The definition makes clear that HUD may issue different Assessment Tools for different types of program participants.
- Clarifies, through the addition of a new § 5.151, that implementation of the new AFH process commences for a program participant when the Assessment Tool designated for use by the program participant has been approved by OMB, and the availability for use of such Assessment Tool is published in the **Federal Register.**
- Adds a definition of ''data'' to collectively refer to ''HUD-provided data'' and ''local data,'' both of which terms are also defined. (See § 5.152.)
- Replaces the term ''determinant'' with a more plain language term—''fair housing contributing factor'' or simply ''contributing factor.'' (See § 5.152.)
- Adds a definition of ''disability.'' (See § 5.152.)
- Clarifies when disproportionate housing needs exist by revising the definition of ''disproportionate housing needs.'' (See § 5.152.)
- Revises the definitions of ''fair housing choice'' and ''fair housing issue'' by removing outdated terminology (*i.e.,* ''handicap'') and making certain additional clarifying changes. (See § 5.152.)
- Adds a definition of ''geographic area'' which refers to the area of analysis of a program participant that may be a jurisdiction, region, state, Core-Based Statistical Area (CBSA), or another applicable area, depending on the area served by the program participant. (See § 5.152.)
- Adds a definition of ''housing programs serving specified populations'' to clarify that participation in HUD and Federal housing programs serving specified populations does not present a fair housing issue of segregation, provided that such programs comply with the program regulations and applicable Federal civil rights statutes and regulations. (See § 5.152.)
- Revises the definition of ''integration'' to provide greater clarity as to the meaning of this term. (See § 5.152.)
- Adds a definition of ''local knowledge'' based on and consistent with the description of such term in the Assessment Tool. (See § 5.152.)
- Revises the definition of ''segregation'' to provide greater clarity. (See § 5.152.)
- Adds a definition of ''qualified PHA.'' (See § 5.152.)
- Revises and clarifies how the analysis of data and the identification of fair housing priorities and goals should be undertaken, including emphasizing that the program participant is responsible for establishing appropriate priorities and goals. (See § 5.154(d).)
- Clarifies that although regionally collaborating program participants need not be contiguous and may cross state boundaries, regionally collaborating program participants should be located within the same CBSA, as defined by OMB at the time of submission of the regional AFH, but HUD allows for exceptions. (See § 5.156.)
- Emphasizes that ''acceptance'' of an AFH means only that, for purposes of administering HUD program funding, HUD has determined that the program participant has provided an AFH that meets the required elements. Acceptance does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and regulations. (See § 5.162.)
- Provides a staggered submission deadline for AFHs; that is, the rule specifies the order of submission by which program participants will submit their first AFH. The rule provides that entitlement jurisdictions receiving an FY 2015 CDBG grant of $500,000 or less, States, Insular Areas, and PHAs will submit their first AFH in the second stage of submission, or at such time as the Assessment Tool specifically applicable to one of these program participants has been approved by OMB and announced by HUD as available for use. The Assessment Tool specifically applicable to a program participant will specify the first-AFH submission deadline, and will ensure the same level of transition as provided for entitlement jurisdictions, which will be the first program participants to submit an AFH. (See § 5.160(a).)
- Allows PHAs, whether submitting an AFH as part of participation with their consolidated plan program participants, other PHAs, or on their own, to submit an AFH every 5 years, imposing on PHAs similar requirements to those placed on jurisdictions subject to the consolidated plan requirements. (See §§ 5.160 and 903.15.)
- Provides that a program participant that undertook a Regional AI in connection with a grant awarded under HUD's FY 2010 or 2011 Sustainable Communities Competition is not required to undertake an AFH for the first AFH submission stage. (See § 5.160(a).)
- Clarifies the conditions under which HUD may not accept an AFH, and provides examples of an AFH that is substantially incomplete with respect to the fair housing assessment, and examples of an AFH that is inconsistent with fair housing and civil rights requirements; and emphasizes that HUD will work with program participants to achieve an AFH that is accepted. (See § 5.162.)
- Provides greater flexibility to program participants in determining when a program participant must revise an AFH, and specifies conditions when HUD may intervene and require a program participant to revise an AFH, but also provides program participants with the opportunity to disagree with HUD's determination. HUD also expands the time frame in which to revise an AFH. (See § 5.164.)
- Revises for PHAs the three options provided in the proposed rule by which a PHA may conduct and submit an AFH. (See § 903.15.)
- Adds a new ''certification'' provision, which clarifies that program participants must certify that they will affirmatively further fair housing when required by statutes and regulations governing their programs, and provides that challenges to the certifications will follow the procedures for consolidated plan program participants in 24 CFR part 91 and for PHA Plan program participants in 24 CFR part 903, as revised in this final rule. (See § 5.166.)
- Moves fair housing-related material from § 903.2(d) to § 903.15(d).

In addition to these changes, HUD also corrected editorial and technical errors identified by the commenters. HUD believes that these changes, more fully discussed below, respond to commenters' requests that they be given

more clarity, more flexibility, and more time in fair housing planning.

IV. Public Comments and HUD's Response to Public Comments

A. The Public Comments Generally

HUD received over 1,000 public comments, including duplicate mass mailings, resulting in approximately 885 unique public submissions covering a wide range of issues. Comments came from a wide variety of entities, including PHAs, other housing providers, organizations representative of housing providers, governmental jurisdictions and agencies, civil rights organizations, tenant and other housing advocacy organizations, and individuals. All public comments can be viewed at *http://www.regulations.gov/#!docketDetail;D=HUD-2013-0066.*

Many commenters expressed outright support for HUD's proposal, without suggesting any changes and requesting that HUD proceed to implement as quickly as possible. Commenters who expressed general support for the rule stated that the rule was a step toward increased opportunity in housing, and that the rule would assist in attaining the goals of the Fair Housing Act.

Many commenters, however, also expressed outright opposition to the rule, stating that HUD's proposal was without legal foundation, that it was an intrusion on affairs that should be handled by local jurisdictions for a variety of reasons, and that the proposal constituted social engineering.

The majority of commenters, whether supportive of HUD's proposal or opposed, provided thoughtful comments for HUD's consideration, advising how the proposal would work better with certain changes, or advising why the proposal would not work and why HUD should withdraw the proposal completely or go back to the drawing board, so to speak. With respect to this latter theme, several commenters expressed support for the new AFH process but requested that HUD give the new approach more thought and reopen the public comment period on the proposed rule, implement the new approach as a pilot first, issue a second proposed rule, or issue an interim rule, which would provide the opportunity for another round of comments.

While commenters raised a wide variety of issues concerning HUD's proposal, the following highlights comments and concerns shared by many commenters:

- HUD's proposal lacked a balanced approach; that is, HUD's proposal seemed to discourage, if not implicitly prohibit, continued investment of Federal resources in areas of racial or ethnic concentration of poverty;
- HUD's proposal lacked reference to benchmarks and outcomes so that HUD and the public could determine a program participant's progress in affirmatively furthering fair housing in accordance with the participant's assessment of fair housing;
- HUD's proposal was not clear on the standards of review of an AFH;
- HUD's proposed new AFH approach is too burdensome, duplicating actions already required by the consolidated plan and PHA Plan;
- HUD lacks the capacity to effectively carry out its responsibilities under the proposal;
- HUD's proposal is an intrusion on the affairs and responsibilities of local governments, and opens the door to the Federal Government determining zoning, the placement of infrastructure, and other local services;
- HUD's proposal does not take into consideration the unique status of States, which have no control over local governments, and consequently, the AFH should only apply to entitlement jurisdictions;
- HUD must carefully screen the accuracy of data to be provided by HUD because prior experience in other programs has shown that the data are not always reliable;
- HUD's proposal is an expansion of the Fair Housing Act, which does not require an assessment of such nonhousing elements as transportation, employment, education, and similar elements; and
- HUD needs to clarify the process it will use when a program participant does not have an AFH that has been accepted, as well as the consequences.

Again, HUD appreciates the time that commenters took to provide helpful information and valuable suggestions. As can be seen by HUD's promulgation of this final rule, HUD decided to proceed to the final rule stage and put in place the new AFH approach. However, as provided in the overview of changes made at the final rule stage, program participants and other interested members of the public can see the many changes that HUD made in response to public comments, and how specific concerns were addressed in these final regulations.

In the following section of the preamble, HUD addresses the public comments.

B. Specific Public Comments

1. Balanced Approach

Comment: Proposed rule appears to prohibit program participants from using Federal resources in neighborhoods of concentrated poverty. A substantial number of commenters who expressed support for the rule stated that the proposed rule did not provide a balanced approach to investment of Federal resources. Commenters stated that the proposed rule appeared to solely emphasize mobility as the means to affirmatively further fair housing and, by such emphasis, the rule devalued the strategy of making investments in neighborhoods with racially/ethnically concentrated areas of poverty (RCAPs/ECAPs). They stated that the proposed rule could be read to prohibit the use of resources in neighborhoods with such concentrations. Commenters stated that the proposed rule, if implemented without change, would have the unintentional effect of shifting resources away from low-income communities of color, and threaten targeted revitalization and stabilization investments in such neighborhoods if jurisdictions misinterpreted the goals of deconcentration and reducing disparities in access to assets, and focused only on mobility at the expense of existing neighborhood assets. Commenters stated that the final rule must clarify that program participants are expected to employ both strategies—(1) to stabilize and revitalize neighborhoods that constitute RCAPs/ECAPs, and (2) enhance mobility and expand access to existing community assets. Commenters stated that these should not be competing priorities. Some commenters also expressed concern that the proposed rule language might be interpreted to only allow preservation of existing affordable housing if it was also part of a more intensive area-wide redevelopment strategy.

Commenters stated that older people and persons with disabilities, in particular, may have difficulty maintaining their homes and are very vulnerable to being institutionalized if they are displaced. Other commenters stated that RCAPs/ECAPs are often near transit and therefore ripe for gentrification and, while gentrification can be a positive outcome at times, gentrification can also lead to isolation of low-income families and a further decrease in socioeconomic opportunities. The commenters stated that there needs to be recognition in the rule that it is important to retain the character of communities while investing more resources in the area rather than attempting to remove people who have cultural, ethnic and historical connections to their neighborhoods.

Commenters recommended that HUD should, in § 5.150, which addresses the purpose of the rule, change the ''or'' to ''and'' in the last sentence. Some commenters also stated that the definition of ''affirmatively furthering fair housing'' also needs to explicitly include improvement and preservation of subsidized housing. Other commenters stated that the rule should explicitly state development on public housing sites is consistent with the obligation to affirmatively further fair housing.

HUD Response: The duty to affirmatively further fair housing does not dictate or preclude particular investments or strategies as a matter of law. Under HUD's rule, program participants will identify fair housing issues and contributing factors, prioritize contributing factors (giving highest priority to those factors that limit or deny fair housing choice or access to opportunity or negatively impact fair housing or civil rights compliance), and propose goals to address them. Program participants have latitude, if they so choose, to prioritize their goals and strategies in the local decisionmaking process based on the information, data and analysis in the AFH.

HUD's rule recognizes the role of place-based strategies, including economic development to improve conditions in high poverty neighborhoods, as well as preservation of the existing affordable housing stock, including HUD-assisted housing, to help respond to the overwhelming need for affordable housing. Examples of such strategies include investments that will improve conditions and thereby reduce disparities in access to opportunity between impacted neighborhoods and the rest of the city or efforts to maintain and preserve the existing affordable rental housing stock, including HUD-assisted housing, to address a jurisdiction's fair housing issues. Preservation activities such as the Rental Assistance Demonstration (RAD) or the Choice Neighborhoods Initiative may be a part of such a strategy.

There could be issues, however, with strategies that rely solely on investment in areas with high racial or ethnic concentrations of low-income residents to the exclusion of providing access to affordable housing outside of those areas. For example, in areas with a history of segregation, if a program participant has the ability to create opportunities outside of the segregated, low-income areas but declines to do so in favor of place-based strategies, there could be a legitimate claim that HUD and its program participants were acting to preclude a choice of neighborhoods to historically segregated groups, as well as failing to affirmatively further fair housing as required by the Fair Housing Act.

A balanced approach would include, as appropriate, the removal of barriers that prevent people from accessing housing in areas of opportunity, the development of affordable housing in such areas, effective housing mobility programs and/or concerted housing preservation and community revitalization efforts, where any such actions are designed to achieve fair housing outcomes such as reducing disproportionate housing needs, transforming RCAPs/ECAPs by addressing the combined effects of segregation coupled with poverty, increasing integration, and increasing access to opportunity, such as high-performing schools, transportation, and jobs.

In addition, place-based and mobility strategies need not be mutually exclusive; for instance, a regional AFH could conclude that additional affordable housing is needed in higher opportunity areas and thus new construction should be incentivized in those places. At the same time, while such efforts are being implemented, preserving the existing affordable rental stock can also still be a priority based on the fair housing issues identified in the AFH, which may include the disproportionate housing needs analysis in the AFH or the need to avoid displacement of assisted residents from areas that may be experiencing economic improvement. Program participants have latitude to adjust their goals, priorities, and strategies in the local decisionmaking process based on the information, data and analysis in the AFH, so long as the goals, priorities, strategies, and actions affirmatively further fair housing.

Rule changes and clarifications. To help clarify these issues, in this final rule HUD revises the purpose section (§ 5.150) and the definition of ''affirmatively furthering fair housing'' (§ 5.152) to clarify that HUD supports a balanced approach to affirmatively furthering fair housing. In this final rule, HUD has added a new provision describing potential actions or strategies a program participant may take, which is inclusive of both place-based solutions and options to preserve existing affordable housing. Strategies can include increasing mobility for members of protected classes to provide greater access to opportunity. (§ 5.154(d)(5).)

HUD also revises the definition of ''affirmatively furthering fair housing'' in this final rule by replacing the term ''proactive steps'' with the term ''meaningful actions.'' At the proposed rule stage, commenters requested that HUD ensure that ''proactive steps'' would not be interpreted in a manner that conflicted with the well-established case law under the Fair Housing Act that defines the contours of the affirmatively furthering fair housing mandate. Upon further review, HUD found that the term ''proactive'' has various meanings and does not have a body of case law applying the term in the civil rights context. For this reason, HUD replaces ''proactive steps'' with ''meaningful actions,'' a concept used by the Supreme Court in civil rights case law and used by Federal agencies in explaining civil rights requirements.[9] With such case law foundation, ''meaningful actions'' provides greater clarity on the actions that program participants are expected to take in carrying out their duty to affirmatively further fair housing. Additionally, in contrast to ''proactive,'' which may convey only a future-oriented approach, the term ''meaningful actions'' encompasses actions to either address historic or current fair housing problems, or both, as well as proactively responding to anticipated fair housing problems. (§ 5.152.)

To provide further clarity, HUD defines the term meaningful actions to mean those significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity. (§ 5.152.)

Comment: Not all segregation is equal or negative. Commenters stated that some housing segregation may be self-imposed, especially among newly arrived immigrant populations. The commenters requested that HUD study the dynamics of segregation besides referencing traditional studies and their assumptions so that policies derived from the new AFH process do not have unintended consequences and adversely

[9] See *e.g.,* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000; Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455–41472 (June 18, 2002); The Department of Housing and Urban Development, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 72 FR 2732–2754 (January 22, 2007); *Alexander* v. *Choate,* 469 U.S. 287, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985); *Lau* v. *Nichols,* 414 U.S. 563 (U.S. 1974); *United Air Lines, Inc.* v. *Air Line Pilots Ass'n, Int'l,* 563 F.3d 257, 268 (7th Cir. 2009).

affect the protected classes that we are all trying to assist.

HUD Response: Individuals are free to choose where they prefer to live. The Fair Housing Act does not prohibit individuals from choosing where they wish to live, but it does prohibit policies and actions by covered entities and individuals that deny choice or access to housing or opportunity through the segregation of persons protected by the Fair Housing Act.

A key purpose of the Fair Housing Act is to create open residential communities in which individuals may choose where they prefer to live without regard to race, color, national origin, disability, and other characteristics protected by the Act. HUD is familiar with the research on immigrant communities and recognizes that there are complex social dynamics at work in different parts of the nation. The purpose of the AFH is to help identify potential fair housing related issues, including factors that limit or deny individuals or groups with a full range of housing options and choices on the basis of being in a protected class as defined by the Fair Housing Act.

In response to these and similar comments, HUD has made several changes to the regulatory text.

Rule Changes. The definition of ''affirmatively furthering fair housing'' in § 5.152 in this final rule revises language from the proposed rule that included the phrase, ''to end racially or ethnically concentrated areas of poverty,'' to ''transforming . . . [those areas] into areas of opportunity.'' This final rule also makes several clarifications in § 5.154, which addresses the ''Assessment of Fair Housing.'' Revised § 5.154(d)(4)(ii) provides that the AFH must identify significant contributing factors, prioritize such factors, and justify the prioritization of the contributing factors that will be addressed in the program participant's fair housing goals. In prioritizing contributing factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance.

2. Competing with Other HUD Priorities

Comment: The proposed rule competes with other HUD policies and directives. Commenters stated that HUD's proposed rule competes with other HUD policies and directives. Commenters stated that, in recent years, HUD has sought to make several policy changes that would limit the ability of program participants to affirmatively further fair housing and these policies include reducing the power of flat rents to incentivize mixed-income communities in public housing, proposing to limit CDBG eligibility for higher-income communities, and decreasing fair market rents that create higher rent burdens for voucher holders. The commenters stated that these policies lower the quality of housing and increase concentration of voucher-assisted households in developments and neighborhoods with higher concentration of poverty. Some commenters also expressed concern that the provisions on segregation may inadvertently prohibit currently authorized program activities that serve specific populations, including the elderly, persons with disabilities and the homeless, or may appear to create a barrier to capital reinvestment or preservation of existing affordable housing if it is located in an area that meets the rule's definitions of segregation or racially or ethnically concentrated areas of poverty.

HUD Response: As discussed under the ''Legal Authority'' section of the preamble to this final rule, program participants that receive assistance from HUD under the programs covered by this final rule have statutory obligations to affirmatively further fair housing, apart from the obligation imposed by the Fair Housing Act itself. They also must comply with the authorizing statutes governing the programs in which they participate, as well as the regulations implementing those statutes. Complying with both types of obligations is a condition of receiving Federal financial assistance from HUD, and the obligations are not inconsistent with each other.

To confirm there is no inconsistency, HUD has made key changes in this final rule, especially by adding a new definition of ''housing programs serving specified populations,'' as noted in Section III of this preamble. The final rule also adopts amended language in the ''Purpose ''and ''strategies and actions'' sections (§§ 5.150 and 5.154) that addresses preservation of affordable housing.

While the final rule encourages local governments to confront historic siting issues through public and assisted housing, the final rule also recognizes the critical role and inherent value in the existing stock of long-term affordable housing. The nation is in the midst of a rental housing crisis, with over 7.5 million very low-income families facing worst case housing needs for affordable housing, meaning they either pay more than half their incomes for rent or live in severely inadequate housing conditions. This figure that does not include an additional estimated 580,000 to 1.42 million persons experiencing homelessness or an additional millions of low-income homeowners also facing exorbitant often unaffordable housing costs.[10]

Rule change and clarification. HUD clarifies that participation in HUD and other Federal programs that serve specified populations is not inconsistent with the duty to affirmatively further fair housing, through the added definition of ''housing programs serving specified populations'' and in new language to the definition of ''segregation,'' both added in this final rule. (*See* § 5.152.)

Comment: The rule conflicts with HUD programs such as those providing designated housing for seniors and persons with disabilities. Commenters stated that the proposed rule's direction to PHAs to design their tenant selection and admission policies and development activities to reduce concentrations of tenants with disabilities conflicts with HUD programs carried out by PHAs and other program participants that provide transitional housing, permanent supportive housing, and other housing restricted to elderly persons or to nonelderly persons with disabilities, including those having experienced homelessness, which often require recipients to live in close proximity so that services can be provided in a coordinated and cost-effective manner. A commenter requested that HUD add an explicit statement in the final rule that participants in HUD program and other Federal programs that provide services to elderly persons, persons with disabilities, or other specified populations, are not violating their obligation to affirmatively further fair housing.

HUD Response: In its recent Statement on the Role of Housing in Advancing the Goals of *Olmstead* (*Olmstead* Statement or Statement), HUD discussed at length the interaction

[10] For the worst case housing needs estimate, see: HUD, Office of Policy Development and Research, ''Worst Case Housing Needs: 2015 Report to Congress—Executive Summary'' (January 2015). *http://www.huduser.org/portal/publications/affhsg/wc_HsgNeeds15.html.* For estimates on homelessness, see: HUD, ''The 2014 Annual Homeless Assessment Report (AHAR) to Congress (October 2014) (for Point in Time estimate of 578,000 people who were homeless on any given night in January 2014). *https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf.* and HUD, ''2013 Annual Homeless Assessment Report: Part 2—Estimates of Homelessness in the U.S.'' (February 2015) (Throughout the course of the year in 2013, an estimated 1.42 million people used a homeless shelter at some point). *https://www.hudexchange.info/onecpd/assets/File/2013-AHAR-Part-2-Section-1.pdf.*

between the civil rights related duties to provide housing for persons with disabilities in the most integrated setting appropriate to their needs, as mandated by section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and the HUD programs that are authorized to provide housing serving specified populations.[11] HUD encourages program participants and members of the public to read this Statement carefully. The Statement clearly presents how the legal requirements of civil rights statutes requiring persons with disabilities to be served in integrated settings are appropriately addressed in the context of HUD housing programs that are permitted to serve populations consisting exclusively or primarily of persons with disabilities. These programs are authorized by program statute or executive order or when a different or separate setting is the only one that will provide persons with disabilities with housing that affords them an equal opportunity for the housing to be effective, consistent with HUD's section 504 regulations at 24 CFR 8.4(b)(1)(iv).

To address the concerns in this rule, consistent with the guidance provided in its *Olmstead* Statement, HUD has added a definition of ''housing programs serving specified populations'' in § 5.152 that explicitly states that participation in these programs does not present a fair housing issue of segregation, provided that such programs are administered to comply with program regulations and applicable civil rights requirements. Housing programs serving specified populations are HUD and Federal housing programs, including designation in programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301, *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e) that: (1) Serve specific identified populations; and (2) comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs), the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), and other Federal civil rights statutes and regulations.

A violation would occur, however, if the programs are administered in a manner in which they do not comply with applicable civil rights laws. For example, a program participant providing housing for individuals with disabilities may not refuse to serve individuals who are deaf or hard of hearing because of the cost of interpreters. Because the example would provide different services based on type of disability, such a limitation is prohibited by civil rights statutes and regulations. However, as long as the program is administered and operated in accordance with program requirements and civil rights statutes and regulations, participation does not present a fair housing issue.

By adding such a definition, HUD seeks to assure current and prospective program participants that utilize Federal housing programs, including HUD or other Federal agency programs (such as the housing programs of the U.S. Department of Veterans Affairs or the U.S. Department of Agriculture's Rural Housing Service housing programs) to serve specific populations does not violate this rule's provisions related to the definition of ''segregation'' or the general duty to affirmatively further fair housing. Participation in these Federally funded programs is encouraged, as is coordination of programs together to support housing options for specific groups, including the homeless and persons with disabilities.

HUD's *Olmstead* Statement discusses these legal requirements and the resulting trend of shifting service delivery from a medical, institutional model designed for the efficiency of the provider to a model emphasizing personal choice and the provision of services in integrated settings where individuals with disabilities can live and interact with persons without disabilities to the fullest extent possible. As set forth in HUD's *Olmstead* Statement, HUD encourages providers of housing for persons with disabilities to explore various housing models and the needs of their communities. While HUD encourages these efforts, HUD reiterates the legal authority of providers of housing to persons with disabilities to develop and operate project-based or single-site supportive housing projects both as permanent supportive housing for the homeless and for individuals with disabilities as authorized by the statutes and regulations that govern the housing, so long as such operation is consistent with civil rights laws and regulations, including section 504 of the Rehabilitation Act of 1973 and HUD's regulations at 24 CFR part 8.

Rule change. This final rule adds a definition of ''Housing programs serving specified populations'' in § 5.152, as described above.

3. Scope of AFFH

a. Scope of AFFH Obligation

Comment: HUD's definition of affirmatively furthering fair housing should be changed. Commenters stated that what constitutes affirmatively fair housing has never fully been defined by Congress or HUD, and they supported HUD's effort to create such a definition. Commenters stated that although they support HUD's efforts, HUD's definition expands affirmatively furthering fair housing to include access to nonhousing elements, such as transportation, employment, education, and other community facilities, extends the protections of the Fair Housing Act to non-protected classes through a prohibition on racially or ethnically concentrated areas of poverty.

Commenters stated that access to community resources is very important, and often has an impact on neighborhoods, their residents, and quality of life; however, it is not covered by the Fair Housing Act, and is, therefore beyond the scope of the protections of the Fair Housing Act.

Other commenters stated that HUD's duty is to ensure that historical segregation has been remedied, and that HUD's rule which goes beyond this duty is unnecessary and contrary to the legislative intent. Commenters stated that HUD has no constitutional authority to practice social engineering, especially at the expense of taxpayers, local or state governments, and the general population.

Commenters stated that while the rule's focus on disparities in access to community assets is noble, the requirement to reduce these disparities for the classes protected under the Fair Housing Act has little to do with affirmatively furthering fair housing. Commenters stated that they have sometimes seen public school systems willing to take the steps needed to help achieve stable integrated neighborhoods (and the public schools play a major role in perpetuating housing segregation), but reducing disparities without integrating the schools is reminiscent of the separate but equal doctrine.

Commenters stated that even more removed from affirmatively furthering fair housing are such issues as recreational facilities and programs, social service programs, parks, roads,

[11] See *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.*

street lighting, trash collection, street cleaning, crime prevention, and police protection activities which the commenters stated were also in the 1995 HUD Fair Housing Planning Guide. Commenters stated that recipients have largely left these peripheral issues out of their analyses of impediments (AIs) for good reasons because they have little, if nothing, to do with affirmatively furthering fair housing and addressing them would make the cost of conducting an AI (and AFH) soar.

Commenters recommended that HUD issue a more narrowly tailored definition of ''affirmatively furthering fair housing'' and remove nonhousing subjects from the list of elements to be addressed in the Assessments of Fair Housing. The commenters stated that at the same time, they encourage HUD, outside of the rulemaking process to continue to work with housing authorities and other interested parties to increase funding for and to make available resources that will increase access of groups with characteristics protected by the Fair Housing Act as well as low-income families to transportation, employment, education and other community facilities.

In contrast to these commenters, other commenters commended HUD for its definition of ''affirmatively furthering fair housing'' in the proposed rule and, as stated by the commenters, HUD's clarification that affirmatively furthering fair housing means expanding access to important community assets and resources that have an impact on the quality of life for residents. Commenters stated that HUD has taken a very important step towards achieving Congress' vision about how the Fair Housing Act should be a tool for creating equal opportunity. Commenters stated that HUD's rule is consistent with the Fair Housing Act, at 42 U.S.C. 3608, and as interpreted by the Federal courts in a series of landmark decisions. The commenters stated that the statutory duty to affirmatively further fair housing was recognized by the appellate court in *N.A.A.C.P Boston Chapter* v. *HUD,* 817 F.2d 149, 155 (1st Cir. 1987), which held that the Fair Housing Act obligated HUD ''[to] do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.''

HUD Response: HUD's final rule is a fair housing planning rule, which is designed to help program participants fulfill their statutory obligation to affirmatively further fair housing. HUD developed the AFH as a mechanism to enable program participants to more effectively identify and address fair housing issues and contributing factors. Because housing units are part of a community and do not exist in a vacuum, an important component of fair housing planning is to assess why families and individuals favor specific neighborhoods in which to reside and whether there is a lack of opportunity to live in such neighborhoods for groups of persons based on race, color, national origin, disability, and other characteristics protected by the Fair Housing Act. HUD's Assessment Tool, which includes a section on community assets and exposure to adverse community factors, is meant to aid program participants in determining if and where conditions exist that may restrict fair housing choice and access to opportunity. In order for program participants to identify such conditions, which constitute fair housing issues, access to opportunity warrants consideration in the overall analysis performed in preparing an AFH. The Assessment Tool guides program participants in considering access to public transportation, quality schools and jobs, exposure to poverty, environmental health hazards, and the location of deteriorated or abandoned properties when identifying where fair housing issues may exist. Following this analysis, the program participants are to set goals consistent with fair housing and civil rights requirements to overcome those issues within their respective geographic area, determined, by the program participant, to be priority fair housing issues. Such an analysis and prioritization of goals is consistent with the intent of the Fair Housing Act and Fair Housing Act case law. Courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: It obligates them to take meaningful actions to address segregation and related barriers for those protected by the Act, particularly as reflected in racially or ethnically concentrated areas of poverty.[12]

Comment: In the AFFH rule, HUD takes the analysis of disparate impact one step further. Commenters stated that HUD is inappropriately using the disparate impact theory as the basis for its AFFH rule. Commenters stated that statutes that create disparate impact liability use different language—such as language proscribing actions that ''adversely affect'' an individual because of his or her membership in a protected group—to focus on the effect of the action on the individual rather than on the motivation for the action. Commenters stated that unlike such statutes, the text of the Fair Housing Act does not prohibit practices that result in a disparate impact in the absence of discriminatory intent. Commenters stated that by its plain terms, section 3604 of the Fair Housing Act prohibits only intentional discrimination. Commenters stated that HUD's rule contemplates an analysis that goes well beyond the finding of any specific intent to discriminate. Commenters stated that HUD's rule contemplates massive plans that take into account statistical analyses of race, gender, land use, facilities, siting and a variety of other contributing factors, and HUD does not require an analysis to show that any discrimination against a member of a protected class was intentional, but rather the entire contemplation of HUD's rule is that through careful planning in advance and carefully implemented restrictions on actions of participants (albeit benign actions), HUD can decide how best to avoid actions that might have a discriminatory impact on one or more protected groups.

Commenters stated that whether HUD's extensive planning exercise, which commenters claim overrides local laws, rules and practices, is wise or should be the law of the land is perhaps a legitimate subject for debate, but that debate should occur within the legislative body that establishes the laws, not in a proposed regulation of an agency of the executive branch that has been created to administer the laws, not create them. HUD must be bound by the terms of the Fair Housing Act, and that act does not authorize the use of disparate impact analysis as the basis for a finding of discrimination.

HUD Response: The basis for HUD's AFFH rule is the Fair Housing Act and certain other statutory provisions, specifically the Housing and Community and Development Act of 1974 and the U.S. Housing Act of 1937, that require HUD programs to be administered in a manner that affirmatively furthers fair housing. This means that HUD has the statutory authority to ensure that participants in HUD-funded programs not only refrain from discrimination, but also take meaningful actions to increase fair housing choice and access to opportunity and combat discrimination.

[12] See discussion in the July 19, 2013, proposed rule at 78 FR 43712, *N.A.A.C.P. Boston Chapter* v. *Secretary of Housing and Urban Development,* 817 F.2d 149 (1st Cir. 1987), *Otero* v. *N.Y. City Hous. Auth.,* 484 F.2d 1122 (2d Cir. 1973); *Shannon* v. *HUD,* 436 F.2d 809 (3d Cir. 1970).

Pursuant to its authority under the Fair Housing Act, HUD has long directed program participants to undertake an assessment of fair housing issues—previously under the AI approach, and following the effective date of this rule, under the new AFH approach. The intent of both planning processes (previously the AI and now the AFH) is to help program participants determine whether programs and activities restrict fair housing choice and access to opportunity, and, if so, develop a plan for addressing these restrictions.

In response to comments asserting that the Fair Housing Act does not recognize disparate impact liability, *the* Supreme Court recently *ruled* that the Fair Housing Act prohibits discrimination *caused by* policies or practices that have an unjustified disparate impact because of race, color, religion, sex, familial status, national origin, or disability. *Texas Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys Project,* No. 13–1371, 2015 U.S. LEXIS 4249 (June 25, 2015). In that decision, the Supreme Court also acknowledged ''the Fair Housing Act's continuing role in moving the Nation toward a more integrated society.'' (See case cited at page 42.)

b. Scope of AFFH Coverage—Populations

Comment: Poverty is not a protected class. Commenters stated that Congress has not yet extended the protections of the Fair Housing Act to persons based on economic circumstances; that is, poverty is not a protected class. Commenters stated that HUD, in its AFFH rule, endeavors to extend Fair Housing Act protections to certain classes of people who are economically disadvantaged without statutory authority by requiring an analysis of racially or ethnically concentrated areas of poverty.

HUD Response: HUD agrees with the comment that the Fair Housing Act does not prohibit discrimination on the basis of income or other characteristics not specified in the Act, and it is not HUD's intent to use the AFFH rule to expand the characteristics protected by the Act. HUD would note that the majority of its programs are meant to assist low-income households to obtain decent, safe, and affordable housing and such actions entail an examination of income. Moreover, the Fair Housing Act does require HUD to administer its housing and urban development programs—that is, programs that target assistance to low-income persons—in a manner to affirmatively further fair housing. Accordingly, it is entirely consistent with the Fair Housing Act's duty to affirmatively further fair housing to counteract past policies and decisions that account for today's racially or ethnically concentrated areas of poverty or housing cost burdens and housing needs that are disproportionately high for certain groups of persons based on characteristics protected by the Fair Housing Act. Preparation of an AFH could be an important step in reducing poverty among groups of persons who share characteristics protected by the Fair Housing Act. The focus and purpose of the AFH is to identify, and to begin the process of planning to overcome, the causes and contributing factors that deny or impede housing choice and access to opportunity based on race, color, religion, sex, national origin, familial status, and disability. In addition, a large body of research has consistently found that the problems associated with segregation are greatly exacerbated when combined with concentrated poverty. That is the legal basis and context for the examination of RCAPs/ECAPs, as required by the rule.

Comment: Affirmatively furthering fair housing should consider groups beyond those based on the protected characteristics listed in the Fair Housing Act. In contrast to the commenters in the preceding comment, other commenters stated that affirmatively furthering fair housing should recognize and consider a wider range of classes targeted for discrimination. The commenters urged HUD, in the final rule, to recognize members of the lesbian, gay, bisexual, and transgender (LGBT) community, Housing Choice Voucher (HCV) holders (often subject to source of income discrimination as a proxy for discrimination based on race, familial status, and disability), victims of domestic violence, homeless individuals, migrant workers, and residents in rural areas, as groups in need of protections. The commenters stated that these vulnerable populations are disproportionately members of Federally-protected classes, and HUD should encourage program participants to address their housing barriers as part of their efforts to affirmatively further fair housing. Commenters stated that the severity of affordable housing need is not necessarily dictated by membership in a protected class.

HUD Response: While HUD recognizes that persons may experience housing discrimination based on their source of income, marital status, migrant worker status, history of domestic violence, or homelessness, etc., as provided in the response to the preceding comment, HUD may not expand, through regulation, protected bases beyond those specified in the Fair Housing Act. The Fair Housing Act does recognize discrimination against LGBT individuals when such discrimination is on the basis of sex, which is a protected characteristic, as stated in § 5.152 of this final rule, which includes nonconformity with gender stereotypes. Such discrimination should, as appropriate, be considered in a program participant's AFH.

Comment: The AFH analysis must address every protected class. Commenters stated that if a State or jurisdiction makes the determination that its AFH plan that there is no need to affirmatively further fair housing for a particular group or groups, then the jurisdiction should offer an explanation of this determination. The commenters stated that the baseline presumption should be that every AFH analysis will discuss every protected class in each analysis section, with an explanatory note where the AFH authors elect to only discuss a subset of the protected classes. The commenters stated that this will not only encourage jurisdictions to examine the disparate housing needs and level of segregation of each protected class within their region, but will also encourage research and planning strategies to account for intersectionality—*i.e.,* the distinct experiences of members of one or more protected classes, and stated, as an example, women who are members of racial and ethnic minority groups and may have disproportionate housing needs in a jurisdiction based not only on their identity as a member of a racial or ethnic minority group, but also their identity as women. Some commenters suggested that the proposed rule appears to focus only on protected classes of race and ethnicity.

A commenter suggested that, to ensure that each State, jurisdiction, or PHA fully accounts for every protected class within its region, HUD's final rule should revise § 5.154(d)(2)(iii) and (iv) as follows with italics reflecting new language and brackets reflecting deleted language: ''(iii) Identify whether *there are* significant disparities in access to community assets [exist across] for all protected classes *as compared to other groups* within the *same* jurisdiction and region; and (iv) Identify whether *there are* disproportionate housing needs *for each protected class as compared to other groups* within the *same* jurisdiction and region.''

HUD Response: The proposed rule provided for the analysis of data on the basis of race, color, religion, sex, familial status, national origin, and disability, and the final rule adopts this language (see introductory text to

§ 5.154(d)). Program participants that do not address fair housing issues on these bases run the risk of having their AFH determined to be incomplete and, consequently, not accepted. While proposed § 5.154 listed all the protected classes, HUD determined that the language of this section could be better stated. HUD did not adopt the exact language presented by the latter commenter, but made the clarification requested by this commenter.

Rule clarification. In § 5.154(d)(2), which pertains to the program participant's analysis of data, HUD clarifies that such analysis pertains to ''each protected class.''

Comment: Housing options must allow elderly persons to age in place. Commenters stated that housing options that support successful aging in place are disproportionately unavailable in racially concentrated segregated neighborhoods. The commenters stated that such communities lack the supportive services and transportation options that are necessary to support successful aging, and that unlike one who lives in a community with more robust options and resources, people in protected classes who live in segregated communities may be forced as they age to make the Hobson's choice of foregoing suitable housing and services or breaking social ties to get access to such supports and services. The commenters asked HUD to provide program participants with adequate information and insight into housing and housing-related aspects of communities that will help people age in place, such as transportation, accessibility and walkability improvements. The commenters stated that the AFH process offers HUD the opportunity to assist program participants to plan for the future and for the needs of a growing population, in support of the Fair Housing Act's goal of integration.

HUD Response: While noting that ''age'' is not a protected class under the Fair Housing Act, Title VI, or Section 504, HUD agrees that adequate information and insight into housing and housing-related aspects of communities such as transportation and physical accessibility, as well as other housing-related aspects of communities such as access to high performing schools, are important items that must be considered in the context of affirmatively furthering fair housing. HUD's proposed Assessment Tool provides for consideration of these factors under the heading of ''Disparities in Access to Opportunity,'' and an analysis of the availability of these assets on a nondiscriminatory basis is part of the AFH, and undertaken to help avoid displacement of existing residents in areas experiencing renewed economic growth or housing price appreciation, or disinvestment in existing low-income neighborhoods.

Comment: Clarify applicability of affirmatively furthering fair housing to LGBT individuals. Commenters stated that it is unclear whether, apart from the listed protected classes, other groups are protected by HUD's rule. Commenters urged HUD to require program participants to consider the housing needs and barriers faced by LGBT individuals and families. Commenters stated that such inclusion would make the AFFH rule consistent with HUD's February 3, 2012, rule prohibiting discrimination against LGBT individuals and families in HUD-funded or Federal Housing Administration-insured housing, referred to as the Equal Access Rule. (See § 5.105(a)(2).) Commenters further stated that such inclusion would align with the decisions of Federal courts across the country, which have recognized protections for LGBT individuals on the basis of sex as a protected class. Commenters stated that, because HUD's rule addresses steps that HUD program participants should take to ensure fair housing for all, LGBT individuals and families should be included along with the seven protected classes under the federal Fair Housing Act.

Other commenters stated that, while discrimination based on sexual orientation and gender identity is not explicitly prohibited by the Fair Housing Act, HUD explained in the preamble its Equal Access Rule that it interprets the Fair Housing Act's prohibition against discrimination based on ''sex'' to include gender identity. The commenters stated that while this has extended crucial protections to transgender and gender nonconforming individuals, truly ensuring fair housing requires more than just investigation of claims of discrimination after the fact. Commenters stated that explicitly enumerating LGBT individuals and families among those groups whose needs and barriers to housing will receive particular consideration by program participants is especially important.

HUD Response: It is HUD's policy to ensure equal access on the basis of sexual orientation, gender identity, and marital status in housing assisted by HUD or subject to a mortgage insured by FHA. HUD published its Equal Access Rule on February 3, 2012, to formally establish this policy. (See 77 FR 5662, codified at § 5.105(a)(2).) HUD's Equal Access Rule did not and could not, however, expand statutory fair housing protection to all persons on these bases. The principal legal authorities for the AFFH rule are the affirmative provisions of the Fair Housing Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and Executive Order 12892 (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing). HUD may not expand, through regulation, the range of protected characteristics specified in the statutes and executive order.

Although sexual orientation and gender identity are not identified as protected classes in the Fair Housing Act, the Fair Housing Act's prohibition of discrimination on the basis of sex prohibits discrimination against LGBT individuals in certain circumstances, such as those involving nonconformity with gender stereotypes. Therefore, for example, a landlord's refusal to renew the lease of a HCV holder because he or she failed to conform to male or female gender stereotypes could be a violation of HUD's Equal Access Rule as well as the Fair Housing Act. Fair housing complaints filed on this basis as well as results of testing or local knowledge of these types of discriminatory practices should, if appropriate, be considered in a program participant's AFH.

In addition, a program participant may be located in a State or locality that has adopted a fair housing statute or ordinance that extends fair housing protection on bases in addition to those specified in the Fair Housing Act. Therefore, the program participant may find it beneficial for its larger planning efforts to include such additional protected bases in its AFH. Even so, HUD cannot direct a program participant to do so or to consider AFH content that covers protected classes beyond those in the Fair Housing Act.

c. Scope of AFFH Coverage—Resources

Comment: Clarify use of resources to which AFH would apply. Many commenters stated that the final rule should be explicit that all of a program participant's housing and community development resources, as well as its policies, practices, and procedures must be assessed, and that these resources would involve not only HUD funds or other Federal funds but non-federal resources. Commenters stated that influencing the allocation of HUD dollars is insufficient and that other Federal and State programs must also spend resources in ways that affirmatively further fair housing. The commenters stated that the proposed rule could be misunderstood to only

consider use of HUD funds or Federal funds, and that however large the Federal investment in housing may be, it is small in comparison to housing activity in the private market.

Commenters stated that the final rule should make explicit what is already implicit and that is that the duty to affirmatively further fair housing applies to a program participant's activities that do not involve the use of HUD funds. Commenters stated that the scope of the duty is particularly important in two contexts. First, when a program participant has violated the nondiscrimination provisions of the Fair Housing Act through activities that do not involve HUD or other Federal funds, that entity cannot certify that it is in compliance with the duty to affirmatively furthering fair housing, and HUD should not accept the certification of such a program participant unless its AFH includes an effective remedy for the violation. Second, in many cases, meaningful goals designed to address fair housing contributing factors may require actions on the part of program participants that do not involve the use of HUD funds. The commenters offered as an example that a jurisdiction's existing zoning ordinance may be identified as one of the contributing factors influencing existing residential segregation, concentrations of poverty, disparities in access to community assets, and disproportionate housing needs based on protected class. Commenters stated that even if the ordinance does not violate the nondiscrimination provisions of the Fair Housing Act the jurisdiction may need to adopt an inclusionary zoning ordinance because such a policy would be the most effective means of addressing the identified contributing factors under the circumstances. Commenters offered as another example, a jurisdiction that has cited the lack of access to mass transit as a contributing factor which hinders the development of affordable units in a high opportunity area and that may need to extend bus service to that neighborhood.

Commenters stated that section 3608 of the Fair Housing Act does not permit jurisdictions to violate fair housing standards with non-HUD resources and, at the same time, certify compliance with the obligation to affirmatively furthering fair housing by analyzing only activities using HUD funds. The commenters stated that if a city's zoning division is enforcing a zoning code (using all local funds) that has been found to discriminate and yet is using CDBG funds in unobjectionable ways, HUD should not accept a CDBG AFFH certification that fails to address a plan to remedy the zoning problem. Commenters concluded that this is well established law and should be made explicit in the final rule and mechanisms should be included to address this issue.

In contrast to these commenters, other commenters stated that the final rule should be clear that the AFFH rule only applies to programs under HUD's jurisdiction. Commenters stated that imposing the AFFH rule on other resources, such as education, health care, and transportation, requires significantly more comprehensive federal authority that incorporates other federal departments. Commenters stated that the final rule should set clear parameters regarding the resources and programs that are governed by the rule.

HUD Response: As HUD stated in the proposed rule, it is a statutory condition of the receipt of HUD funding that program participants certify that they will affirmatively further fair housing. The proposed rule provided that program participants would take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of this rule and would take no action materially inconsistent with their obligation to affirmatively further fair housing. While the duty to affirmatively further fair housing derives from the receipt of HUD funds, commenters are correct in saying that the duty applies to all of a program participant's programs and activities related to housing and urban development.

Comment: The scope of activities related to housing and urban development should be determined by the program participant. Commenters stated that the appropriate scope of activities should be left up to the communities to decide given the wide variety and characteristics of the communities that participate in this program. Commenters stated that a one size fits all mandate runs the real risk of further eroding the consolidated plan process and substantially reducing the consolidated plan's real value and impact in how a community conducts and implements its planning efforts.

Other commenters stated that the duty to affirmatively further fair housing should apply to activities that make sense. The commenters stated that affirmatively further fair housing should apply to activities in which there is an opportunity for unfair housing to occur such as home purchase or rental.

HUD Response: HUD agrees with the commenters that the analysis of fair housing issues, the identification and prioritization of contributing factors, and the establishment of goals to address such issues are to be determined by the program participant. This rule cannot provide grantees with authority or obligations beyond those they already have legal jurisdiction over. In some cases, program participants may be local government agencies having authority over some areas that other participants, such as public housing authorities, do not. In many cases, the analysis of local fair housing issues that the rule requires will include issues beyond the program participants' legal authority to change. For example, a PHA may be unable to change a zoning law. In such cases, the analysis is still useful in identifying those challenges that, while they may beyond the program participants' control, could be addressed by other state or local government agencies or that otherwise present a barrier or constitute a fair housing contributing factor, as defined in the rule.

While HUD will review a program participant's AFH for consistency with fair housing and civil rights laws and determine if the AFH is substantially complete, the best source of information about housing and related issues in a geographic area will almost always be found with the program participant or participants undertaking Federally funded housing and related activities in the geographic area or areas that they serve. The program participants are in the better position to identify housing choice issues faced by residents in their areas. HUD's AFFH rule is intended to help program participants by providing additional information and data that is expected to aid the program participants' analysis and final decisions on investment of Federal funds. HUD will then review the analysis of a program participant for consistency with fair housing and civil rights laws, as well as determine if such analysis is substantially complete. HUD may determine that a program participant's analysis, goals, or actions are materially inconsistent with current Federal laws and regulations related to fair housing and civil rights, or that the program participant has failed to fulfill their obligations to conduct a complete analysis. In such cases, HUD will request that the program participant revise the associated AFH to ensure compliance. Such a request does not interfere with local decisionmaking powers of HUD's program participants, but ensures that such decisionmaking comports with a program participant's overall obligation to affirmatively furthering fair housing.

However, as noted in HUD's response to an earlier comment pertaining to

community assets, fair housing choices are not limited to transactions relating to rental or ownership of housing. Fair housing issues may arise from such factors as zoning and land use; the proposed location, design, and construction of housing; public services that may be offered in connection with housing (*e.g.,* water, sanitation), and a host of other issues. Accordingly, the AFH approach focuses primarily on how to assist program participants in being better informed about, and better able to set goals and priorities relating to, conditions in their current environments that involve fair housing concerns, such as patterns of integration and segregation; racially or ethnically concentrated areas of poverty; disproportionate housing needs, and housing-related barriers in access to education, employment, transportation, and jobs, among others, to ensure that these conditions are taken into consideration in making funding decisions.

The final rule provides, as did the proposed rule, that program participants have flexibility in setting goals and priorities relating to fair housing concerns so long as those goals are designed, and are consistent with, the analysis of data and local knowledge and the obligation to affirmatively further fair housing and other fair housing and civil rights requirements.

d. Scope of AFFH Coverage—Activities

Comment: Clarify scope of activities considered to be activities relating to housing and urban development under the Fair Housing Act should be Federally-funded grant programs. Commenters stated that activities considered related to housing and urban development under the Fair Housing Act should include those eligible under the CDBG program, ESG, the HOME program and other Federal grant programs, as well as PHA mandated activities. Commenters stated that this should be the minimum requirement, and going beyond the minimum should be at the discretion of each program participant. The commenters stated that mandating program participants to go beyond the minimum would likely result in an administrative burden that HUD has not contemplated.

PHA commenters stated that, as HUD is aware, PHAs may only conduct activities within their areas of operation, as defined by State or local law, and that these geographic constraints impede PHAs' ability to implement activities envisioned by a multi-jurisdictional, regional or state AFH. The commenters stated that, for example, a PHA that serves a predominantly minority or high poverty area can only undertake activities within that specific geographic area. Commenters requested that the final rule recognize PHAs' geographic constraints and limit PHAs' liability for issues or activities outside their area of operation pursuant to a jointly-undertaken AFH. PHA commenters stated the following activities should be exempt from fair housing planning: Redevelopment on public housing sites owned by a PHA before the effective date of the rule; public housing developments operated by a PHA with fewer than 100 public housing units; public housing developments operated by a PHA which house only elderly persons or persons with disabilities, or both; public housing developments operated by a PHA which consist of only one general occupancy, family public housing development; public housing developments approved for demolition or for conversion to project-based or tenant-based assistance, including conversions under the Rental Assistance Demonstration program or any equivalent program; public housing developments which include public housing units operated in accordance with a HUD-approved mixed-finance plan; and large redevelopment efforts intended to revitalize neighborhoods and reduce poverty.

Other commenters requested that the proposed rule not address coverage of non-housing CDBG activities, such as community projects, public facilities and economic development. The commenters stated that while these are not housing projects, HUD's rule indicated that funding decisions of these projects may be covered by the rule, but the rule was not clear on this issue.

Other commenters stated that ''activities relating to housing and urban development'' is extremely broad and HUD needs to clarify or elaborate on what this means.

HUD Response: HUD-funded and other Federally-funded housing and urban development activities are explicitly covered by the duty to affirmatively further fair housing. This rule does not change the scope of the duty to affirmatively further fair housing.

HUD recognizes that program participants may be limited by their State and local enabling statutes in taking certain actions. Nonetheless, the inclusion of a larger regional analysis for participants is necessary to put the local fair housing issues into context required by the Fair Housing Act and case law (*e.g. Thompson* v. *HUD*). While a grantee may be serving a central city, the regional conditions of surrounding suburbs may be highly relevant to identifying fair housing issues, including those that are beyond the grantees' immediate control or legal authority to influence. Barriers to fair housing choice or other ''fair housing contributing factors'' (as defined in the rule) may still be relevant in helping to explain the fair housing issues facing the program participant. In some cases, this may help in encouraging regional solutions to shared problems, and in some cases may simply add needed context to program participants' planning processes.

The AFH is primarily intended as a planning tool designed to identify the full range of fair housing issues affecting a program participants' geographic area, including the jurisdiction, region, and fair housing issues identified may not necessarily be limited to those under the control of the program participant or involving the use of HUD or other Federal assistance. Once fair housing issues and contributing factors have been identified, the scope of actions that program participants may decide to take, and are capable of taking, to address these fair housing issues and contributing factors may often be broader than the scope of the program participants' activities receiving the HUD or Federal assistance that trigger the obligation to affirmatively further fair housing. An objective of the AFH approach is to have program participants consider all available means to address fair housing issues and contributing factors that arise within their geographic area of analysis or impact their geographic area.

4. Benchmarks and Outcomes

Comment: Program participants must be required to establish benchmarks and timeframes for each goal. Many commenters recommended that the final rule require program participants to establish specific action steps/strategies and/or benchmarks in the AFH in order to be able to measure a program participant's progress toward achieving fair housing goals. Commenters stated that GAO, in studying compliance with the obligation to affirmatively furthering fair housing, stressed the need for benchmarks and timeframes. Commenters suggested that proposed § 5.154 clearly delineate what kinds of milestones HUD reviewers would use to determine that a PHA or jurisdiction has made progress toward its goals identified in a participant's AFH. Commenters stated that § 5.154 must be amended to require that participants submit benchmarks, a timetable in which to complete those benchmarks, and information about the entity

responsible for completing them, in their AFH.

Commenters recommended including benchmarks/timeframes for each goal under four general categories: Modifying local regulations and codes, constructing new developments, creating new amenities, and facilitating the movement of people. Other commenters suggested that not only should the AFH have benchmarks but the benchmarks should have deadlines. Commenters stated that HUD should provide numerical benchmarks for determining ''measureable difference in access.'' Commenters stated that if a participant fails to meet a benchmark the participant should file a justification noting a plan to achieve the benchmark or modify the benchmark within 30 days of submission of the justification. The commenters stated that HUD should post this justification on its Web site for public comment within 30 days, and within 30 days of receiving those comments, HUD should complete its review and approve/reject the plan or modification. Other commenters suggested that the benchmarks and timeframes should be outlined in the Consolidated Plan and Annual Action Plans.

Other commenters similarly asked that HUD mandate specific outcomes of the AFH process. Commenters stated that without outcomes, the new AFH process is rendered worthless. Commenters stated that HUD's rule focuses on process, not outcomes and it is the latter which is important.

In contrast to the above commenters, other commenters stated that while they are sympathetic to those who believe that enforcement of the duty to affirmatively furthering fair housing must be far more rigorous and that specific benchmarks should be laid out in the AFH, they believe such a shift would be unwise. Commenters stated that the new AFH process already brings significantly more accountability to communities and promises to vastly improve the fair housing process; and therefore more stringent applications beyond what has been set out in the proposed rule would be counter-productive and could stymie what would otherwise be productive development.

On the subject of outcomes, commenters, in contrast to the commenters above, stated that they supported HUD's approach of not mandating certain outcomes, but welcomed HUD, through guidance, to provide examples of outcomes that may reasonably be achieved through the new AFH process.

HUD Response: HUD agrees with the commenters that the AFH process, to be effective, should have benchmarks and outcomes, but HUD agrees with the latter commenters that the final rule should not specify the benchmarks or mandate certain outcomes. The final rule provides for the establishment of benchmarks, but established by the program participant and not by HUD. However, as part of the AFH review process, HUD will include review of benchmarks and outcomes, as reflected in a program participant's goals. With respect to the request for guidance, HUD intends to provide the guidance on benchmarks and outcomes requested by the commenters.

Rule change. HUD adds § 5.154(d)(4)(iii) to provide that it is program participants that ''identify the metrics and milestones'' for determining what fair housing results will be achieved.

Comment: Require annual publically available performance reports. Commenters recommended that HUD require annual publically available performance reports that include actions carried out and results achieved. Commenters stated that the rule should include a performance report requirement to describe efforts to carry out the duty to affirmatively further fair housing. Commenters recommended amending § 91.520 (Performance reports) by adding the following language: ''The Performance report must include . . . actions taken to affirmatively further fair housing, including the jurisdiction's progress in executing its AFH plan in a timely manner, ...'' Other commenters stated that the final rule should amend § 903.7(r)(1) (Annual Performance Reports) to require annual performance reports that identify actions carried out to mitigate or address each of the goals in the AFH, describe the results of those actions and specify which fair housing issues were impacted and how they were impacted.

Commenters stated in requiring performance reports, HUD should spell out what information participants must report in terms of progress they have made toward their fair housing goals, and the reports should include uses for the range of HUD grants received and any actions taken with respect to policies, practices, and non-financial resources.

Other commenters recommended that performance results could be provided through a comprehensive 5-year review for each required element of the AFH.

HUD Response: Neither the proposed rule nor this final rule requires new performance reporting. Instead HUD relies upon existing performance reporting requirements or performance assessment requirements already set out in regulations governing consolidated plan program participants and PHAs. For some existing performance review or reporting requirements, HUD builds upon these requirements by specifically referencing review of AFH performance. For example, see § 91.105(e)(1)(i) of the consolidated plan regulations. Similarly the CDBG regulations at § 570.441(b)(3) provide for review of performance in carrying out the duty to affirmatively further fair housing. With respect to PHAs, HUD's Public Housing Assessment System (PHAS) regulations provide in § 902.1(b) that a PHA's compliance with the duty to affirmatively further fair housing and other civil rights requirements such as section 504 of the Rehabilitation Act of 1973 is monitored in accordance with applicable program regulations and the PHA's Annual Contributions Contract. With respect to specific program regulations, § 905.308 of HUD's Capital Fund regulations in 24 CFR part 905 encompasses a PHA's duty to affirmatively further fair housing in the use of its capital funds, and § 905.802 of those same regulations provide for HUD review of PHA performance under the Capital Fund regulations. In addition, HUD's Office of Fair Housing and Equal Opportunity has existing procedures in place to investigate complaints and conduct compliance reviews relating to a program participant that is not affirmatively furthering fair housing. Given these performance review and monitoring processes already in place, HUD did not see any need to add new review requirements.

HUD notes that the community participation requirements of the AFH, which incorporate the community participation requirements of the consolidated plan regulations in 24 CFR part 91, and those for PHA Plans in 24 CFR part 903, provide an opportunity for a review by the public of the performance by the program participant.

5. Determinants (Contributing Factors in the Final Rule) and Goals

As noted in Section III of this preamble, HUD is replacing ''determinant'' with ''contributing factor.'' However, since the proposed rule used the word ''determinant'' and this was the term used in submitting public comments on this issue, HUD retains the word ''determinant'' for this discussion of public comments.

Comment: More than one goal needs to be established. Many commenters stated that the final rule should prohibit program participants from setting only

one goal. Commenters stated that each community should be required to set more than one goal to mitigate the impact of determinants that cause fair housing issues, and that those communities should be required to report on the impact of their activities to address these issues in a specified format. Commenters stated that the compliance with the duty to affirmatively further fair housing must recognize that while barriers for people of diverse racial and ethnic groups, disabilities, and familial status often overlap, they are not interchangeable and all need to be addressed comprehensively to truly further fair housing.

Some commenters stated that even two goals are not sufficient to ensure progress toward ending segregation and increasing access to community assets. Commenters stated that no program participant should have the option to only select one goal to address or mitigate its identified fair housing issues. Commenters urged HUD to set a higher standard of performance, and to require program participants to set goals and identify specific milestones, and timetables. Commenters stated that the language in the proposed rule must be changed at the final rule stage to reflect all of the components of the duty to affirmatively further fair housing, as described in the definition for this term. Commenters stated that the final rule must require program participants to set fair housing goals based on all of the most significant fair housing determinants.

Other commenters stated that while one substantive goal may be sufficient for some program participants, the option to address only one goal may set a low bar for others. Commenters stated that reference to ''one goal'' signals to program participants that additional existing fair housing issues can be ignored or somehow de-prioritized, undermining much of what HUD sets out to accomplish with this rule.'' Commenters stated that setting just one goal will not even require communities to address both the need to strategically enhance neighborhood assets (*e.g.,* through targeted investment in neighborhood revitalization or stabilization) and the need to promote greater mobility and access to areas offering vital assets such as quality schools, employment, and transportation for members of protected classes.

Commenters recommended that the final rule clarify that program participants must identify at least one goal to address and/or mitigate each fair housing issue identified in the analysis as a discriminatory barrier. Commenters stated that although resource constraints in jurisdictions may limit the scope of fair housing goals, it is critical for long-term planning and regional integration for the jurisdiction to identify and execute even modest goals for each fair housing issue or barrier identified.

HUD Response: The regulation does not prescribe a minimum or maximum number of fair housing contributing factors (''determinants'' in the proposed rule) or goals to be set for those factors. Although, HUD believes it would be a rare situation in which a program participant has only one goal, HUD does not disregard the possibility that a program participant may identify a single contributing factor and have only one goal for addressing that contributing factor, or that a program participant that has more than one contributing factor may have the same goal for addressing each of those contributing factors. HUD is interested in the substance of the goals and how a program participant's goal or goals would address contributing factors. HUD will evaluate whether the goals appropriately focus on contributing factors, and appear achievable by the program participant. This final rule includes additional clarifying language on prioritizing the most significant contributing factors. In addition, HUD intends to provide greater detail on identifying contributing factors and setting goals in the Assessment Tool and other sub-regulatory guidance.

Also, HUD recognizes that not all identified contributing factors may be obstacles to fair housing requiring an action or goal to eliminate them. For example, a contributing factor may be outside of a program participant's control, such as a neighboring jurisdiction's zoning policies as opposed to the zoning policies of the jurisdiction of the program participant.

In this rule, despite many commenters' concerns to the contrary as discussed in this preamble, it is not HUD's intention to dictate to program participants the decisions that they make based on local conditions. As stated in the proposed rule, through this new AFH process, HUD is not mandating specific outcomes for the planning process. Instead, recognizing the importance of local decisionmaking, the new AFH process establishes basic parameters and helps guide public sector housing and community development planning and investment decisions to fulfill the obligation to affirmatively further fair housing. In addition, it is important to remember that the AFHs will be made available to communities and residents of these communities will have the opportunity to weigh in on whether program participants have accurately identified contributing factors and have established goals appropriate for identified contributing factors and related fair housing issues.

Rule change. This final rule adds § 5.154(d)(4)(iii) that provides that the AFH must set goals for overcoming the effect of contributing factors as prioritized in accordance with paragraph (d)(4)(ii) of the section. This new section further provides that for each goal, a program participant must identify one or more contributing factors that the goal is designed to address, describe how the goal relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify metrics and milestones for determining what fair housing results will be achieved. For instance, where segregation in a development or geographic area is determined to be a fair housing issue, with at least one significant contributing factor, HUD would expect the AFH to include one or more goals to reduce the segregation. HUD believes that this added language gives program participants the flexibility to decide, given local factors and conditions, the number of contributing factors that exist and the number of goals to be established.

Comment: Specify that goals must be to overcome fair housing contributing factors rather than mitigate and address the contributing factors. Several commenters stated that regulatory language related to the contributing factor analysis must be revised to require program participants not just to ''mitigate or address'' problems, but to overcome them. A commenter stated that while the definition of ''affirmatively furthering fair housing'' in the rule is strong, the proposed requirements for what a program participant must do under the AFH weakens the current standard. The commenter stated that under the current AI process, guidance and enforcement practice all require a participant to ''conduct an analysis to identify impediments to fair housing choice within the jurisdiction, and take appropriate actions to overcome the effects of any impediments identified through that analysis. . . . (§ 91.225(a)(1)).'' The commenter stated that by requiring only that participants ''mitigate or address'' the determinants of fair housing issues rather than ''take appropriate actions to overcome the effects of impediments,'' HUD appears, perhaps inadvertently, to be taking a

step back from the current standards to which participants are to be held.

HUD Response: HUD agrees with the commenter and has replaced, where appropriate, ''mitigate and address'' with ''overcome.'' HUD stated in the proposed rule that the new AFH process is needed to ''facilitate efforts to overcome barriers to fair housing choice.'' Mitigating and addressing the contributing factors are part of those efforts to overcome such barriers, but the commenters are correct in stating that the ultimate goal is to overcome.

Rule Change. This final rule revises the first sentence of the proposed definition of the term ''affirmatively furthering fair housing'' in § 5.152 to say that affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Comment: Consider using a term other than ''determinant.'' Commenters stated that HUD should consider using a different term, such as ''drivers'' in place of the term ''determinants,'' which they stated better describes ''the informal nature of the process of hypothesizing about causes and effects [of discrimination and segregation] through community dialogue.'' Commenters stated that, as provided in the proposed rule, the point of data analysis is to take stock of current conditions and provide information about disparities to initiate a community conversation about how the drivers may have led to those conditions. Commenters stated using the term ''determinants'' suggests a more scholarly investigation between outcomes and other variables, and not the desired community conversation.

HUD Response: HUD agrees with the commenters and, as noted in Section III, of the preamble, HUD is replacing ''determinant'' with ''fair housing contributing factor.''

Comment: Determinants may be difficult to identify. Commenters stated that while it may be easy to determine the presence of segregation or integration, it is not easy, or may even be impossible to identify ''primary determinants'' and to further refine that analysis to identify the ''most significant determinants.'' Commenters stated that the requirement to assess determinants is very complex and is often related to factors outside of a program participant's control. Another commenter stated that while it is relatively easy to identify fair housing issues based on some of the thresholds in the rule, determining their exact causes can be exceedingly complex, with many factors of history and geography—most of which are well outside of the control of the program participant. Commenters stated that because HUD already has data on determinants, HUD should be in charge of conducting the review to find the answers it seeks.

Other commenters stated that the ''determination of the 'primary determinants' for causal conditions is often inherently arguable, vulnerable to differing interpretations and prioritization'' and that the final rule should recognize that the identified conditions should be addressed by the authority and resources available to the jurisdictions. The commenters stated that without bright lines for widely varying circumstances, ''any proposed criterion for acceptance or rejection of an AFH alone should be on a predominantly procedural basis.'' Commenters stated that the final rule should place less emphasis on an analysis that may or may not be of any relevance, which would free up resources to be targeted towards developing solutions. Commenters stated that it is a generous assumption that all program participants have the capacity to perform the required determinants analysis. Other commenters stated that such a requirement creates legal and political exposure to the agencies and entities that they might designate as having ownership of historical determinants of segregation and concentrations of poverty and that this process of ''finger pointing and blame'' heightens the potential for adversarial relationships to develop among the very partners that must effectively work together to improve the communities served through programmatic resources.

Other commenters stated that for program participants to properly identify determinants, additional guidance is needed from HUD. Commenters stated that while the assessment of determinants is central to the AFH process, the lack of guidance in the rule about determinants is a major shortcoming, as the proposed rule had a limited explanation of what a fair housing determinant is, how determinants should be identified, and how to set goals to mitigate or address determinants. The commenter stated that even though the proposed rule recognizes the need for such guidance in the summary of the rule and the assessment tool is identified as the means of providing such guidance, the ''assessment tool'' is defined as something that HUD will issue in the future. The commenter stated that without seeing the tool, jurisdictions may not have the necessary information to prepare these central elements of an AFH. To mitigate concern about the absence of guidance on determinants in the rule, the commenter suggested that the final rule incorporate the guidance that is being developed as an assessment tool by including illustrative examples of determinants and fair housing priorities and goals for mitigating and addressing the determinants that should be considered in drafting the AFH. Alternatively, the commenter stated that the assessment tool should ''at a minimum be published for comment before it is finalized.''

HUD Response: HUD agrees that identifying factors contributing to fair housing issues may not always be easy. It is for this reason that HUD seeks to assist with such identification by providing to program participants local and regional data on patterns of integration, racially or ethnically concentrated areas of poverty, barriers to access to key community assets, and disproportionate housing needs based on characteristics protected by the Fair Housing Act. While HUD cannot guarantee that the provision of such data will always make evident the factors contributing to such fair housing issues, HUD believes that the data will help in this regard. In addition, the questions presented in the AFH Assessment Tool (which was published for comment after the proposed rule) are designed to help program participants determine the factors that give rise to fair housing issues in their respective geographic areas of analysis. The community participation process will also assist program participants in identifying contributing factors and receiving feedback on whether the correct contributing factors have been identified. HUD will also provide instructions, guidance, training, and technical assistance in various formats to help program participants make this identification.

With respect to commenters' concerns about finger pointing and blame, the purpose of the AFH is to analyze data and local knowledge to identify barriers with a view toward overcoming them, not assigning blame. Although the rule recognizes that many obstacles to housing choice that exist today reflect historic patterns of segregation, the analysis required by the AFH is to identify contributing factors to fair housing issues as a means of better planning how to address the fair housing issues. By providing data, HUD seeks to help program participants in determining the cause of fair housing

issues, the extent of impact, and how such fair housing issues may be addressed.

With respect to commenters' concerns about the resources necessary to achieve the desired goals, HUD recognizes that there are likely insufficient funds to achieve every goal for every identified contributing factor, which is why the final rule directs program participants to identify significant fair housing contributing factors and to prioritize such factors. HUD further recognizes that there may be disagreement about which contributing factors are the significant factors leading to a fair housing issue. The public participation process should be of assistance to program participants in helping to identify and prioritize the contributing factors that should be the focus of the AFH.

Comment: Zoning and land use should be explicitly identified as a determinant. Commenters stated that the determinants analysis should include a detailed assessment of a community's zoning and land use regulations. Commenters stated that although the proposed rule requires program participants to use an assessment tool to identify the primary fair housing determinants, they stated that there is no clear indication in the rule that this assessment tool will include a template for analysis of zoning and land use regulations. The commenter stated that because zoning and land use policies are not implicitly listed, the rule may be signaling that a robust assessment of zoning and land use policies with respect to impeding or limiting fair housing choice is not required. Commenters requested that language be added to § 5.154(d)(3) that would provide that based upon data identified under § 5.154 (d)(2) and community input, the analysis will assess whether a participant's laws, policies, or practices limit fair housing choice, and that examples of such laws, policies or practices include, but are not limited to, zoning, land use, housing plans or policies, or development plans or policies.

HUD Response: The proposed rule did not identify all the questions that would be included in the Assessment Tool, as the Assessment Tool was still under development at the time of publication of the proposed rule. However, as seen in the proposed Assessment Tool published on September 26, 2014, the Assessment Tool does provide for an analysis of land use and zoning laws. HUD also plans to provide program participants with guidance on conducting such an analysis.

Comment: Goals should not be equated with outcomes. Commenters stated that goals should be measured by the extent to which they are achieved. Commenters stated that goals may simply be a process goal that, if implemented, would affirmatively further fair housing; that is, if the process is implemented, the goal is achieved. The commenters stated that goals should not be required to be outcome goals, since the ability to influence and reduce segregation is limited by a number of factors, both known and unknown, including individual preferences, inadequate funding to ''move the needle'' in a significant way, and the lack of state control over local decision making.

HUD Response: HUD agrees with the commenters that goals should not be equated with outcome. A goal is what one hopes to achieve by taking certain action and the outcome reflects the results of taking such action. As stated earlier in this preamble, HUD is not mandating specific outcomes, and HUD gives program participants the discretion and flexibility to set goals, taking into consideration the nature and scope of fair housing issues and contributing factors in the relevant geographic areas of analysis and the capacity of the program participant to address fair housing issues. HUD agrees that some goals may be process goals, such as amending a local land use or zoning law to remove barriers to the development of affordable housing in areas of opportunity. Achievement of the process goal by the enactment of the amendment that removes the barriers is a short-term outcome. However, an action of this kind could also yield long-term outcomes, such as reducing segregation or increasing access to opportunity.

6. Integrated Settings for Persons With Disabilities

Comment: The rule, if implemented properly, will significantly improve housing opportunities for persons with disabilities. Many commenters expressed support for the rule's recognition that affirmatively furthering fair housing includes affording persons with disabilities the opportunity to live in the most integrated setting appropriate to the needs of persons with disabilities. Commenters stated that discrimination against persons with disabilities has too often been ignored, and expressed support for the rule's definitions of ''fair housing choice'' and ''segregation'' and the rule's statement that for individuals with disabilities, integration also means that such individuals are housed in the most integrated setting appropriate. Commenters stated that the most integrated setting is one that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. Commenters requested that the final rule also include the following language from HUD's *Olmstead* Statement: ''Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.'' The commenters stated that including these examples will help regulated entities better understand their obligations.

HUD Response: HUD appreciates the suggestion to include in the rule examples of integrated settings as provided in HUD's *Olmstead* Statement. However, HUD believes that guidance, not the regulatory text, is the better location for these examples and HUD will include these examples in its guidance on affirmatively furthering fair housing.

Comment: Include a reference to providing integrated settings for persons with disabilities with respect to the steps to be taken by PHAs to affirmatively further fair housing. Commenters recommended that in § 903.2, which addressed PHAs taking steps to deconcentrate poverty and comply with fair housing requirements, HUD include a reference to promoting opportunities for persons with disabilities to live in the most integrated setting appropriate.

HUD Response: Section 903.15 of this final rule already captures this concept. Section 903.15(d)(2)(ii) provides that affirmative steps include PHAs engaging in ongoing coordination with state and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

Comment: Specify disability organizations that are to be consulted in the development of an AFH. Commenters requested that the rule specify that disability organizations, such as protection and advocacy agencies, independent living centers, and State and local affiliates of The Arc, Mental Health America, The National

Alliance on Mental Illness, and United Cerebral Palsy, be consulted in the preparation of the AFH and the consolidated plan, as well as the citizen participation plan. Commenters stated that these organizations typically have the best knowledge concerning persons with disabilities who are needlessly segregated.

HUD Response: The final rule, at § 5.158(a), requires program participants to undertake consultation in accordance with consolidated plan requirements and requirements governing PHA planning. While HUD mandates meaningful consultation with certain types or categories of organizations, HUD declines to mandate consultation with specifically named organizations.

Comment: Define ''institution''. Commenters stated that the rule refers to ''deinstitutionalizing'' persons with disabilities, but does not define ''institution,'' perhaps leaving it to the courts to determine whether housing provided to the disabled as part of a supportive services program or a PHA's designated housing plan is sufficiently community-based to comply with the rule. Commenters stated that consistent with the *Olmstead* decision, the rule also should recognize that the goal of ''deinstitutionalizing'' persons with disabilities into community-based settings should only apply when: (1) Such placement is appropriate; (2) the affected person does not oppose such treatment; and (3) the placement can be reasonably accommodated, taking into account the available resources and the needs of other individuals with disabilities.

HUD Response: The focus of this rule is about fair housing planning and how the process of fair housing planning should be undertaken. For each of the protected classes covered by the Fair Housing Act, and consequently covered by the this final rule, program participants should rely on rules already in place to ensure nondiscrimination for these protected classes, and be guided by these existing requirements in planning the actions they intend to undertake to promote fair housing choice and access to opportunity. HUD therefore declines to adopt commenters' suggestion to have the rule address in more detail the goal of deinstitutionalizing persons with disabilities. Those requirements are adequately addressed in the Department of Justice's rules and guidance implementing the Americans with Disabilities Act, in the Department of Health and Human Services' s Medicaid rules on Home and Community Based Services, and in HUD's *Olmstead* Statement.

Comment: Do not hold PHAs accountable for inability to move persons with disabilities to integrated settings. Commenters stated that it is troublesome to consider that PHAs may be held accountable for the lack of ''disability-related services'' that may be available in a person's living environment. Commenters stated that PHAs are not funded for these special needs services and do not have the trained staff to handle these needs. Commenters stated that to relocate disabled persons from institutions into ''the most integrated setting appropriate'' is a noble pursuit but brings up other issues, such as what resources are available to up-fit units to meet the mobility requirements of the relocates or where they will be able to secure supportive services for those who need mental health services? Commenters stated that often even wheelchair accessible units compliant with fair housing design standards do not come with all the supports a person may need, such as lifts in the bedroom to help them into bed, power door locks, and cameras at the front door to enable a bed-ridden occupant to determine who is outside their door before opening it, etc. are expensive items to install and maintain.

HUD Response: HUD recognizes that PHAs and all program participants may be limited in fulfilling their AFH goals based on available resources. What is expected of program participants, however, is to ensure that they are taking meaningful actions within their control and that their actions do not contribute to or perpetuate discrimination, segregation, and limitation of housing choice, including against persons with disabilities. This rule does not create new obligations on PHAs to provide housing in integrated settings for persons with disabilities. HUD notes that PHAs have existing obligations to provide housing in the most integrated setting appropriate under section 504 of the Rehabilitation Act and under the Americans with Disabilities Act. Moreover, since State Medicaid agencies have the obligation to provide health care services to individuals with disabilities in the most integrated settings appropriate to their needs, such services should be provided by such agencies. However, one of the biggest needs faced by States in *Olmstead* implementation is locating affordable housing where individuals with disabilities may live and receive State-provided services, and PHA's play an important role, through their public housing and HCV programs in making such housing available. Recent experience, including the Non-Elderly Disabled (NED) 2 Housing Vouchers and the Section 811 Project Rental Assistance program, have shown that closer collaboration between PHAs and State Housing Agencies with State Medicaid Agencies enhances the ability to fulfill their respective responsibilities in this area. HUD intends for its guidance to supplement the AFFH regulations and will provide more information about these collaborations.

Comment: The rule should address PHA admission preferences. Commenters made several different suggestions on how the rule could address PHA admission preferences. Some commenters stated that the rule should mandate that PHAs establish preferences for persons with disabilities. Commenters stated that historically, persons with disabilities have been dramatically underrepresented on PHA waitlists due to the absence of outreach and the sheer isolation of nursing home and institutionalized residents. Commenters stated that there is an urgent need for the creation of a preference for persons with disabilities, and the AFH should mandate that PHAs establish preferences for persons with disabilities. Other commenters stated that in § 903.2(d)(2)(ii), the rule lists residency preferences such as those designed to assist in deinstitutionalizing individuals with disabilities as an example of a PHA activity that will affirmatively further fair housing. Commenters suggested that HUD change ''residency preferences'' to ''admissions preferences'' because admissions preferences will more effectively further the goal of integrating persons with disabilities into housing with the non-disabled population. Commenters further stated that residency preferences, particularly in communities with high non-minority populations, have the potential to be used as a barrier to affirmatively furthering fair housing by affording a preference to persons who are very likely to be non-minority. Commenters stated that this may result in minority applicants spending a disproportionate amount of time on housing waitlists, frustrating the purpose of the affirmatively furthering fair housing mandate.

HUD Response: The Quality Housing and Work Responsibility Act of 1998 (QHWRA) (title V of Pub. L. 105–276, approved October 21, 1998) eliminated Federal admissions preferences and allows PHAs to adopt their own preferences pursuant to the local PHA planning, including an assessment of local housing needs and review by the Resident Advisory Board, and

consistent with Federal fair housing and civil rights requirements. Given that QHWRA eliminated imposed preferences on PHAs and determined that PHAs were in the best position to determine preferences, if any, based on local conditions, this final rule does not mandate preferences on PHAs.

7. Community/Citizen Participation and Engagement

Comment: Require maximum citizen participation at every stage in the fair housing planning process. Commenters state that HUD should require that program participants maximize citizen participation in every stage of the assessment process. Commenters stated that the AFH should be developed by way of an iterative community process so that community members have the opportunity to respond at each stage of the development of the data and action plan, rather than only to a fully-developed plan.

Commenters stated that enhanced participation would be achieved by: (1) Creating an affirmative marketing plan for every event open to the public; (2) publishing all materials and reports in plain language, and in multiple languages; and (3) making all comments on the process available to the public. Commenters stated that, during the consultation phase, program participants should engage in and develop an affirmative marketing plan for activities related to the public participation process that includes an assessment and identification of possible stakeholders. Commenters stated that this plan should be submitted to HUD as evidence of the planning and action steps the program participant undertook to ensure that maximum community participation among stakeholders occurred.

Commenters stated that all of the marketing materials and other materials associated with affirmatively furthering fair housing compliance should be published in plain language so that they can be understood even by those with no expertise in fair housing. In addition to using plain language, commenters stated that these same materials should be translated and published in languages that are most relevant to the program participant's community. Commenters stated that understanding fair housing needs must go beyond data analysis and involve input from those individuals who have first-hand knowledge of the existing hurdles and barriers in their communities. Commenters stated that an aggressive outreach campaign is necessary to ensure that those individuals with concerns are heard, and that no one should be prevented from participating in the process and from providing valuable insight into the fair housing barriers in a community because of a comprehension or language barrier.

Other commenters also focused on marketing campaigns as being critical to meaningful participation. Commenters stated that participants should create major marketing campaigns to educate the public about the negative impact of housing discrimination and how to be proactive on the matter. The commenters stated that this should all be done with particular sensitivity to historically underserved audiences, keeping cultural and linguistic attributes in mind because these are the very individuals most impacted by the new rule and affirmatively furthering fair housing issues.

HUD Response: HUD appreciates the commenter suggestions, but HUD regulations for almost all HUD programs already require HUD program participants to engage in affirmative fair housing marketing. HUD therefore declines to expand upon existing affirmative fair housing marketing requirements at this time, but the final rule does strengthen the proposed rule's community participation requirements.

This final rule strengthens the provisions of proposed § 5.158 pertaining to community participation in the AFH by directing program participants to employ communications means designed to reach the broadest audience. The final rule provides that such communications may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the program participant's official government Web site, as well as at libraries, government offices, and public places. Also, program participants are required to ensure that all aspects of community participation are conducted in accordance with applicable fair housing and civil rights laws that, among other things, assure access to communications for persons with limited English proficiency (LEP) and access to meetings and materials for persons with disabilities.

With respect to the comment regarding relevant languages, HUD funding recipients are already required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons by existing law, including title VI of the Civil Rights Act. HUD's guidance on LEP can be found at 72 FR 2732 (January 22, 2007). Sections 91.105, 91.115, and 570.441 of this final rule direct that the citizen participation plan required by the consolidated plan regulations shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to citizen participation by persons with limited English proficiency.

Rule change. This final rule revises § 5.158(a) to include language that strives to ensure that the AFH, the consolidated plan, and the PHA Plan and any plan incorporated therein are informed by meaningful community participation, and to achieve this objective, program participants should employ communications means designed to reach the broadest audience. The revised section provides that such communications may be met, as appropriate, by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the program participant's official government Web site, as well as at libraries, government offices, and public places.''

Comment: Utilize public participation tools that will reach residents in isolated areas. Commenters stated that HUD must ensure that the approved plans demonstrate effective methods for maximum engagement, particularly for isolated rural jurisdictions and their residents to participate in this process. Commenters stated that those who fall under any of the protected classes and live in isolated communities may encounter obstacles to participate in an AFH process, such as limited public meetings that are located far from their local community. Commenters stated that methods for maximizing public participation need not be sophisticated, merely effective and efficient, and that remote real-time access to video links, or 'electronic clickers' that allow for anonymous and active participation are used in certain circumstances and should be identified in the planning process so that this engagement process is presented to and approved by HUD.

In a similar vein, commenters stated persons with disabilities in nursing homes and institutions are isolated from the general public. Commenters stated that often, access to persons with disabilities in these settings is monitored or controlled by gatekeepers such as facility staff, medical personnel, or guardians. Commenters recommended that a program participant's citizen participation plan include special notification to nursing homes and other institutions for persons with disabilities, as well as follow up visits and phone calls. Commenters stated that although HUD's proposal

includes a requirement that the AFH and related documents be accessible to persons with disabilities, there is no similar requirement relating to the materials and documents relied upon by program participants in deliberating upon and drafting the AFH must be accessible. Commenters recommended that HUD require that such materials be accessible and that Web site information be Section 508 compliant.

HUD Response: HUD agrees that the community participation processes must consider the populations served, and where they are located, and they must choose public participation approaches that will reach the populations served. These approaches must be reflected in the program participant's citizen participation plan, and HUD emphasizes this point in language added to § 5.158(a). In addition, HUD encourages its program participants to consult the section 508 Web site and that of the U.S. Access Board, both of which provide guidance on making Web sites accessible to persons with disabilities. See *www.section508.gov* and *www.access-board.gov*.

Rule change. This final rule revises § 5.158(a) to include language that provides that program participants shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

Comment: Modify or replace citizen participation requirements for States. Commenters stated that generating citizen participation at the state level is costly and, in most cases, fruitless. Commenters stated that meaningful and widespread citizen participation for States is expensive and likely require the employment of a consultant. Commenters stated that States are huge geographic areas in which to undertake meaningful citizen participation. Commenters stated that consultation with interest groups is generally more productive because interest groups have a more immediate interest in providing input to the planning process. The commenters stated that interest groups respond to public participation because of their potential for gain, while citizens whose communities may or may not receive a CDBG grant or other CPD assistance, have less interest in providing their input and less of an expectation that they will benefit from a program.

Commenters asked that to minimize costs and in acknowledgement that typical citizens have little or no interest in a statewide consolidated plan or AFH, encourage, but do not require, State citizen participation plans to provide for citizen and resident participation, and permit States to rely almost exclusively on participation of the organizations described in § 91.115(a)(2)(ii).

In a similar vein, other commenters stated that the public participation requirements in § 91.115 should reflect differences between State and local governments. The commenters stated that the best methods for effective and meaningful interaction vary tremendously based on the size of a jurisdiction's service area.

HUD Response: The community participation requirements for States have long been required under the Consolidated Plan regulations, and HUD believes they have worked well. This final rule applies the same community participation process that States now use under the consolidated plan.

Comment: Clarify that States only need to consult with agencies and organizations that fall under State Consolidated Plan. Commenters stated that the language in the rule pertaining to State consultation for the AFH should make it clear that a State only needs to consult with agencies and organizations that fall under the State consolidated plan.

HUD Response: Similar to HUD's response to the preceding comment, the AFH regulations in § 91.110(a) (introductory paragraph) do not delineate that only State public or private agencies must be consulted. Such delineation is not currently there in the Consolidated Plan regulations and therefore is not delineated in this final rule. However in adding a new paragraph (a)(1) to § 91.110, which pertains to HUD's public housing program or HCV, HUD has clarified that consultation is only required of PHAs administering public housing or HCV programs on a statewide basis or that certify consistency with a State's consolidated plan.

Rule change. In § 91.110, paragraph (a)(1) is revised from the proposed rule to clarify that, with respect to public housing or HCV programs, the State shall consult with any PHA administering public housing or section 8 programs on a state-wide basis as well as with PHAs that certify consistency with a State's consolidated plan.

Comment: Clarify that States do not need to analyze a PHA's geographic area if the PHA adopts the State's AFH. Commenters expressed concern that if local PHAs adopt the State's AFH, there will be a requirement for the State to analyze units that are much smaller than would otherwise be expected for a statewide analysis because a local PHA is tied to a small jurisdiction (city or county), and the AFH would need to use block group or census tract data and information about the local housing market, trends and stakeholders to be helpful in planning a course of action to address fair housing issues. The commenters stated that this level of analysis is not a reasonable expectation to place on the State for its AFH. Commenters stated that a State needs assurance that its AFH would not need to change course based on the make-up of local PHAs opting to use the State AFH in lieu of their own.

HUD Response: All jurisdictions and insular entities will be required to consult with PHAs on PHA programs. To clarify, States must conduct outreach to PHAs that administer public housing or Section 8 programs on a statewide basis or that certify consistency with the State's consolidated plan. PHAs, however, cannot adopt a State's AFH, but they may work in collaboration with a State pursuant to § 5.156 and § 903.15(a)(1). In addition, as provided in § 5.156(a)(3), all collaborating program participants are accountable for the analysis and any joint goals and priorities to be included in the collaborative AFH, and collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

Comment: Public hearings are not the best vehicles to ensure public participation of the targeted populations. Commenters stated that public hearings, which they described as the primary vehicles for soliciting community feedback on the AFH, are hardly a sufficient mechanism to ensure the participation of the target population. Commenters stated that, recognizing that such public hearings may not be sufficiently proactive, § 91.115(a)(2)(iii) provides that a State should also explore alternative public involvement techniques including the use of focus groups. Commenters asked that the rule be altered so that all program participants must consider and ultimately employ such techniques, and public hearings would be optional. Commenters stated that program participants and PHAs must be required to pursue outreach strategies that actively engage the community in a dialogue to ensure that their vision of

change for their community is also brought to bear.

HUD Response: Public hearings should not be the only vehicle to solicit public participation but HUD believes they can be an effective vehicle based on experience under current regulations. As HUD stated in response to earlier comments, the program participant's public participation processes must consider the populations served, and where they are located, and they must choose public participation approaches that will reach the populations served and these approaches must be reflected in the program participant's community participation plan. Please note earlier discussion of changes to § 5.158 to strengthen community participation.

Comment: A public hearing should not be required until the AFH is completed. Commenter stated that the proposed amendment to § 91.105 would require at least one public hearing on the AFH before it is published for comment. The commenters stated that this requirement confuses the planning principle of citizen participation for plans with research studies like the AFH (which is not a plan). The commenters stated that under sound planning principles, the appropriate time for a public hearing on a research study like an AFH, would be when the AFH is completed and made available for public comment. Commenters stated that there is no need for a public hearing before the AFH is completed, and the comment period should be conterminous with the notice period for a public hearing on the AFH. Commenters stated that HUD has not shown any factual basis for a need for a public hearing prior to the AFH being issued for comment and public hearing. This additional public hearing requirement will only delay completion of the AFH an extra month—and given the realities of how recipients have handled AIs, this is time that cannot be lost.

Commenters urged HUD to eliminate the requirement of a public hearing before the AFH is published for comment and urged that the comment period start when the public notice of the public hearing on the draft AFH is published. Commenters stated that the time period should be no less than 30 days.

HUD Response: As stated in response to the preceding comment, HUD believes that a public hearing can be a useful vehicle for involvement of the public on a program participant's AFH. HUD also believes that the final rule's scheduling of the public hearing is at the appropriate time—that is, while the AFH is in development so that a program participant may take into consideration the views and recommendations of the affected community. This is the approach taken for the consolidated plan. A public hearing is held during the development of the consolidated plan, not after the consolidated plan is completed. HUD is taking this same approach for the AFH because, in HUD's experience, it will yield valuable information from the community to inform the program participant regarding the identification of fair housing issues, contributing factors, goals, and priorities.

Comment: Separate public hearings must be required for AFH performance reports. Commenters stated that there must be a separate public hearing for the performance reports pertaining to the AFH and consolidated plan. The commenters stated that the CDBG statute, the basis for the Consolidated Plan regulations, calls for ''public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance'' [42 U.S.C. 5304 (a)(3)(D)]. Commenters stated that the same must be required of AFH performance reports.

HUD Response: HUD encourages transparency, but will not require a separate public hearing for the performance reports related to the consolidated plan. HUD's regulations already provide for public input on performance reports for participating jurisdictions; *e.g.,* § 91.105(e)(1).

Comment: Meaningful public participation of targeted populations will require technical assistance. Commenters stated that public participation by members of protected classes should be more strongly emphasized. Commenters stated that, in those places that have a disproportionately low share of protected class members as compared to surrounding cities or counties, the final rule should incorporate a requirement to conduct outreach to protected class members who live in those other places (*e.g.,* those who commute to jobs from those other places).

Other commenters stated that while the citizen participation plan of the consolidated plan is ''designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used,'' the consultation requirements in § 91.105(a)(2) limit participation to organizations ''that have the capacity to engage with data informing the AFH.'' (See also § 91.100(e).) Commenters stated that the rule provides no guidance about what is meant by these qualifications. Commenters expressed concern that these qualifiers may be used by some participants to exclude from the AFH process organizations that have meaningful experience to share but lack sophisticated data analysis expertise. The commenters stated that rule should not imply that groups that lack the ability to conduct data analysis themselves cannot participate meaningfully in a discussion about the implications of such analysis or the steps that should be taken to overcome problems identified through such analysis.

Other commenters stated that with respect to the consultation requirements in § 91.105(a)(2), two factors must be considered: (i) That the low- and moderate-income persons contemplated in the citizen participation plan are more than likely to participate in the development of the AFH and other policies through the structure and mobilization of community-based organizations, and (ii) that such community-based organizations generally lack the capacity to engage with technical data. The commenters stated that jurisdictions will achieve meaningful community participation through pro-active implementation of capacity-building strategies, including allocation of funds, as part of their duty to ''take appropriate actions to encourage the participation by low- and-moderate-income persons.'' The commenters stated that the CDBG program calls on insular area jurisdictions to include in their citizen participation plans a policy regarding provision of technical assistance to groups that are representative of persons of low- and moderate-income. (See § 570.441(b)(2).) The commenters stated that AFFH rule should include similar requirements.

Other commenters also emphasized the importance of involving community-based organizations. The commenters stated that community-based organizations communicate quickly to families—much faster than any national entity, and that their materials for the public are highly culturally competent and in the community's preferred language. Commenters stated that these local groups have made the difference between a family losing or preserving their home. Commenters stated that these organizations stay in touch with families and maintain relationships that have been unmanageable by vast national programs.

Additional commenters similarly stated there are very positive provisions for community involvement in the planning process but no support for capacity building is identified in the rule itself. Commenters stated that the effectiveness of community engagement will depend on existing community capacity, unless additional support is included in 2015 budget.

HUD Response: The commenters raise very important issues that need to be taken into consideration when program participants are planning outreach efforts. The issues raised by commenters also underscore the importance of allowing program participants to tailor outreach efforts to ensure effectiveness given the populations in their areas, and that HUD should not prescribe a list of outreach actions that a program participant must undertake. The program participants are in a good position to tailor outreach methods that will provide for meaningful actions.

However, as stated in responses to prior similar public comments, HUD has revised § 5.158 in this final rule to strengthen the community participation requirements by directing program participants to employ communications methods that are designed to reach the broadest audience, and that are conducted in accordance with fair housing and civil rights laws, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable. In addition, HUD will be providing technical assistance on techniques to encourage participation by the groups that otherwise may not participate. HUD will also review the results of the program participants' community participation process as part of its review of the AFH.

Comment: Program participants should be required to document activities targeted to obtain input from protected classes, and identify the organizations with whom they consulted. Commenters stated that program participants should be required to document how their community engagement activities will target protected classes. Other commenters suggested that the rule require program participants to identify the organizations with whom they consulted.

HUD Response: The AFFH final rule at § 5.158 requires program participants to consult with the agencies they identify in their PHA Plan or consolidated plan. Program participants are also required to retain records of their community participation efforts, which would be available if HUD investigates a complaint or conducts a compliance review relating to a program participant's duty to affirmatively further fair housing. (See § 5.168.)

Comment: Include real estate and housing professionals in the AFH planning process. Commenters stated that the real estate profession is a diverse profession today and has first-hand experience in addressing housing issues in a community, and that the inter-related issues of housing, education, transportation and economic development are front and center issues for real estate. Commenters stated that each individual REALTOR® and other real estate professionals are intimately familiar with their community and the issues impacting housing choices, and they provide an invaluable resource, particularly the real estate professional serving, and part of, today's multi-ethnic and diverse communities, needs to be invited to participate in the planning process. Commenters stated that similarly, property owners, landlords and business owners all have a personal stake in the decisions flowing from the AFH process. Commenters further stated that while not directly impacted by the rule, the interactions of these individuals with covered program participants, be they local PHAs or municipal governments, can be seriously affected by decisions flowing from the AFH process, and that these important providers of jobs, housing opportunities and local economic activity—strongly committed to fair housing principles—must be assured a maximum voice in the community participation process. The commenters stated that consultation with state housing finance agencies and the National Council of State Housing Agencies would be helpful in ensuring that State level concerns are appropriately addressed in the final rule.

HUD Response: The commenters identify important groups and organizations that would lend valuable perspectives during the AFH planning process. Identification of these groups underscores the importance of designing a meaningful participation process to ensure that all interested parties have the opportunity to have a voice in the development of the AFH.

Comment: Require each program participant to identify a coordinating entity to oversee the public participation process. Commenters stated that community participation is a critical component of the process, and how participants engage members of their community, as well as how those views are eventually represented or reported in the AFH, will substantially impact the success of the AFH process. Commenters stated that in order to realize the goals embedded in the rule, the community participation component must be significantly strengthened in a number of ways, one of which would be to have each AFH identify a coordinating entity that will oversee the process. Commenters stated that this coordinating entity (CE) would be comprised of all elements of stakeholders, including public, private, academic, and community-based representatives, and the coordinating entity would develop a comprehensive community-organizing plan that encompasses all parts of the community in the process. The commenters stated that both public and private funds should support the establishment and implementation of this CE, which will act as an organizing and monitoring entity.

HUD Response: The commenters have provided an innovative approach to the AFH community participation process, and program participants are free to adopt such approach but it is not one that HUD will mandate by regulation. (See § 5.156(d).) The entity that is ultimately accountable for the community participation process is the program participant.

Comment: The AFH consultation process requires program participants to seek input from fair housing stakeholders, but this requirement is not in the citizen participation provisions. Commenters stated that while the description of the AFH consultation process requires participants to seek input from fair housing stakeholders, this requirement does not carry through to the citizen participation provisions. Commenters stated that the citizen participation requirements are much more general, and only require that citizen participation plans ''provide for and encourage citizens, residents and other interested parties to participate in the development of the AFH, any significant revisions to the AFH, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. Commenters stated that to ensure a strong linkage between the AFH and the consolidated plan and public housing plan, the consultation provisions of the AFH should also be applied to the citizen participation plans for the applicable programs.

HUD Response: Through the consultation process, HUD directs program participants to consult with organizations that administer housing, organizations experienced in housing

issues, and organizations experienced in fair housing issues. The AFH's community participation process is designed to reach out to the residents of the community or geographic area in which the program participant operates, and there is no requirement that the citizens be experienced in housing issues or fair housing issues. However, the rule's provision on community participation is flexible enough so as to permit fair housing groups to be among the ''interested parties'' that may participate in hearings alongside other members of the public.

Comment: The mandate to ensure meaningful access to citizen participation by persons with Limited English Proficiency is too broad. Commenters stated that the citizen participation requirement, which states that, ''at a minimum, the citizen participation plan shall require that the local government take reasonable steps to provide language assistance to ensure meaningful access to citizen participation by persons with limited English proficiency'' is too broad and, given the multitude of the various languages spoken in a given area could constitute a substantial level of expense to provide language assistance.

HUD Response: The ''mandate'' is one of taking ''reasonable steps.'' HUD recognizes that it may not be reasonable for local governments to assist all LEP persons because of the wide variations of languages that may be spoken in a given area. However, HUD further notes that it is a violation of title VI of the Civil Rights Act to deny meaningful access to programs and activities based on a person's national origin. Program participants should be aware of the languages spoken by LEP persons in their jurisdiction and take the steps set out in HUD guidance to assure access under title VI.

Comment: HUD should require LEP translation, not simply require reasonable steps to assist LEP individuals. Commenters stated that the final rule should require jurisdictions to provide and implement a citizen participation plan that accounts for people with limited English proficiency and persons with disabilities, and not simply require that reasonable steps be taken to assist LEP individuals. Commenters stated that, in the alternative, HUD should adopt, in the regulatory text, certain preamble language. Commenters stated that the preamble to the proposed rule stated that the requirement in proposed § 91.105(a)(4) to provide meaningful access within the public participation process to LEP persons ''strives to have local governments involve these individuals to the maximum extent possible.'' The commenters recommended that the preamble language be included in the regulatory text but revised to read, ''. . . the maximum extent possible, and in compliance with title VI and other laws requiring meaningful access to LEP persons.'' The commenters stated that this strengthened language highlights the importance of language access, and serves as a reminder that in certain cases, jurisdictions may have obligations beyond voluntary compliance with respect to ensuring meaningful access to LEP persons.

Commenters stated that while HUD's rule proposed to amend the Consolidated Plan regulations to require that the citizen participation plan include an assessment of language needs, no such provisions are included in the proposed amendments to regulations concerning the PHA Plan process at 24 CFR part 903. Commenters ask that § 903.17(c) be amended to require that PHAs: (1) Include outreach to LEP populations in its outreach activities within the jurisdiction, and (2) identify the need for translation of notices and vital documents with respect to the PHA Plan process. The commenters also asked that HUD require PHAs conducting public hearings pursuant to § 903.17(a) to describe how they will identify and address the needs of LEP attendees.

HUD Response: Requirements related to LEP derive from title VI of the Civil Rights Act of 1964 and Executive Order 13166, and HUD's LEP guidance at 72 FR 2732 (January 22, 2007). Under HUD's guidance, funding recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The HUD LEP guidance discusses title VI's requirements for document translation and the provision of language assistance. For this reason, HUD declines to mandate the specific measure that the commenters suggest; rather, the requirement to take ''reasonable steps'' applies to all program participants and all program participants' programs and activities. As noted earlier in this preamble, this final rule, in § 5.158, states that program participants should employ communications methods designed to reach the ''broadest audience.'' This language includes involving LEP persons to the maximum extent possible. On the issue of public hearings, HUD believes that the inclusion of measures to include LEP persons in the community participation process that is part of the PHA planning process is sufficient.

Comment: HUD's communication mandates to program participants must go beyond assisting LEP individuals; it must include persons with disabilities. Commenters stated that reasonable accommodations for persons with disabilities are essential to ensuring that all residents of a jurisdiction may access the proposed AFH plan, and provide meaningful input into its development. The commenters stated that in order to ensure that residents with disabilities can participate in each step of the AFH plan, it will be necessary for the jurisdiction's proposed plan and materials to be available in formats accessible to people with communications disabilities, for any public hearings or meetings to make available sign language interpreters or other appropriate auxiliary aids and services, and for the physical buildings hosting the public hearings or meetings to be accessible to persons with disabilities.

HUD Response: HUD has modified the final rule to make clear to program participants that community participation (like all other programs, services, and activities) must be accessible to persons with disabilities. The access issues discussed by the commenter all fall within existing requirements of section 504 of the Rehabilitation Act and the Americans with Disabilities Act that are applicable to program participants.

Comment: HUD must define ''vital document.'' Commenters stated that it is imperative that the final rule define what is meant by ''vital documents'' as used in Consolidated Plan regulations at § 91.105(a)(4) (Local governments) and § 91.115(a)(4) (States). The commenters stated that while the term appears throughout HUD's ''Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons'' (HUD LEP Guidance), the term should be defined specifically in the context of the citizen participation process with respect to an AFH. The commenters stated that ''vital documents'' in the HUD LEP Guidance describe those documents that are ''critical for ensuring meaningful access.'' The commenters stated that, borrowing language from that definition, they propose that the final rule include a definition of ''vital document'' as describing ''those documents and other materials that are critical for ensuring meaningful access to the community participation process.''

HUD Response: HUD appreciates the recommendations, but declines to define this term for the AFH process.

This term has been defined for quite some time in HUD's LEP Guidance. HUD therefore does not see the need to define this term in regulation but will continue to provide support through guidance. HUD notes that, in general, documents related to public participation would be considered vital based on HUD's LEP Guidance.

Comment: Require program participants conducting public meetings to track the languages spoken at the meeting. Commenters stated that program participants conducting public meetings/hearings regarding the AFH should be required to track the languages spoken by meeting attendees. The commenters stated that this information will inform program participants' subsequent assessments of language needs, and that if a program participant finds that LEP persons are continually underrepresented at public meetings/hearings, it must take steps, outlined in its assessment of language needs, to improve attendance by LEP residents.

The commenters stated that the final rule should note that jurisdictions needing guidance in determining which language groups require translated vital documents and notices should consult with the four factor analysis detailed in the HUD LEP Guidance, which is a balancing test that considers the following: (1) The number of LEP persons served or likely to be served or encountered; (2) frequency of contact with LEP persons; (3) importance of the activity or program at issue; and (4) available resources. The commenters stated that this test can provide jurisdictions with an initial snapshot of the language access needs for the purposes of ensuring effective citizen participation, including what languages should be covered.

HUD Response: HUD appreciates the suggestion and commends any program participant that undertakes the effort to track languages spoken at meetings, since this information would be evidence of effective outreach to persons with LEP, as required by title VI of the Civil Rights Act, in the event HUD receives a complaint or conducts a compliance review on this issue. However, HUD declines to mandate such tracking.

8. Collaboration, Consultation, and Other Planning Efforts

Comment: The consultation requirement does not appear to apply to PHAs. Commenters stated that while it is clear that the consultation requirement applies to States and local jurisdictions that are required to produce consolidated plans (see §§ 91.110(a)(2) and 91.100(e), respectively), this consultation requirement does not appear to apply to PHAs and it should.

HUD Response: HUD disagrees with the commenters. Consultation requirements for PHAs are fundamentally different as direct consultation is focused upon the residents served. This takes place through specific consultation of the Resident Advisory Board (see § 903.13), as well as residents in the HCV program. Public participation requirements for PHAs also require that PHAs ''conduct reasonable outreach activities to encourage broad public participation'' and take a number of actions to ensure such participation occurs (see § 903.17). HUD Guidance also directly specifies interaction with difficult to reach groups such as those with LEP (PIH Notice 2011–31[13]).

Comment: Require jurisdictions to consult with financial institutions. Commenters stated that HUD should require jurisdictions to consult with local financial institutions about issues related to access to credit and mortgage lending as part of the development of the AFH. Commenters also stated that HUD should require jurisdictions to consult with community development financial institutions (CDFIs) and to review local financial institutions' Community Reinvestment Act (CRA) public performance reports as part of preparing the AFH.

HUD Response: HUD encourages jurisdictions to consult with financial institutions as suggested by the commenters, and encourages financial institutions to participate in community participation processes, but HUD declines to require jurisdictions to undertake consultation with financial institutions.

Comment: Provide guidance on what is meant by ''sufficiently independent and representative.'' Commenters stated that HUD should provide clarification regarding the rule's consultation requirements at § 91.100, specifically, the requirement that organizations be ''sufficiently independent and representative.'' Commenters stated that many community organizations with valuable input are also CDBG subgrantees. Commenters requested that HUD should ensure the rule's more clear linkage of the AFH to the consolidated plan process does not exclude those subgrantees representing protected classes from the AFH consultation process.

HUD Response: The broad citizen participation requirements under § 91.100 are intended to include consultation with a wide variety of public and private agencies, local governments, and PHAs. The proposed rule provided additional language that emphasizes that ''sufficiently independent and representative'' organizations must be consulted on the obligation to affirmatively further fair housing, but such language is not intended to exclude subgrantees or other interested organizations from the consultation process.

Comment: Other planning efforts must include Qualified Allocation Plan and Metropolitan Transportation Plan. Commenters stated that there are two other sets of plans and programs that should be coordinated with the AFH fair housing planning effort—the Low Income Housing Tax Credit (LIHTC),[14] Qualified Allocation Plan, and the Department of Transportation's (DOT's) Metropolitan Transportation Plan (MTP) and/or Transportation Improvement Plan (TIP). Commenters stated that given the volume of the LIHTCs and studies indicating LIHTC-financed projects are often located in areas of concentrated racial or ethnic poverty, the availability of LIHTCs and the Qualified Allocation Plan (QAP) process should be included in the AFH analysis and AFFH certification consideration. The statute requires QAP selection criteria to include, among other factors, the location of proposed projects and the needs of two protected classes, special needs populations and families with children. The MTP is a planning document that considers goals, strategies, and projects with a 20-year time horizon; and this plan is updated every 5 years. The commenters stated that the TIP is a statement of proposed transportation investments that is updated every 4 years. The commenters stated that Metropolitan Planning Organizations (MPOs), which have a comprehensive public participation process, are responsible for these planning endeavors. The commenters also stated that there is also a parallel statewide process, and that is Transit-Oriented Development, which is the siting of transit lines and transit stops, bus routes and frequency. The commenters stated that these planning efforts work to prevent segregation and are important informing fair housing planning. Commenters requested that

[13] See *http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2011-31.PDF.*

[14] Although the popular terminology is low-income housing tax credit or LIHTC, the correct legal name is Low-Income Housing Credit. The word ''tax'' is not in the legal name.

QAP, MTP, TIP be included in required planning efforts.

Other commenters stated that as the largest producer of affordable housing in this country, the LIHTCs must be a part of the AFH planning process. Commenters stated that inclusion of LIHTC is especially important since, according to the commenters, LIHTC funding is limited to Qualified Census Tracts, which bear a strong resemblance to concentrated areas of poverty.[15] Commenters stated that LIHTC is also one of the funding vehicles for rehabilitating or producing HUD-supported housing, such as mixed-finance public housing developments, rehabilitated project-based Section 8 developments, Sections 202 and 811 properties, and supportive housing under the McKinney-Vento program. Commenters stated that HUD should be coordinating its enforcement of the duty to affirmatively further fair housing with the Department of Treasury and making all efforts to have Treasury incorporate the principles of affirmatively furthering fair housing into its administration of the LIHTCs.

In contrast to these commenters, other commenters stated that requiring AFH planning to be coordinated with other plans by other agencies is a legal stretch and is problematic in implementation. These commenters stated that HUD should not mandate coordination with any plan or programs that are beyond the control of the program participant and over which HUD does not have jurisdiction. Commenters stated that coordination with other Federal agencies should not be required because just getting all HUD entitlements to cooperate and line up consolidated planning processes would be a monumental task. They stated that asking jurisdictions also to line up with additional Federal agencies is not feasible.

Commenters stated that it is unclear how the AFH and the QAP for LIHTC would successfully meld together given these conflicting goals. The commenters stated that the goals of LIHTC do not match the goals of the AFFH rule. Commenters stated that LIHTC, New Market Tax Credit (NMTC), and Enterprise Zones actually encourage or prioritize development of projects in areas of low-income households. The commenters stated that for the LIHTCs there is, in fact, a basis boost for locating projects in Qualified Census Tracts (areas of low-income concentration) specifically to encourage the construction of multifamily projects in these areas/communities.

HUD Response: Commenters have identified some planning processes being undertaken by other Federal agencies. If HUD program participants are involved in any of these planning efforts, these should be addressed in their AFH, and the Assessment Tool provides for such inclusion. HUD agrees that coordination with these other planning efforts will enhance a program participant's assessment of fair housing. HUD declines, however, to mandate in the regulation coordination with these other planning processes.

In response to the specific comments on the use of Federal programs that encourage redevelopment of or investment in low-income neighborhoods, the use of various strategies including redevelopment or preservation of existing affordable housing is not necessarily at odds with the planning requirements in this regulation.

Comment: Clarify the composition of a Fair Housing Advisory Council. Commenters stated that the term Fair Housing Advisory Council could be interpreted to allow a jurisdiction to meet the consultation requirement by only engaging a hand-picked advisory council while avoiding consultation with any of the fair housing organizations listed at the beginning of the entire section (such as Fair Housing Initiative programs (FHIPs)) and other public and private fair housing service agencies). Commenters requested that HUD clarify the composition of such councils.

HUD Response: HUD agrees with commenters' concerns and did not intend to allow for a Fair Housing Advisory Council to be considered a replacement for the broader consultation requirements in part 91.

Rule change. HUD has removed the language regarding Fair Housing Advisory Councils in proposed §§ 91.100(e) and 91.110(a)(2). In lieu of rule language, HUD intends to provide guidance on models for meeting the consultation requirements, which may include Fair Housing Advisory Councils.

Comment: Convene a Partnership on Sustainable Communities or Reconvene the President's Council on Fair Housing. Commenters stated that there is more that HUD could do, through its own planning efforts, and these include convening a Partnership on Sustainable Communities along with other Federal agencies and offices that are responsible for housing, fair housing, civil rights, or equal opportunity outcomes, to develop a strategic plan to address cross-agency action towards regional fair housing and civil rights goals that support both mobility and investment goals. The commenters also stated that the President's Council on Fair Housing, originally established under President Clinton's Executive Order 12892 to foster access to opportunity and integration strategies across Federal agencies should be reconvened.

HUD Response: HUD appreciates these suggestions from the commenters and will take these under consideration as ways in which HUD and other Federal agencies may be helpful to jurisdictions and other program participants in carrying out their obligation to affirmatively further fair housing.

Comment: HUD must work closely with the U.S. Department of Transportation (DOT) in assisting program participants to affirmatively further fair housing. Commenters stated that HUD must work with DOT staff to share AFH data on segregation, concentrated poverty, and access to opportunity trends—and identify ways that MPOs and transit agencies can align AFH with the DOT's equity and environmental justice analyses per their title VI obligations. Commenters stated that the two agencies should provide guidance for regions and jurisdictions that assist in aligning AFH-Consolidated Plans-Public Housing Plans-and Regional Transportation Plan timelines and goals so that they can achieve integrated, coherent use of their HUD and DOT resources.

HUD Response: HUD appreciates these suggestions and is working with DOT to share data that enhances the planning processes of both agencies.

Comment: Consultation requirements for States exceed those required by statute. Commenters stated that the ''consultation'' requirements for States appear to greatly expand the requirements under QHWRA, in a way that does not appear to have a legal basis under either QHWRA or Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act). Commenters stated that the ''consultation'' requirements go far beyond consultation and actually require the State to help the PHA remedy its fair housing violations. Commenters stated that the only requirement under QHWRA is that States discuss how they will help ''troubled'' PHAs with financial or

[15] Contrary to the commenters' statement, tax law does not limit LIHTCs to buildings located in Qualified Census Tracts. Rather one of the three types of proposed projects to which allocating agencies must give preference is ''projects which are located in qualified census tracts . . . and the development of which contributes to a concerted community revitalization plan'' (emphasis added; citation omitted). Many LIHTC projects are appropriately located in locales that are not Qualified Census Tracts.

technical assistance, as set forth in their comprehensive housing affordability strategy (CHAS) or consolidated plan (Consolidated Plan). Commenters further stated that QHWRA specifically defines a troubled PHA as one whose physical units do not meet ''acceptable housing conditions,'' and the statute states that if public housing is distressed, the solution is for the PHA to ''voucher out'' the PHAs residents.

Commenters stated that § 91.110 of the proposed rule states that ''If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the State should consult with the PHA and identify the actions it may take, if any, to assist the PHA in implementing the required remedies.'' The commenters stated that this provision goes far beyond QHWRA, which only speaks to assisting troubled PHAs with financial or technical assistance, and that by stating that the State has an obligation to help a PHA, the rule shifts the burden from the PHA to the state to address problems created by the PHA or other non-state entity.

Commenters stated that this same regulatory section states that: ''The State shall consult with any state housing agency administering public housing concerning consideration of public housing needs, planned programs and activities for the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing, and proposed actions to affirmatively further fair housing.'' Commenters stated that while ''all state agencies administering public housing'' could refer to State agencies only, it could also be interpreted to mean any PHA operating in the State, including those in entitlement jurisdictions.

Commenters concluded by stating that HUD needs to clearly say that the State consultation only applies to PHAs located in non-entitlement jurisdictions, and that the language in the proposed rule that says the State should identify what actions the State should take to assist the PHA when the PHA is implementing the required remedies should be removed as it has no legal basis under the QWHRA or other legislation that of which the commenters are aware.

Other commenters similarly stated that under the State Consultation Requirements in § 91.110(a)(2), which provides that the ''State shall consult with state and regionally-based organizations that represent protected class members . . . and other public and private fair housing service agencies, to the extent such agencies operate in the State,'' HUD needs to be clear that this applies to such entities and regional organizations that operate in the State's non-entitlement jurisdictions, and that the focus should be on the non-entitlement areas in these consultations.

HUD Response: HUD disagrees that the consultation requirements imposed on States exceed statutory authority. With respect to a PHA under a voluntary compliance agreement (VCA), the language in § 91.110(a)(1) encourages States to consult with such PHA. There is no mandate to provide funding for those PHAs under a VCA.

In response to comments that the States have a very different role from entitlement jurisdictions, HUD is developing an Assessment Tool especially for States that will take into consideration the different role of States.

9. Consolidated Plan

Comment: Standards by which HUD will measure strategies and actions in Consolidated Plan are unclear. Commenters stated that the standards by which HUD will measure the strategies and actions in the consolidated plan and Annual Action Plan are unclear. Commenters stated that the proposed rule and guidance reiterate that jurisdictions will be able to choose the strategies in the consolidated plan and the actions in the Annual Action Plan that will be used to support the goals in the AFH, but that detailed guidance is needed for jurisdictions to understand the standards by which HUD will review the strategies and actions supporting AFH goals in the consolidated plan and Annual Action Plan. Commenters stated that these changes to the Annual Action Plan regulations do not include information about consequences, like withholding of grant funds, if HUD does not approve the strategies or actions listed in the consolidated plan or Action Plan. Commenters stated that although there is a clear relationship between the AFH and consolidated plan and Annual Action Plan, the final rule should clearly state the expectations of how each document should relate. Commenters stated that, for instance, it is unclear whether all priorities and goals identified in the AFH must be addressed in strategies in the consolidated plan and whether each Annual Action Plan must include actions to address all priorities and goals in the AFH. Commenters stated that no changes were made to the Consolidated Annual Performance and Evaluation Report (CAPER) regulations, and that it is unclear whether HUD's review of actions carried out in support of AFH goals will be altered when reviewing the CAPER after the final rule is in effect. Commenters stated that clarity on HUD's expectations regarding reporting requirements is needed.

HUD Response: The standard of review of the consolidated plan at § 91.500(b) is unchanged by this rule. A plan will only be disapproved if it is inconsistent with the consolidated plan statute (Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703 *et seq.*)) or the plan is substantially incomplete. With respect to the latter, based on this rule's requirements at §§ 91.215, 91.315, and 91.415, a strategic plan must include how its priorities and objectives will affirmatively further fair housing consistent with the goals and other elements in the assessment, and will identify additional objectives for any goals that are not addressed. Therefore, for a strategic plan to be complete and meet HUD review standards, a jurisdiction must at a minimum identify strategies and actions to overcome the contributing factors and show how it plans to address each of the goals identified in the AFH (although it is not necessary to be a one-for-one match up as a single strategy may address multiple goals or a combination of strategies may address a single goal). In turn, the annual action plan will require the jurisdiction to describe the actions it plans to take in a particular year that address goals identified in the AFH (see §§ 91.220, 91.320, 91.420). If the substantive elements of the consolidated plan or annual action plan are not included in a consolidated plan, the plan may be disapproved as substantially incomplete. See § 91.500(b) of the Consolidated Plan regulations, which provide examples of actions that may result in a determination by HUD that the plan cannot be accepted or is substantially incomplete.

In this regard, a consolidated plan or annual action plan may also be disapproved as substantially incomplete if the AFFH certification is rejected by HUD, after HUD has determined the certification to be inaccurate based on inspection of evidence and provided the program participant an opportunity for notice and comment. New AFFH certification language at §§ 91.225, 91.325, 91.425, and 903.15(d)(3) provides the standard under which HUD will review the validity of AFFH certifications.

HUD further notes that, under the Fair Housing Act and program statutes, program participants are ultimately responsible for affirmatively furthering fair housing, not just developing an

AFH with goals and priorities and planning documents with strategies and actions. It is the program participants' responsibility to affirmatively further fair housing and to set, evaluate, and readjust goals, priorities, strategies, and actions to fulfill that legal duty.

Comment: Additional attention needs to be paid to impact on HOME consortium. Commenters stated there is insufficient guidance on the changes that will be necessary to the HOME consortium grant agreement for HOME Consortia, and reference to their re-certification process under the State's Consolidated Plan, regardless of renewal clauses contained in their current Consortia Agreements.

HUD Response: HUD will provide additional guidance as needed, as well as technical assistance on a case-by-case basis.

Comment: Require States to include language in their Consolidated Plans on how they will use their resources to assist with achievement of fair housing goals. Commenters stated that regional collaboration should be encouraged, and the new AFH regulations should require that States include language in their consolidated plans on how they will use resources to assist the regions with their fair housing goals. Commenters stated that an AFH is not intended for States and should not be forced on States merely for ease of administration. States are diverse and should be given the flexibility to assist regional collaborations without having to fit into their mold.

HUD Response: The AFH includes States, but HUD recognizes that fair housing planning assessments by States will be different in scope and emphasis than entitlement jurisdiction. Therefore, as noted earlier in this preamble, and in the publication of the AFH Assessment Tool, HUD is developing a separate Assessment Tool for States.

Comment: The Consolidated Annual Performance and Evaluation Report (CAPER) can measure AFFH performance; program participants should continue to be allowed self-evaluation. Commenters stated that performance review by HUD of the Consolidated Plan regulations should be the same one used to assess how program participants have acted with respect to the goals they set out for affirmatively furthering fair housing. Commenters stated that feedback on progress of affirmatively furthering fair housing is included within CAPER, and this should continue to be a self-evaluation that is then reviewed by HUD. Commenters stated that HUD does not review CAPERs with any consistency, and that, for some years, a review letter comes within six months of the CAPER submission; other years there has been no letter at all. Commenters stated that jurisdictions across the country report similarly mixed responses from the various HUD field offices, and they asked why HUD would not hold all jurisdictions to the same level of review.

HUD Response: The annual performance reporting requirements at § 91.520, including the requirement to report on actions taken to affirmatively further fair housing, and HUD review requirements at § 91.525 are unchanged in this rule. Levels of review may vary based on priorities and resources. HUD takes note of the commenters' concerns about consistency in review.

Comment: Allow jurisdictions to match up planning cycle to next available cycle. Commenters recommended that jurisdictions be given the ability to match up planning cycles in the next available cycle. Commenters stated that this may require the PHA and or the consolidated plan length (3 to 5 years) to be shorter or lengthen to match up, but should be decided at the local level and approved by HUD. Commenters stated that matching up FYs is less important if the AFH is planned for and produced before the PHA/consolidated plan are due. Commenters stated that if a region wants to align their 5-year consolidated plan cycles to facilitate a regional AFH, according to, the commenters stated their understanding of existing rules, many jurisdictions would need to prepare a shorter consolidated plan—perhaps even just one or two years, further increasing costs and demands on scarce staff time in an upcoming 5-year period.

HUD Response: Jurisdictions already have the flexibility—and HUD intends to accommodate such flexibility—to change the submission date of its consolidated plan under § 91.10. This section explicitly allows changes, with HUD's agreement, to allow for strategic plans to stretch beyond 5 years for the purpose of aligning plans.

Comment: No additional public comment period is required for AFH, public comment period for CAPER and Consolidated Plan is sufficient. Commenters stated that the public comment periods for the CAPER and consolidated plan (15 and 30 days, respectively) are sufficient. Commenters stated that it seems that the AFH requirements of holding one public hearing, as well as consultation with various fair housing and similar groups, will fit into the current planning and reporting citizen participation process.

HUD Response: The AFH is a distinct document with data, analysis, and priority and goal setting that feeds into the consolidated plan. Further, public input is a fundamental and necessary component in the AFH process. Jurisdictions may be able to appropriately conduct some outreach or hearings on both, but must be aware that submission timelines require that the AFH must be submitted 270 calendar days (for first AFHs) or 195 calendar days (for subsequent AFHs) before the start of the first program year to which the new housing and homeless needs assessment, market analysis, and strategic plan, as required by 24 CFR 91.15(b)(2), and referred to in the regulatory text as the ''new consolidated plan'' applies. It may be more likely that there be shared outreach efforts on a prior year action plan or performance report, but in any such case the AFH should be a distinct agenda item for any public hearing.

Comment: Recommendations for comment period for AFH. Commenters stated that the AFH review for public comment on consolidated plan participants should be a minimum of 45 days. Other commenters stated that HUD's rule should allow up to 30 days for public comment, allowing the program participant to decide on an appropriate comment period within these parameters. Yet other commenters stated that 15 days is insufficient time for public comment.

HUD Response: This rule sets the minimum public comment period for a jurisdiction at 30 days, the same period required for the consolidated plan. The minimum public comment period for a PHA remains 45 days under existing PHA Plan public comment requirements. Jurisdictions may choose to follow a longer public comment period, if desired.

Comment: Placing AFH community participation and consultation requirements in 24 CFR 91.110 and 91.115 creates certain issues for State grantees. Commenters stated that placing the community participation and consultation requirements applicable to the AFH in §§ 91.110 and 91.115 has the virtue of giving formal recognition to the distinctive character of State-level undertakings in connection with the two processes. Commenters stated that additional clarification may be needed to limit consultation obligations to entities that fall under the coverage of the two processes—*i.e.*, making consultation with entitlement localities or PHAs, for example, optional rather than mandatory where there is no state program coverage.

HUD Response: HUD has not changed the requirement in this rule, but only extended such requirements to the AFH process. As provided in the rule, the requirement for States is to consult with ''any housing agency administering public housing or section 8 on a State-wide basis as well as all public housing agencies that certify consistency with the State's consolidated plan.'' (See § 91.110(a)(1).) HUD understands this requirement to limit required consultation to State level public housing agencies or those that certify consistency with the State's consolidated plan.

Comment: Consolidated Plan public participation requirements can be improved to achieve more meaningful public comment. Commenters stated that the consolidated plan public participation requirements could be improved to foster more genuine and complete public participation. Commenters stated that given the amount of information in a draft AFH or draft consolidated plan, a 60-day (60 calendar days) public review and comment period is warranted. Commenters stated that not only is there much to read and assess, community-based organizations need time for their members to process comments before presenting them at a hearing or later in writing (see § 91.105(b)(4)). Commenters stated that there must be an adequate amount of time between the availability of a draft AFH or draft consolidated plan and a public hearing to obtain public comments about it, perhaps 30 days. Commenters stated that advocates have experienced public hearings about draft consolidated plans within the current 30-day review and comment period, affording the public only one or two weeks to review the draft and prepare testimony (see § 91.105(b)(3)). Commenters stated that there must be a reasonable amount of time between the hearing about the draft AFH or consolidated plan and submission to HUD for review, perhaps one to two weeks. Commenters further stated that advocates have experienced consolidated plans or PHA Plans submitted to HUD a day or two after a public hearing, not a sufficient amount of time for the jurisdiction or the PHA to have considered public or resident comment (see § 91.105(b)(5)). Commenters stated that in 1994 advocates called for a period of 60 days to review consolidated plan performance, and that given the importance of AFFH performance, there must be more than a 15-day review period. At a minimum 60 days is suggested in light of the next point—the need for a performance report hearing.

HUD Response: As stated previously in this preamble, the AFH regulations state the minimum public comment period. Program participants may set higher public comment periods. Citizen participation plans are also subject to citizen input. Participants are required to demonstrate in the AFH that they have considered community comments and how they have dealt with those comments. Just setting a minimum time period for consideration does not guarantee that the time will be used for the purpose of review, which is why HUD will instead look to the summary of citizen input and responses as demonstration that public input was considered. Further, it is up to jurisdictions to decide how to appropriately schedule public hearings, so long as the scheduling is done in a manner that makes the hearing accessible to all and promotes public participation. While HUD will not require all participants to hold separate hearings on performance reports, jurisdictions may choose to do so.

Comment: Make all comment periods for all reports the same. Commenters stated that comment periods for all reports should be the same to create a reliable schedule community members can depend on.

HUD Response: It is HUD's position that not all reports warrant the same period of public comment. HUD has set public comment period for the AFH in line with the consolidated plan and annual action plan requirements (*e.g.*, 30 days). The performance report comment period of 15 days is unchanged by this rule and reflects the nature of the document as reporting out of actions taken rather than a proposal for future action that may be subject to more public debate.

Comment: The new certifications at § 91.225 and in part 903 are too broad. Commenters stated that requiring a program participant, at § 91.225, to certify that ''it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing'' is too broad of a legal standard, and may result in increased litigation spurred by individual instances, or decisions of the State or a State recipient that one or more parties may feel is inconsistent with an AFH, even though a State's actions, on the whole, affirmatively further fair housing as set forth under the AFH and other related program requirements. The commenters stated that these decisions may be related to non-housing community assets over which State housing program administrators have no knowledge or control, or may relate to actions of individual state recipients over which the state has no legal authority.

PHA commenters stated that the proposed certification sets forth an unreasonable expectation. The commenters stated that under this standard, a PHA would be hard-pressed to justify capital improvements on a property that exists in a neighborhood lacking community assets, and that similarly, a PHA would struggle to explain how lowering their voucher payment standard in order to be able to stretch their budget and continue to serve the same number of families meets the definition of ''affirmatively furthering fair housing.''

Other commenters stated that the program participants do not know what ''materially inconsistent'' means in the certification; that HUD offered no explanation of its meaning. The commenters asked who decides what is ''material'' and what are the criteria for being deemed ''materially inconsistent.'' The commenters stated if HUD does not define this term and does not identify criteria that it will use to review and approve AFHs, then HUD must exercise flexibility in interpreting this provision. Commenters stated that under the proposed rule's definition of affirmatively furthering fair housing, which can be read to discourage investments in existing low-income neighborhoods, the certification can be challenged on the basis that investments in poverty/minority concentrated neighborhoods are a violation of affirmatively furthering fair housing, because the effect of such investment does not ''expand access to high opportunity neighborhoods'' and develop ''investment possibilities in underserved communities.''

Commenters stated that HUD must provide certification that has clear standards for meeting compliance standards; that program participants should not bear the burden of providing that they have complied with ill-defined and changeable standards.

Commenters recommended that HUD should add language to the AFFH certification to more clearly state its meaning of the certification—that HUD should adopt the language from the Westchester consent decree, requiring that in certifying compliance with the obligation to affirmatively further fair housing, the jurisdiction or PHA acknowledges that ''the location of affordable housing is central to the fulfilling the commitment to affirmatively further fair housing because it determines whether such housing will reduce or perpetuate

residential segregation.'' Other commenters recommended the final sentence of the certification state preservation of affordable housing and investment in areas of racial or ethnic concentrations of poverty are not actions necessarily materially inconsistent with the obligation to affirmatively further fair housing.

HUD Response: The commenters concerns about the certification provisions largely arise from concerns that HUD's rule did not assure a balanced approach and that participation in HUD or other Federal housing programs serving specified populations may be viewed as a violation of the duty to affirmatively further fair housing. HUD has already addressed both of these concerns in this preamble by advising of revisions in this final rule to the ''purpose'' section of the regulation and to the definition of ''affirmatively furthering fair housing,'' and by inclusion of a definition of ''housing programs serving specified populations.''

HUD does not believe the standard of material inconsistency is overly broad. The obligation to affirmatively further fair housing is a statutory obligation, and the certification provisions simply restate the fact that a participant cannot act in a way that is inconsistent with its legal obligation. Unrelated types of actions would not be materially inconsistent; there would have to be some relationship between the action and the obligation to affirmatively further fair housing. HUD would review the AFH and certification and determine if the actions planned to address the goals in the AFH, or the actions that are taken by the program participant, including those based on the AFH, are materially inconsistent with the obligation to affirmatively further fair housing. If they are, HUD would review the certification under existing procedures in 24 CFR part 91 or the procedures in § 903.15(d)(3) to determine whether the statutory duty is violated.

HUD believes that the certification language is appropriate and consistent with statutory requirements and, therefore, makes no change in this final rule.

Comment: Certification should clarify the duty to affirmatively further fair housing with respect to non-federal funds. Commenters asked that the certification at § 91.225 provide that a program participant will take no action, ''whether using federal funds or not,'' that is materially inconsistent with its obligation to affirmatively further fair housing. The commenters stated that this same phrase should be added to the certification language at § 91.325 and § 91.425. Commenters further stated that the applicability of the duty to affirmatively further fair housing to all housing and community development resources could be strengthened by including language similar to that used by the Federal Transit Administration in its update of guidance on title VI of the Civil Rights Act. The commenters stated that the guidance includes the following language: ''Title VI prohibits recipients of Federal financial assistance (*e.g.*, states, local governments, and transit providers) from discriminating on the basis of race, color, or national origin in their programs or activities, and it obligates Federal funding agencies to enforce compliance.''

Other commenters, however, stated that the certification should not pertain to activities that do not involve HUD or other Federal funds.

HUD Response: HUD believes the existing certification appropriately reflects the scope of actions to which the program participant must certify.

Comment: Certification should be both prospective and retrospective. Commenters stated that any jurisdiction other than one that is submitting a certification for the first time should be obliged to make a retrospective representation about AFFH compliance. The commenters stated that a jurisdiction should be required to make explicit the fact that it is making a certification with the intention that HUD rely on it without conducting an independent investigation. The commenters recommended that the certification requirement in the final rule read as follows: ''Each jurisdiction is required to submit a certification that it has and will affirmatively further fair housing, which means that: (a) It has and will take all meaningful steps possible to overcome barriers to fair housing choice that exist in or are contributed to by the jurisdiction; (b) it has not and will not take any action inconsistent with its obligation to affirmatively further fair housing; and (c) it has not and will not fail to act where such failure to act has been or would be inconsistent with its obligation to affirmatively further fair housing. The certification shall include a statement from the jurisdiction that it is representing that the certification is true, complete, and based on supporting evidence, and that it understands that HUD is entitled to rely upon such certification without conducting an independent investigation.''

HUD Response: HUD disagrees with the recommendation to change the language of the certification. Program participants are subject to certifications to AFFH for all periods of time during which funds are received from HUD. Therefore, if a program participant did not affirmatively further fair housing in a prior time period when HUD funds were received, it was in violation of a prior AFFH certification. HUD notes that the commenter is correct that HUD relies on certifications for purposes of extending funding to program participants. However, HUD sees no need to include this language in the regulation, since funding is conditioned on the certification and, if the certification is inaccurate, HUD has existing processes to investigate or challenge it.

10. Definitions

Comment: The definition of ''affirmatively furthering fair housing'' is improved but can be read as discouraging investments in existing low-income neighborhoods. Many commenters stated that the regulation's proposed definition of affirmatively furthering fair housing is more straight forward than the previous definition and that increased clarity will promote greater compliance by participants in Federal programs. Commenters specifically pointed to phrasing in the definition which states that affirmatively furthering fair housing means taking proactive steps beyond combating discrimination.

However, other commenters stated that HUD's definition can be read as discouraging investments in existing low income neighborhoods. The commenters stated that HUD's definition makes no mention of the kinds of investments in underserved communities that have been shown to improve those neighborhoods, such as quality affordable housing, and can be read as explicitly excluding affordable housing investments in low-income minority communities. Commenters stated that under this definition, virtually any investment in poverty/minority concentrated neighborhoods can be attacked under this provision.

HUD Response: As noted earlier in this preamble, HUD did not intend to indicate that an investment in a neighborhood of racial or ethnic concentration of poverty is not an acceptable means of affirmatively furthering fair housing. Such investments may be an acceptable means of affirmatively furthering fair housing when designed to achieve fair housing outcomes such as reducing disproportionate housing needs, eliminating RCAPs/ECAPs, increasing integration, and increasing access to opportunity, such as high performing schools, transportation, and jobs. HUD

believes that the clarifications and changes made to the purpose section and the definition of ''affirmatively furthering fair housing'' demonstrate that the final rule supports a balanced approach.

Rule change and clarification. In § 5.150, HUD revises the purpose and in § 5.154(d)(5) HUD adds strategies and actions, to clarify HUD's support for a balanced approach to affirmatively furthering fair housing. Additionally, as noted earlier in this preamble, HUD has replaced the term ''proactive steps'' with ''meaningful actions'' in the definition of ''affirmatively furthering fair housing'' to clarify the types of actions grantees are expected to take to affirmatively further fair housing.

Comment: The term ''community assets'' is not clearly defined in the rule; the term ''neighborhood asset'' is not defined. Commenters stated that the term ''community assets,'' which is defined as part of the definition of ''significant disparities in access to community assets'' is not clearly defined in the rule compared to the data sets HUD is providing. Commenters stated that different measures for community assets are included in different parts of the rule. Other commenters stated that any definition of ''community assets'' should include affordable housing itself as an example of a community asset. In fact, ''community assets'' should be broadly defined to include factors such as affordable housing, access to healthy food, quality schools, social services, transportation, and other factors that foster a healthful, secure, and opportunity-centered quality of life.

Other commenters stated that the term ''neighborhood asset'' was used but not defined and that any use of the term ''neighborhood asset'' should include a social/family network of support, stating that such networks increase individuals' access to opportunities and resources.

HUD Response: HUD appreciates the concerns and suggestions made by the commenters. HUD's Assessment Tool, published on September 26, 2014, addresses more thoroughly certain community assets that are key to access to opportunity, and HUD believes the Assessment Tool is more appropriate for addressing and clarifying what is meant by community assets. HUD further notes, however, that many communities have unique assets and the use of a broad definition is intended to capture not only the most common assets that afford access to opportunity, but also those that are less common, but nonetheless very important in communities across the nation. In this final rule, HUD does not use the term ''neighborhood asset.''

Comment: Strengthen the definition of ''community participation.'' Commenters stated that the proposed definition of ''community participation'' should provide detailed, result orientated steps that will aid states, local governments, and public housing agencies in understanding the rigor and importance of the requirement that funding recipients proactively involve the community in furthering fair housing. Commenters stated that the proposed definition of ''community participation'' should provide specific examples of acceptable community participation plans to clearly illustrate the importance of community participation and provide guidance to funding recipients. Commenters additionally stated that the proposed definition of ''community participation'' should require recipients of funding not just to ''consider the views and recommendations received'' and have a ''process for incorporating such [community] views in decisions and outcomes,'' but should also have a requirement that recipients of funding demonstrate that such views have, indeed, been incorporated into decisions and outcomes.

HUD Response: HUD declines to revise the definition of ''community participation'' in the manner the commenters suggest. The additional detail that commenters are seeking about community participation can be found in § 5.158, entitled ''Community participation, consultation, and coordination.''

Comment: HUD's definition of ''concentration'' is without appropriate basis. Commenters expressed disagreement with HUD's definition of a concentration of minorities as provided in the proposed rule, which commenters stated automatically defines an area of concentration as any area that has a non-white population of 50 percent of more. The commenters stated that, as HUD has noted, the U.S. is moving to majority minority status, and therefore to use the automatic 50 percent standard is a false measure that does not accurately reflect local community demographics or take into account the changing demographics of the United States as a whole. The commenters stated that HUD's definition makes an assumption that an area that is ''majority minority'' is, in itself, an inherently bad thing—an assessment that many would disagree with, and that the ''solution'' called for by this ''problem,'' following the logic that commenters stated HUD is using, would require program participants to adopt a strategy encouraging minorities to move out of the suburbs and into the central city.

Commenters stated that HUD's definition of concentration in the proposed rule is the one that has been used by HUD's Office of Fair Housing and Equal Opportunity (FHEO) for competitive programs such as Choice Neighborhoods and Sustainable Communities, but given that the basis for conducting the AFH (and previously the AI) has been based on CDBG statute, as well as the other formula programs in the Office of Community Planning and Development (CPD), the commenters recommend that HUD use the CPD definition instead. Commenters stated that the CPD definition provides that a concentration exists if the minority population is ten percent higher than the jurisdiction as a whole, and provided the following example—if a jurisdiction was 10 percent minority, then any census tract over 20 percent would constitute a concentration, and if a jurisdiction was 60 percent minority, a concentration would exist if the census tract was more than 70 percent minority. Commenters stated that this is a fairer and more reasonable method of measuring concentrations (particularly at a State level where vast areas of geography is involved) as well as reasonably addressing minority majority jurisdictions, both urban and suburban.

HUD Response: First, HUD would clarify that neither the proposed rule nor the final rule includes a numeric threshold in the definition of the term, ''racially or ethnically concentrated area of poverty.'' The commenters referring to a 50 percent threshold for minority population are instead commenting on the AFFH Data Documentation paper that HUD released concurrently with the proposed rule, and which HUD also requested comment on. The comments on those thresholds will be addressed through the development of the Assessment Tool, including consideration of the correct threshold that may be applicable to different geographic areas, for instance rural versus central city areas.

In addition, the comments on the use of a 10 percent threshold used in HUD's consolidated planning regulations appear to refer to those regulations' provisions on disproportionate housing needs analysis and not to a threshold for defining an area as having a high minority population. HUD notes that the term ''concentration'' appears in other HUD regulations, including in the requirements on site and neighborhood standards, without the specific threshold provided in the regulatory text itself. See, for example, §§ 91.220,

92.353, 570.208, 891.125(c), 891.680, 905.602, 972.218, 982.54, and 983.57.

Comment: Revise the definition of ''fair housing choice'' with respect to persons with disabilities. Commenters asked that the final rule clarify that fair housing choice means that housing is not conditioned on acceptance of disability-related services (unless that is one of the rare instances in which it is specifically required by a Federal statute).

Other commenters stated that the definition of fair housing choice must clearly indicate that ''choice'' includes residents' ability to choose to remain in homes and communities where they have long lived and where they have deep and important social, community, and economic ties, even if those communities are racially or ethnically concentrated areas of poverty. Commenters recommended the following revised definition of ''fair housing choice'' with respect to persons with disabilities: ''For persons with disabilities, fair housing choice is the ability to live where they choose. This includes access to accessible housing, and, for disabled persons in institutional or other residential environment, housing in the most integrated setting appropriate as required under law, if they so desire, including disability-related services that an individual needs to live in such housing. Fair Housing Choice also means recognizing that not all persons with disabilities desire to live in an integrated setting and that those people have the right to choose to reside with others with the same disability in housing built to meet their needs that includes services focusing on that specific disability.''

Other commenters stated that HUD's definition of fair housing choice includes housing choices not constrained by barriers ''related to'' protections contained in the Fair Housing Act and the commenters stated that they object to HUD's apparent inclusion of matters correlated with protected classes but not related causally to those characteristics.

HUD Response: HUD appreciates the commenters' suggestions and, as noted earlier in this preamble has revised the definition of ''fair housing choice.'' Although HUD's definition of fair housing choice does not address the involuntary receipt of services, HUD interprets its regulations under section 504 of the Rehabilitation Act to require disability-related services to be voluntary.

Rule change. HUD has revised the definition of ''fair housing choice'' in § 5.152 to mean that individuals and families have the opportunity, as well as the information and options to live where they choose free of discrimination or other barriers, and that persons with disabilities have the option to reside in accessible housing and in the most integrated setting appropriate to an individual's needs, as required under Federal civil rights law. This choice also includes disability-related services an individual may require in order to live in such housing.

Comment: The definition of ''fair housing issue'' is meaningless. Commenters stated that the definition of ''fair housing issue'' includes, ''any other condition that impedes or fails to advance fair housing choice.'' The commenters stated that by including anything and everything, the definition means nothing. The commenters stated that HUD must provide a definition of ''fair housing choice'' that program participants can understand. The commenters stated that the definition of ''fair housing issue'' in the proposed rule can lead to the conclusion that, since men and women with disabilities have lower incomes than unprotected classes, and since lower incomes impede housing choice, the lower incomes of persons with disabilities is a matter subject to requirements and mitigation under the Fair Housing Act. Commenters recommended that HUD adopt the following definition: ''Fair housing issue means unequal housing opportunities for persons in a protected class under federal law and evidence of illegal discrimination or violation of existing civil rights law, regulations, or guidance, as well as any other condition that impedes or fails to advance fair housing choice.''

Other commenters stated that the definition of ''fair housing issue'' must omit reference to ongoing local or regional segregation. Commenters stated that because fair housing issues do not stop at the borders between jurisdictions, it is important that the definition of fair housing issue use ''and'' instead of ''or.''

HUD Response: HUD disagrees with the commenters, but does agree that a clarification would be helpful. The definition of ''fair housing issue'' is intentionally broad because the factors and conditions that may impede fair housing choice or access to opportunity are wide and varied.

Rule change. As noted earlier in this preamble, HUD has made certain clarifying changes to the definition of ''fair housing issue.'' (See § 5.152.) Specifically, a fair housing issue is a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity.

Comment: The definition of ''integration'' does not clearly define the geographic area under review. Commenters stated that the definition of ''integration'' does not clearly define the geographic area under review, but includes, ''jurisdiction or Metropolitan Statistical Area (MSA).'' The commenters stated that those geographic designations may represent vastly different areas with vastly different demographic characteristics. The commenters stated that a community may be integrated in a jurisdiction but segregated in an MSA or vice versa. Commenters stated that reference to ''Metropolitan Statistical Area as a whole'' should be removed in the definition of ''integration.'' Commenters stated that MSAs cover broad areas that a single jurisdiction cannot influence, as multiple jurisdictions are often captured in a single MSA. Commenters stated that another concern with the definition is the standard presented for persons with disabilities, which is that they live, ''in the most integrated setting appropriate.'' Commenters asked whom does HUD believe is competent to determine what is appropriate. Commenters stated that the better terminology is to state the most integrated setting chosen by the household.

Other commenters asked that in the definition of ''integration,'' HUD replace the word ''handicap'' with ''persons with disabilities.''

HUD Response: The geographic area under review will differ depending upon who is the program participant. In this regard, HUD has included a definition of ''geographic area'' that is intended to acknowledge that different program participants have different geographic areas in which they will undertake their assessment of fair housing. With respect to integration, as noted earlier in this preamble, HUD has revised the definition of ''integration,'' which HUD believes addresses the commenters concerns.

Rule change. The definition of ''integration'' in § 5.152 is revised. HUD has replaced the word ''handicap'' with ''disability'' and has better identified the particular geographic areas at issue, by providing a definition of geographic area in § 5.152, which program participants will analyze using the Assessment Tool.

Comment: HUD needs to define ''region.'' Commenters stated that if HUD is requiring a regional analysis for every entity submitting an AFH, then HUD must define what is meant by a ''region.'' Commenters asked whether a

region for State AFH planning purposes is the State and surrounding States, or all the regions within a State, however those are defined.

HUD Response: The duty to affirmatively further fair housing requires a regional analysis. The court in *HUD* v. *Thompson* placed a strong emphasis on the need for regional solutions to decrease segregation and racial isolation. For these reasons, a PHA would need to consider fair housing effects outside its jurisdictional border, as would an entitlement jurisdiction, in order to meet the requirements under the Fair Housing Act and fair housing case law. A PHA may conduct its own AFH with geographic scope and proposed actions scaled to the PHA's operations and region. PHAs choosing to conduct and submit an independent AFH, must include an analysis for the PHA service area and region, in a form prescribed by HUD, in accordance with § 5.154(d)(2). Program participants' regions will ultimately be defined by the AFH Assessment Tool provided by HUD.

Comment: The definition of ''segregation'' needs further clarification. Commenters stated that the definition of ''segregation'' is unclear as to whether HUD is defining segregation in terms of a jurisdiction, some other ''geographic area,'' or a particular development—the same concern expressed about geographic area that commenters expressed about the definition of ''integration.'' Commenters stated that the definition is confusing when it references ''particular housing developments''—that the definition seems to say that segregation occurs when there is a high concentration of persons with disabilities ''in a particular housing development,'' though, the commenters stated that it is unclear whether concentrations in a development apply only to persons with disabilities or other protected groups as well.

Other commenters stated that HUD should strike the phrase ''a particular housing development'' or else this would lead to individual projects having to deny eligible applicants housing if they do not meet particular characteristics. Commenters also stated that HUD should strike the clause ''or other clauses'' because this phrase is simply too vague.

Commenters stated that HUD must define ''segregation'' to be the result of government or private sector actions and not the actions of individuals making their own location decisions. Commenters stated that the term ''segregation'' is a politically and emotionally loaded term and its use may create obstacles to rational discussion of the reasons why certain racial/ethnic groups are clustered in particular locations. Commenters stated that the use of more neutral terms such as ''dissimilarity index'' and ''isolation index'' would enable communities to explore these questions without the value-laden judgment implicit in the use of the term ''segregation.''

HUD Response: HUD understands that the term ''segregation'' may be an emotionally charged term, but the Fair Housing Act was enacted to overcome historic patterns of segregation, including the exclusion of people because of their characteristics protected by the Fair Housing Act. HUD declines the commenters' suggestion to define ''segregation'' as a result of government or private sector actions. Instead, the final rule generally defines ''segregation'' as a high concentration of persons according to protected class status regardless of the cause. The rule also provides more specificity regarding segregation of persons with disabilities. Thus, identifying a pattern of ''segregation'' is only the first step in the analysis. Program participants will then assess the related contributing factors to determine whether addressing them should be a high priority (*e.g.,* where the contributing factor represents a limitation or denial of fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance). HUD agrees with commenters that segregation at the development or building level can include not only persons with disabilities but also persons with other protected characteristics. HUD has addressed the issue of the size of geographic area at issue in segregation by providing a definition of geographic area.

Rule change. Similar to the change made to the definition of ''integration'' HUD has revised the definition of ''segregation'' and has added a new defined term of ''housing programs serving specified populations'' to clarify that developments that may contain a high proportion of persons with disabilities do not constitute a ''fair housing issue of segregation'' provided the program or program activity serving those residents is not otherwise violating applicable Federal civil rights requirements, including the duty to affirmatively further fair housing. (See § 5.152.)

Comment: The definitions of racially or ethnically concentrated areas of poverty are defined by census tract, which can be problematic. Commenters stated that the definition of racially or ethnically concentrated areas of poverty is defined by census tract boundaries, and the commenters expressed concern that this will not allow for any analysis of areas that may be smaller than census tracts but still are racially or ethnically concentrated areas of poverty. The commenters recommended that HUD clarify that program participants should consider smaller such concentrated areas of poverty as part of their analysis.

HUD Response: Neither the proposed rule nor the final rule include a limitation that the definition of an RCAP/ECAP is based only on a census tract. The final rule states that an RCAP/ECAP ''means a geographic area with significant concentrations of poverty and minority populations.'' The term ''geographic area'' is further defined as, ''a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or another applicable area (*e.g.,* census tract, neighborhood, Zip code, block group, housing development, or a portion thereof) relevant to the analysis required to complete the assessment of fair housing, as specified in the Assessment Tool.'' As such, the Assessment Tool will propose the appropriate level of geography for determining various elements of the AFH, including RCAPs/ECAPs. In general, RCAPs/ECAPs will likely be based on census tracts, at least for many program participants, including entitlement jurisdictions as well as PHAs in urban areas. However, other levels of geography may be relevant for different elements, for example HUD's Small Area Fair Market Rents use zip codes, which may be useful for some types of analyses in a participant's AFH.

Rule Change. This final rule adds a definition of the term ''geographic area.''

Comment: The definition of significant disparities in access to community assets is too broad. Commenters stated that HUD's definition of this term is too open-ended to be useful and open to many different interpretations and uses. Commenters stated that, for example, based on the literal meaning of the words, it is hard to understand how a disparity in access to educational assets could exist with regard to any household within a local school's attendance area since all school-aged children are eligible to attend and the schools typically provide transportation. Commenters also asked about the meaning of ''differences in access to transportation.'' Commenters asked if low-income areas with a high percentage of a particular race have more access to public transportation, or if more affluent communities have little access to public transportation, is that a disparity in access that should be addressed. Other commenters stated

that the definition of ''significant disparities in access to community assets'' should be more precise. Commenters stated that the definition should include a ''measurable difference in access.'' The commenters stated that because even minute differences may be measurable, this language should include a qualifier such as a ''significant or material'' measurable difference. Commenters also stated that the Fair Housing Act does not cover significant disparities in community assets and such inclusion is beyond the scope of the statute.

HUD Response: As stated in HUD's proposed rule, research indicates that disparities in access to community assets negatively impact educational and economic outcomes. Sustained exposure to highly distressed neighborhoods is associated with a reduction in children's odds of high school graduation by at least 60 percent, while low-income students who have access to asset-rich neighborhoods with good schools may realize math and reading gains that help close the achievement gap. (See 78 FR 43714.) Given this research, one of HUD's objectives through the new AFH process is to reduce disparities in access to community assets (that is access to opportunity) based on race, color, religion, sex, familial status, national origin, or disability.

HUD declines to set out a measureable standard for determining significant disparities in community assets, as program participants and communities should have flexibility in making such a determination since these disparities will vary across communities. HUD believes the Assessment Tool will help program participants to identify such significant disparities through the provision of data.

Comment: Other terms need to be defined. Commenters suggested definitions for such terms as ''affirmative move,'' ''complaint,'' ''discrimination,'' ''exclusionary practices,'' ''fair'' ''fair housing,'' ''family,'' ''homelessness,'' ''inclusive communities,'' ''jurisdiction,'' ''local data,'' ''material inconsistency with data,'' and ''neighborhood.''

HUD Response: As noted in Section III of this preamble, HUD has included a definition on ''local data'' but declines to define these additional terms. For some of the terms, such as ''fair'' and ''complaint,'' the rule uses these terms based on the common dictionary definition of such terms. The term ''fair housing'' reflects the meaning as used in the Fair Housing Act. For terms such as ''family'' and ''homeless,'' these terms are already defined in HUD regulations, and the final rule does not need to further define these terms. The term ''jurisdiction'' is defined in HUD's regulations in 24 CFR part 91, as noted by HUD in the introductory language to the definition section, § 5.152. Commenters asked that HUD define ''inclusive communities'' to emphasize that the rule is speaking of such term in the context of protected classes. HUD believes such qualification is unnecessary since this rule is about providing an approach for program participants to more effectively affirmatively further fair housing for persons with characteristics protected by the Fair Housing Act. The term ''material inconsistency with data'' is addressed in the data document.

New terms defined. As noted in Section III of this preamble, HUD has added, in this final rule, definitions for ''data,'' which includes a definition for ''HUD-provided data'' and ''local data.'' HUD defines ''local data'' as metrics, statistics, and other quantified information, that are subject to a determination of statistical validity by HUD, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool. The phrase ''subject to a determination of statistical validity by HUD'' is included to clarify that HUD may decline to accept local data that HUD has determined is not valid but not that HUD will apply a rigorous statistical validity test for all local data. HUD also provides a definition for ''local knowledge.'' As also noted in Section III and discussed in response to several comments, HUD has included in this final rule definitions for ''geographic area,'' ''housing programs serving specified populations'' and ''qualified PHA.'' In this final rule, HUD has also added a definition of ''joint participation'' to refer to the collaboration of two or more program participants conducting an AFH, but which is distinguished from regional collaborating program participants, which must include in such collaboration at least two consolidated plan program participants. (See § 5.152.)

11. Disproportionate Housing Needs

Comment: HUD's definition of disproportionate housing needs is overly complicated. Commenters stated that the approach HUD took in defining disproportionate housing needs seems overly complicated and that HUD has failed to demonstrate that the ''measures and indices are valid, robust, and stable.'' Other commenters stated that HUD's apparent treatment of disproportionate need appears to conflate potential disparate impact on protected classes with the effects of real estate markets. Commenters stated that HUD should consider whether members of protected classes have disproportionate housing needs compared to similarly situated members of unprotected classes (*e.g.,* households in protected classes living near transportation hubs or near high performing schools compared to households living near these community assets who are not in protected classes).

Other commenters stated that the proposed definition of disproportionate housing needs seems to indicate that affordable housing projects should only house families in protected classes with disproportionate housing needs and exclude other low-income individuals who qualify for such housing. Commenters asked whether this means that Federal funds should be devoted only to helping those in a protected class and not others with the same economic challenges. Commenters stated that moving households from an area of poverty as currently defined and putting them in one that is not an area of poverty may cause the second area to become an area of poverty or otherwise ''flip the communities.'' Other commenters stated that the categories of housing need included in the definition of ''disproportionate housing need'' (cost burden, severe cost burden, overcrowding, and substandard housing) and their accompanying analyses are too expansive and recommended conducting an analysis solely on income, as income directly correlates to other identified factors.

Commenters stated that it is crucial that the disproportionate housing need analysis be regional in scope, to encompass the entire housing market, so that the solutions developed are not primarily focused on providing housing where the majority of low-income families already live. Other commenters stated that a final rule should ensure that the definition of ''disproportionate housing needs'' is more clearly focused on regional housing needs rather than conditions ''within the jurisdiction.''

Lastly, commenters questioned the basis for the threshold of 10 percent. Commenters recommended changing the percentage from 10 percent to at least 20 percent. Commenters stated that the American Community Survey (ACS), which HUD proposes to use, has high margins of error, often over 20 percent in a given census tract and occasionally approaching 30 percent.

Commenters stated that because the margins of error are so high, the percentage should be changed from 10 percent to 20 percent or higher, especially for more rural states and rural areas within all states.

HUD Response: HUD agrees with the commenters that the definition of ''disproportionate housing needs'' in the proposed rule was not as clear as intended. As noted in the overview of changes made at the final rule stage (Section III of this preamble), HUD has revised the definition of ''disproportionate housing needs'' and removed the 10 percent threshold.

HUD agrees with the commenters that a single numeric threshold for determining disproportionate housing needs would be unsuccessful in accurately identifying disproportionality across different population sizes, demographic characteristics, and relative to other protected classes or subsets of the same protected class within a category of housing need, as well as relative to the total population. As commenters pointed out, the same threshold also may not accurately depict disproportionate housing need in both low- and high-density areas, or among both homogenous and heterogeneous populations. HUD's intention is to identify disproportionate housing need in an inclusive and relative way, and to do so fairly in every set of circumstances. Therefore, HUD revises the definition of disproportionate housing need to remove the numeric threshold and provide more clarity to the meaning of disproportionate housing needs.

An example of disproportionate housing needs would be found when, according to U.S. Census Bureau data, a significantly higher proportion of the jurisdiction's black residents experience a severe cost burden when compared to the proportion of the jurisdiction's white residents experiencing a severe cost burden. Another example of disproportionate housing need can be found when a higher proportion of Hispanic individuals with limited English proficiency experience substandard housing conditions than the proportion of the state's population that experiences substandard housing conditions.

Rule change. HUD has revised the definition of ''disproportionate housing needs'' in § 5.152. HUD's revised definition uses the term ''significant disparities,'' but this term does not mean ''statistically significant,'' but rather is included to note the possibility of existence of substantial disparities, which should be interpreted as ''significant'' in terms of their impact on affected persons rather than merely ''statistically significant.''

12. Housing Choice Vouchers

Comment: Fund the Housing Choice Voucher program in order to affirmatively further fair housing. Commenter stated that the best way to deconcentrate poverty is to double funding to increase the payment standard for the HCV program so that more households can live in higher-income resource-rich communities. Commenters stated that the HCV program has traditionally been a tool to help minorities and lower income families move into housing areas not as concentrated with poverty, but with the funding cuts, barely perceptible increases in fair market rents (FMRs), and increased utility costs, rental units in deconcentrated areas are not even available or eligible because the rents are too high. The commenters stated that therefore the only areas in which a voucher holder can find housing are in the traditional areas in which they have always lived in. Commenters stated that, unless funding is restored and payment standards and FMRs are adjusted upwards, the HCV program cannot realistically be a vehicle for affirmatively furthering fair housing.

HUD Response: HUD is cognizant of the constraints within which program participants must operate, in particular given the current budgetary environment.

Comment: HCV ''hard units'' should not be the sole consideration in an assessment of fair housing. Commenters stated that given the growing predominance of HCV, ''hard units'' should not be the sole consideration for the AFH; rather consideration must include the full portfolio of a PHA's Federally-assisted units, vouchers, project-based vouchers (PBV), and RAD converted units (PBV or project-based rental assistance (PBRA)). Commenters stated that it is unclear if ''hard units'' means only public housing units, or if the term also covers PHA-owned units that have PBVs or PBRA (important after RAD conversions), or other PBV units in properties that the PHA does not own. Commenters stated that HUD should define ''hard units'' to include all PHA-owned units that have HUD-funded rental assistance, and all units, regardless of ownership, that have PHA-administered PBVs.

HUD Response: HUD agrees that ''hard'' units, such as public housing units, PBVs, and PHA-administered PBRA are not the sole consideration of an AFH, and notes that Section 8 HCVs will also be addressed in a program participant's AFH. Greater specificity on different program types will be addressed in the Assessment Tool, rather than in the regulatory text.

Comment: HCV program conflicts with duty to affirmatively further fair housing as presented in HUD's rule. Commenters asked, given that the HCV program presents a choice of housing location to voucher holders, whether HUD expects PHAs to impose restrictions that limit locational choice in order to affirmatively further fair housing. Commenters stated that, while PHAs can and do make efforts to recruit participating landlords in diverse areas and inform voucher holders about housing opportunities in low-minority areas, ultimately, voucher holders may make their own housing choices based on a number of different considerations, including proximity to existing family and social networks, employment opportunities, and religious institutions; access to public services, including public transit; and landlord willingness to participate in the program. Commenters stated that families may choose to live in areas of concentrated poverty even when other choices exist.

Commenters stated that one of the goals of AFH is not to steer applicants to low-income areas, but that, given that funding resources are at a historical low and trends are still set for that to continue, a PHA would be in direct conflict with that intent. Commenters stated that increasingly public housing programs are developing new housing units in low-income areas due to lower costs associated with construction there, and PHAs that have difficulty meeting housing assistance payment obligations for the HCV program are being instructed by HUD to discontinue allowing their participants to move to higher cost areas to mitigate their shortfall. Commenters stated that given the continued downward trend of funding for PHAs, this instruction places PHAs in direct conflict with the duty to affirmatively further fair housing as provided in HUD's rule.

Other commenters stated that not all cities have high poverty, high minority, and poor performing schools located in the same areas, and that, in many communities, some of the best schools are in low-income areas, and this occurs as a result of magnet and charter schools choosing to locate in these areas. The commenters stated that PHAs can encourage voucher holders to consider non-minority areas of the city but cannot force or steer them to these areas. Commenters further stated that it is problematic to pay higher rents only in non-minority neighborhoods as a means of encouraging minorities to live in non-

minority areas, and, to do so, brings up the concern that minority landlords that own units in minority areas would believe they were being discriminated against by lower rent payments.

HUD Response: HUD disagrees with the commenters' statement that the HCV program conflicts with the duty to affirmatively further fair housing. HCV participants can choose any housing that meets the requirements of decent, safe, and affordable housing in the private market. Most HCV programs are administered locally by PHAs, which must comply with fair housing and civil rights laws. This rule does not impose restrictions that limit participant choice in the HCV program. The question is whether there are impediments in the locality that limit housing choice; for example, the lack of affordable housing in diverse neighborhoods, the lack of information about housing opportunities in more affluent or diverse neighborhoods, racial steering, and misconceptions about the type of housing appropriate to persons with disabilities. The HCV program already operates under requirements that reinforce housing choice. For example, during a voucher recipient's briefing, if the client is living in a high-poverty census tract in the PHA's jurisdiction, the briefing already must explain the advantages of moving to an area that does not have a high concentration of poor families. In addition, under the SEMAP, the PHA is scored on the following factors if it is in a metropolitan fair market rent area: whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; whether it informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and whether it supplies a list of landlords or other parties who are willing to lease units including units outside areas of poverty or minority concentration.

Comment: Require PHAs to demonstrate efforts to enable families to move to new jurisdictions who seek to move. Commenters stated that it is especially critical that PHAs and other entities that administer HCVs be required to demonstrate that they are making efforts to assist those voucher holders who seek to move to communities of higher opportunity and to remove barriers, such as onerous portability requirements, that impede use of vouchers to obtain housing opportunities outside of the jurisdictional boundaries of the PHA. Commenters stated that unless such demonstration is required of PHAs, the HCV program will not live up to its objective of promoting integration and mobility and, instead, will reinforce prevailing patterns of racial segregation.

Other commenters recommended that HUD designate regional housing choice voucher initiatives as a recognized activity for fair housing opportunity. Commenters recommended HUD could improve the HCV program to better facilitate movement of people by supporting mobility programs and by changing FMRs and payment standards to improve access to areas that are not RCAPs and are already high in community assets such as quality schools.

HUD Response: As stated in response to the preceding comment, PHAs administering HCVs will continue to be subject to fair housing and civil rights laws. In addition, PHAs may consider implementing success rate payment standards if less than 75 percent of voucher recipients can find housing within the term of their voucher. PHAs can also consider exception payment standards for a portion of the fair market rent area to increase housing opportunities. More generally, this final rule aligns the PHA Plan and consolidated plan development process for the furtherance of goals specified in the AFH. This final rule creates a structure for PHAs to cooperate fully with their local jurisdiction toward this purpose.

In addition, this rule provides PHAs the option to cooperate with each other in the creation of an AFH, allowing PHAs to develop a coordinated approach to address fair housing issues. Such an approach could help to expand mobility through the creation of cooperation, agreements, memorandums of understanding (MOUs), consortia, or other tools to take regional approaches to HCV mobility policies.

Comment: It is not clear how the rule applies to voucher-only PHAs and small PHAs. Commenters stated that the rule is too vague regarding what requirements will be made for voucher-only PHAs, and also of small PHAs. Commenters stated that § 903.2 (now § 903.15) of the proposed rule describes a PHA's burden to affirmatively further fair housing through its ''development related activities,'' but it is unclear whether or how the rule applies to voucher-only PHAs. Commenters stated that, considering the constrained fiscal environment in which PHAs are operating and the lack of fee income generated by voucher only PHAs, HUD should consider limiting the rule's applicability to PHAs with development programs. Commenters asked how HUD expects voucher only PHAs to have their tenants de-concentrate when tenants choose where to live.

Other commenters stated that in § 91.110 HUD omits references to the HCV program in several places without any apparent reason. Commenters stated that they assume this was a mistake. Commenters stated that HUD should: insert ''or the Housing Choice Voucher program'' at the end of the first parenthetical in paragraph (a); insert ''or the Housing Choice Voucher program'' after the first reference to ''public housing'' in paragraph (a)(1); and change ''PHA's program'' to ''PHA's programs'' in paragraph (a)(1) near the bottom of 78 FR 43736.

Other commenters stated that it is important for HUD to clarify in the final rule that the affirmatively furthering fair housing obligations and certifications apply to the HCV Administrative Plan and all PHA planning documents, including the Moving to Work Plans for those PHAs that have been selected for the Moving to Work program. Commenters stated that these documents specify key PHA policies that affect efforts to expand housing choice within their jurisdiction and throughout the regional housing market in which they are located.

Commenters stated that past actions, such as setting higher payment standards in higher cost suburban locations are no longer feasible. Commenters stated that, in the event that HUD deems the rule is applicable to voucher-only PHAs, the commenters requested guidance regarding what steps such PHAs can take to affirmatively expand housing opportunities. Other commenters requested that HUD add an explicit statement in the final rule that defines a PHA's undertaking of recruitment activities to encourage participation by landlords in low-poverty, low-minority areas within the PHA's jurisdiction as meeting its duty to affirmatively further fair housing.

HUD Response: HUD appreciates the recommendations made by the commenters but specifying which HUD programs in which PHAs are covered by the duty to affirmatively further fair housing is unnecessary. The duty to affirmatively further fair housing and the requirement to conduct an AFH applies to all PHAs, regardless of the HUD program or initiative in which they are participating. Therefore HCV-only PHAs must submit an accepted AFH and include goals to affirmatively further fair housing in their planning processes. With respect to the commenter's reference to development activities in § 903.2 of the proposed rule and HCV-only PHAs, HUD notes that

the section under the proposed rule and § 903.15 of this final rule makes reference to both operational and development activities. However, HUD has also clarified strategies and actions that a PHA may take in § 5.154 of this rule, and those include both mobility-based options that may be more applicable to HCV-only agencies, as well as place-based solutions that may have more applicability to public housing only agencies.

13. Local Control and Zoning

Comment: HUD's rule is an effort to impede local control on zoning. Commenters stated that HUD's rule opens the door for the Federal government to determine zoning, rents, placement of infrastructure and other services over the local government, and that the Federal government is ill-suited to determine best practices for the thousands of diverse localities across the nation. Commenters stated that HUD's rule will subvert private property laws and limit if not eliminate any or all future suburban development. Commenters stated that land use control belongs with local governments, not the Federal government, and that housing and development actions cannot be accommodated through Federal mandates.

Commenters stated that through this rule HUD is furthering the idea that there is housing discrimination and unfairness toward those who are not financially able to afford living in a more affluent neighborhood and that a Federal agency can now impose a rule on local municipalities and counties that they must not only zone for and build affordable housing, but that HUD actually has the authority to make land use decisions on behalf of the municipality. Commenters stated that great care must be used to avoid unintended negative consequences, and that the worthy objective of HUD's rule could be upset by the costs of compliance especially by medium-sized and smaller municipalities and by the potential fear of having HUD personnel in Washington supplant their knowledge in thousands of jurisdictions around the country.

Commenters stated that while HUD advises that it is not prescribing specific actions or solutions, the rule has the potential to greatly influence local decisions by issuing guidance that becomes akin to regulations. Commenters stated that clearly, one-size-fits-all solutions should not be suggested or imposed by HUD, and any guidance must clearly present pros and cons for different types of situations. Commenters stated that land use planning should be primarily the province of local units of government, and that housing activity is uniquely local and reflects the desire and aspirations of specific communities and the complex interaction of market forces at the local level. The commenters stated that a Federal regulation that potentially dictates the use of particular local planning tools and the location, place and form of development does not reflect local community or market circumstances and is not appropriate. The commenters stated that policies that work in one region may have serious unintended negative consequences in another, and that the United States is far too diverse demographically, historically, geographically and economically to successfully implement a ''one-size-fits-all'' program.

HUD Response: HUD agrees that determinations about the goals, priorities, strategies, and actions that a community will take to affirmatively further fair housing should be made at the local level. This rule does not impose any land use decisions or zoning laws on any local government. Rather, the rule requires HUD program participants to perform an assessment of land use decisions and zoning to evaluate their possible impact on fair housing choice. This assessment must be consistent with fair housing and civil rights requirements, which do apply nondiscrimination requirements to the land use and zoning process. However, this rule does not change those existing requirements under fair housing and civil rights law. Instead, the purpose of this assessment is to enable HUD program participants to better fulfill their existing legal obligation to affirmatively further fair housing, in accordance with the Fair Housing Act and other civil rights laws.

It is important to note, however, that, while zoning and land use are generally local matters as stated by the commenters, when local zoning or land use practices violate the Fair Housing Act or other Federal civil rights laws such as title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or the Americans with Disabilities Act, they become a Federal concern, as with any violation of Federal law that occurs at a local level. See, *e.g., U.S.* v. *City of Black Jack, Missouri,* 508 F.2d 1179, 1187–1188 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975); *U.S.* v. *Yonkers Board of Education,* et al., 837 F.2d 1181 (2d. Cir. 1987), cert. denied, 486 U.S. 1055 (1988).

Inclusion of zoning and land use is not intended to assume these issues will have such implications for most or many program participants. However, including zoning and land use for consideration is needed to gain an accurate overall picture of local housing and neighborhood issues, such as the availability of affordable rental housing in a diverse set of communities.

HUD also agrees that ''one size fits all'' solutions should not be mandated by Federal regulation. HUD is not prescribing any ''one size fits all'' or specific solutions to fair housing issues that may exist in a given locality; rather, HUD requires that planning documents such as the consolidated plan—which, again, affects Federal funding—consider the findings of the AFH. The manner in which this consideration is implemented, however, will, absent violations of Federal law and regulation, be up to the jurisdiction. Thus, the goals, priorities, strategies and actions that a community will take to fulfill its obligation to affirmatively further fair housing will be decided at the local level based on data and analysis from the AFH.

It is true that the United States is demographically, historically, geographically, and economically diverse. This final rule takes this variation into account and provides flexibility for the broad diversity of types of HUD program participants. Further guidance will help program participants apply the rule to meet their specific needs and characteristics. There is also flexibility provided in how best to craft strategies and actions to meet local needs and challenges. Program participants still are required to follow applicable Federal laws, and in the case of Federal programs that provide funding for affordable housing and economic development, these include the legal obligation to affirmatively further fair housing under the Fair Housing Act.

Rule change. HUD has added a ''strategies and actions'' provision in § 5.154(d)(5).

Comment: HUD's rule is based on the mistaken belief that zoning and discrimination are the same. Commenters stated that equating zoning with discrimination is wrong. Commenters stated that zoning laws restrict what can be built, not who lives there, and that just because a community uses zoning to limit high density housing does not make the community racist. Commenters stated that it has been proven over and over again in cities that high density housing stretches municipalities and school systems beyond their limited resources. Commenters stated that zoning laws are geared to provide for the safety, security, peace, tranquility, enjoyment, and preservation of the property values

of both existing and future individual and commercial property owners, the latter of which also includes an investor's ability to generate an acceptable rate of return or cost of capital.

Commenters stated that developers choose where they will purchase, develop, and build based upon the existing zoning laws that have been put in place, in most cases years in advance of any development, as part of that community's long term planning and development process, and that amendments and modifications to such zoning laws are reviewed and approved by a city planning commission or zoning review board including public comment, and they are ultimately ratified by the local city council.

Commenters stated that data can be manipulated and interpreted improperly to further social engineering motives, and that HUD's data does not show and cannot prove that zoning laws are solely responsible for any perceived racism.

In contrast to these commenters, other commenters stated that HUD's rule should assure that State, regional, and local government entities are focused on strengthening their local land use and zoning policies so that they encourage affordable housing development in areas of opportunity and that they increase the availability of land for the development of low and moderate income housing. Commenters stated that, in addition to zoning, there are many local policies that often create significant impediments, including stringent design, parking and setback requirements and excessive fees for utilities, parks, storm water, etc. Commenters stated that to counteract these types of local barriers, broader regional policies should be implemented and enforced, and that communities should also reduce or waive these fees for affordable units as a means of addressing impediments.

Other commenters stated that there can be affordable housing and good zoning, and urged HUD to not adopt regulations that can be used against communities that are equally concerned about the environment, loss of green space, flooding, clean water, wetlands and natural beauty, which are things that all people, including those in lower income brackets, need.

HUD Response: The issue of including zoning and land use as factors for consideration in the AFH was addressed in response to the preceding comment. As to the comment that data can be manipulated to further social engineering, it is the program participants themselves, which include State and local governments, that will analyze the data and produce the AFH, and program participants may include any statistically valid local data that they can obtain and believe relevant to the AFH. The AFH will help inform future planning related to the use of Federal funding and other funding for housing and economic development. This final rule, and Assessment Tools and guidance to be issued, will assist recipients of Federal funding to use that funding and, if necessary, adjust their land use and zoning laws in accordance with their existing legal obligation to affirmatively further fair housing. The approaches that can be taken to accomplish this are varied and not specifically prescribed by this rule. This rule, in accordance with existing law, simply requires an assessment, based on data, of effects on the availability of affordable housing, and does not overturn any local decisionmaking process.

Comment: Provide examples of zoning laws that are barriers to fair housing. Commenters stated that it would be helpful if HUD would give specific examples of codes or regulations and specific standards that HUD considers to further fair housing or that HUD considers to present barriers to fair housing. Commenters stated that some may see a zoning law as a barrier to affordable housing and others as an affirmative act to prevent displacement of low-income and minority households.

HUD Response: Zoning and land use laws that are barriers to fair housing choice and access to opportunity can be quite varied and often depend on the factual circumstances in specific cases, including zoning and land use laws that were intended to limit affordable housing in certain areas in order to restrict access by low-income minorities or persons with disabilities. Examples of egregious zoning actions that were found to violate the Fair Housing Act can be found going back to the zoning ordinance at issue in *U.S.* v. *City of Black Jack,* 508 F.2d 1179 (1974). An example of a positive zoning action that would further fair housing would be the removal of such an ordinance. HUD will include additional examples in its guidance for its affirmatively furthering fair housing regulations.

14. Standards for Review

Comment: Final rule should designate HUD offices with responsibility of review of AFHs. Many commenters requested that the final rule designate HUD's Office of Fair Housing and Equal Opportunity (FHEO) as the lead authority regarding AFH review and acceptance, and certification that a participant is affirmatively furthering fair housing and that FHEO be provided sufficient resources to carry out this new responsibility. The commenters stated that designation of FHEO as the lead reviewing office would maintain consistency and preserve institutional knowledge among reviewers even as administrations change.

Other commenters recommended that the rule designate HUD's Office of Community Planning and Development (CPD) as HUD to review and approve the AFH for participants in HUD's CDBG, HOME, ESG, and HOPWA programs because these programs fall under CPD's jurisdiction.

Other commenters recommended that the final rule explicitly state that HUD's Office of Public and Indian Housing (PIH), CPD, and FHEO all be designated with equal authority to review AFHs.

Other commenters recommended that HUD regional and field offices be required to review the AFHs of program participants in their jurisdictions to alleviate any problem of inadequate HUD staffing at HUD Headquarters.

Other commenters recommended that HUD establish ''Fair Housing Review Councils'' to review AFHs, review complaints, and recommend remedies to HUD, with a cross-section of HUD agency officials providing consistent guidance, based on the model that HUD's Office of Sustainable Housing and Communities (now HUD's Office of Economic Resilience) undertook in reviewing applications for grants under HUD's Sustainable Communities Initiative (SCI). Commenters stated that, under this model, the following HUD offices, OSHC, CPD, FHEO, and PIH, along with Federal colleagues from the Federal Highway Administration of the U.S. Department of Transportation, and the Environmental Justice Division of the Environmental Protection Agency all jointly reviewed applications, alongside of experts from the field. Commenters stated that, alternatively the council could be comprised of candidates who apply for membership on the council and who have qualifying credentials that include demonstrated experience in housing law, policy, and/or finance; affordable housing development; asset-building, transportation equity, housing, community and economic development; civil rights, fair housing, educational equity, youth development; urban planning, public health/health equity, environmental justice, criminal justice reform with a representative mix from philanthropy, public sector, and the private sector.

Another commenter stated that no matter who reviews AFHs that HUD

should ensure that AFHs are reviewed in a consistent and objective manner so that the outcome of the review is not dependent on the perspective of the individual reviewer or HUD office. Similar to this comment, another commenter recommended that the same set of HUD employees review all AFHs using clear and detailed standards of review.

HUD Response: HUD appreciates the recommendations regarding who, within HUD or outside of HUD, should review AFHs. There is no need for HUD to specify in the final rule which offices will review AFHs and HUD emphasizes that HUD's review of an AFH under § 5.162 is a ''HUD'' review. However, since this rule provides that an AFH is a necessary and important component of the consolidated plan and PHA planning processes, HUD can assure program participants that the review of AFHs will be a collaborative process among FHEO, CPD, PIH, the Office of General Counsel, and their respective staff in their regional and field offices, and other HUD staff that HUD may determine should be involved in review of AFHs.

HUD also understands concerns about variations in outcomes of review of AFHs as a result of different reviewers, but HUD also assures that all reviewers of AFHs will perform their reviews under clear and consistent evaluation standards. HUD also believes that program participants' use of an Assessment Tool to create their AFH will help to ensure that AFHs are developed consistently and will facilitate objective, consistent reviews.

Comment: Review of an AFH should not precede review of the consolidated plan or PHA Plan, but should occur simultaneously. Commenters stated that review of AFH should not precede review of the consolidated Plan but should occur at the same time. Commenters expressed that this approach would only delay funding to program participants.

HUD Response: The responsibility to affirmatively further fair housing is such an important responsibility placed on HUD and its program participants by the Fair Housing Act that HUD concluded, particularly in light of the criticism of the former AI process, that to fulfill this statutory obligation as intended, the AFH should commence prior to submission of a program participant's consolidated plan or PHA Plan, as applicable. As HUD stated in its proposed rule, it is also important that the AFH be informed by meaningful community participation. The community participation and consultation requirements that HUD has established in § 5.158 provide for reasonable opportunities for the public to be involved in the development of the AFH prior to its incorporation into the consolidated plan or PHA Plan. This prior involvement should facilitate HUD's review of the AFH. The involvement should also facilitate review of the consolidated plan and/or PHA Plan, or any plan incorporated therein, since the affected communities would have already had the opportunity to review and comment on the AFH, HUD will have the opportunity to identify any deficiencies in the AFH, and the program participant will have the opportunity to correct any deficiencies, prior to incorporation of the AFH into the consolidated plan or PHA Plan, such that funding to program participants will not be delayed.

Comment: HUD's review and acceptance of AFH is vague and does not specify how HUD will evaluate the AFH. Commenters stated that the rule lacked necessary details on how an AFH is to be reviewed and accepted or not accepted by HUD. Commenters stated that the rule suffers from overwhelming vagueness in terms of expected actions and outcomes that leaves program participants exposed to extreme risks and litigation challenges. Commenters stated that the proposed rule does not provide specific details on how HUD will evaluate the effects of the AFH, which was one of GAO's primary criticisms of the AI process. Commenters stated that the rule is particularly not clear with respect to HUD's non-acceptance of an AFH that is ''materially inconsistent with the data and other evidence available to the jurisdiction'' or ''substantially incomplete,'' and without clarity as to the meaning of these terms, the AFHs of program participants are subject to rejection and program participants are vulnerable to litigation. Commenters stated that ''materially inconsistent'' in particular would subject program participants to arbitrary decisions by HUD or to litigation by third parties. Commenters stated that HUD should define these terms or eliminate them from the regulatory text. Other commenters stated that the rule should provide more examples of what these terms mean. Other commenters stated that only substantial incompleteness should be a basis for rejection of an AFH and not inconsistency with fair housing and civil rights laws.

Other commenters asked for the rule to be clear on the impact if a portion of an AFH is not acceptable.

HUD Response: HUD understands commenters' concerns about the standards of review provision in the rule. It was not HUD's intention to be vague, but it was also not HUD's intention to be overly prescriptive as to the standards by which HUD will evaluate and determine whether to accept an AFH. HUD recognizes that the content of a program participant's AFH depends on local conditions and local laws, and very prescriptive standards may interfere with the local assessment and planning that a program participant must undertake.

As HUD stated in the proposed rule, this final rule will be supported by HUD with technical assistance and examples that will help guide program participants as to what it means to have an AFH that is substantially incomplete or one that is inconsistent with fair housing or civil rights laws. However, in the regulatory text, HUD has included two examples for each of these categories.

The reference to acceptance or nonacceptance of a portion of an AFH in the proposed rule was directed to program participants submitting collaborative AFHs; that is, a joint AFH or Regional AFH. HUD has revised the language in § 5.162 to clarify how nonacceptance of a joint or regional AFH may occur. An AFH as a whole will either be accepted, or not accepted with respect to an individual program participant. This means that if a portion of a program participant's AFH, such as the analysis of a key issue, not accepted then the entire AFH for that program participant is not accepted. In addition, HUD's determination not to accept an AFH with respect to one program participant does not necessarily affect the acceptance of the AFH with respect to another program participant in the case of a joint or regional AFH.

Rule change. In this final rule, HUD revises § 5.162 to state that HUD will provide written notification to the program participant or participants (where a regional AFH is submitted) of HUD's nonacceptance of the AFH (either to one or more program participants or all when a regional AFH is submitted) and the written notification will specify the reasons why the AFH was not accepted and will provide guidance on how the AFH should be revised in order to be accepted.

Comment: HUD should review an AFH holistically and not reject an AFH for a single concern or withhold funds. Commenters stated that HUD should review an AFH holistically and that a single deficiency should not be the basis for a negative determination. Commenters recommended that the final rule should provide that: (1) An unsatisfactory ''AFH plan'' will not be

the sole cause for suspension of funds, but there must also be a problem in AFH implementation such as a sustained pattern of fair housing violations; (2) only funds directly involved in the fair housing violation may be suspended (*e.g.,* distinguish effect on HOME, ESG, CDBG funds); and (3) HUD will offer an appeal process if HUD finds the AFH or its implementation unacceptable. Other comments asked that the rule provide information about the consequences and remedies if HUD finds an AFH substantially incomplete and that HUD clarify the consequences of submitting an unacceptable AFH after the initial resubmission.

Commenters recommended that a program participant's funds be partially or wholly suspended when a resubmitted AFH is rejected and until an acceptable AFH is submitted. Other commenters recommended that HUD consider sanctions other than withholding a program participant's HUD funds if the participant is unwilling or unable to submit an acceptable AFH. The commenters stated that HUD funds properly spent create housing opportunities and that it is hard to see how withholding the resource necessary to create affordable housing improves the situation for a program participant that is not willing to create affordable housing choices for its residents. Commenters stated that, if local opposition to fair housing makes it difficult for local officials to submit an AFH that would be accepted by HUD, HUD should carefully consider remedies other than withholding HUD funds and thus rewarding those in the community opposed to affordable housing.

HUD Response: HUD appreciates the recommendations made by the commenters but believes that the rule contains the right approach. With respect to concerns about violations of Fair Housing Act requirements, it is important to point out that the rule addresses the fair housing planning process, and the assessment of fair housing planning. This rule does not focus on actions taken by a program participant that may result in a violation of the Fair Housing Act, including a failure to affirmatively further fair housing, or other civil rights laws.

With respect to funding, the current process for distribution of funding under the programs covered by this rule is that a program participant does not receive funding until its consolidated plan or PHA Plan, as applicable, is accepted by HUD. This final rule does not alter that process. The rule, however, does make an accepted AFH a required element of a consolidated plan or PHA Plan.

As provided in the proposed rule and adopted in this final rule, if HUD identifies a deficiency in a program participant's AFH, HUD will notify the program participant and advise of the deficiency and how the program participant may address the deficiency so that HUD can accept the AFH. Because HUD will work with a program participant to produce an AFH that HUD will accept, HUD believes it is unlikely that a program participant will not produce an AFH that will be accepted by HUD. One of the significant changes that HUD committed to make under this AFH process is greater engagement by HUD and better guidance to program participants on how to fulfill their duty to affirmatively further fair housing.

Comment: HUD should contact a program participant for discussion about any AFH deficiencies rather than reject the AFH. Commenters recommend that HUD should contact a program participant for discussion about deficiencies with an AFH rather than reject the AFH if it finds priorities or goals are materially inconsistent with evidence available to the program participant. Another commenter stated that HUD set forth potential reasons for rejecting an AFH and not pre-determine expected results of participants' assessments.

HUD Response: The rule already provides for the practices that the commenters are requesting. HUD's initial nonacceptance of an AFH is not the end of the AFH review process. HUD will not only advise a program participant of deficiencies identified in the AFH but how these deficiencies may be overcome. HUD's review is not based on any predetermined expected results. Moreover, the rule does not restrict HUD from contacting a program participant to obtain information about an AFH if HUD believes it does not have adequate information to decide whether or not to accept an AFH.

15. Enforcement and Oversight

Comment: HUD only needed to enforce the existing AI requirement. Commenters stated that HUD cites to the GAO report as one justification for its proposed rule, but stated that GAO recommended modest, incremental changes to HUD's oversight processes to address the substantial, systemic weaknesses identified by GAO. Commenters stated that HUD, rather than elect to address its own deficiencies and implement an effective means to oversee compliance of program participants with the duty to affirmatively further fair housing, proposed a radical revision to the definitions underpinning the duty to affirmatively further fair housing, and the processes used by some HUD program participants to determine methods for overcoming identified fair housing issues and their contributing factors. The commenters urged HUD to reconsider its approach to and attend to its own performance with regard to the duty to affirmatively furthering fair housing before expanding the policy reach of the Fair Housing Act. The commenters stated that an alternative approach would be to strengthen HUD's support for and oversight of effective implementation of the duty to affirmatively further fair housing, consistent with HUD's existing Fair Housing Planning Guide. Commenters stated that rather than going forward with a new approach, HUD could make sure program participants prepare current AIs that meet standards laid out in guidance such as HUD's Fair Housing Planning Guide.

HUD Response: HUD considered various options for how to improve the affirmatively furthering fair housing process and determined that a comprehensive improvement of the AI process and clarification of requirements for both program participants as well as HUD is likely to lead to a more effective fair housing planning process. HUD believes that its provision of data to its program participants is an important component of improving fair housing planning, as is the community participation requirement, the Assessment Tool, and greater integration to the extent possible with the PHA planning and consolidated planning processes.

Comment: HUD needs to specify the range of sanctions to be imposed on program participants for failure to affirmatively further fair housing. Commenters stated that the proposed rule was deficient regarding how HUD would enforce the rule's requirements. Commenters stated that the most significant areas needed for improvement of HUD's proposed rule relate to oversight and accountability. The commenters stated specifically that the proposed rule (1) fails to provide an effective mechanism for HUD to assess initial and ongoing compliance with the obligation, and (2) lacks a mechanism for individuals and communities aggrieved by violations of the rule to challenge those practices administratively. Commenters stated that while HUD has the power to withhold funds for lack of compliance, HUD needs to establish a process of ''progressive discipline'' to bring about

compliance before going to the extreme of withholding funds.

Commenters stated that HUD needs to specify that it has a range of sanctions available to use for failure to affirmatively further fair housing, including something HUD has still not done (or at least not persuaded the Department of Justice to do), which is to bring a False Claims Act claim against jurisdictions that make false or fraudulent representations. The commenters stated that taking such action would hardly be unprecedented in the context of protecting the Federal government from fraud, stating that the Department of Health and Human Services, for example, has no problem bringing False Claims Act claims against those who defraud the Federal Government in connection with Medicaid. The commenters stated that it is equally important for HUD to build in a real auditing function, not unlike the Internal Revenue Service (IRS). The commenters stated that the effectiveness of the IRS has obviously varied greatly over time, but the underlying problem faced by the IRS is one well worth thinking about. Commenters stated that some taxpayers will meet their obligations because it would never occur to them not to, while others are committed to evading their obligations unless and until caught.

Other commenters expressed concern that HUD did not propose to amend its existing regulations at § 570.912 (nondiscrimination noncompliance) and § 570.913 (other remedies noncompliance). These commenters stated that these regulations provide for a wide range of sanctions, including referral to the Attorney General for the commencement of an appropriate civil action, and while HUD's proposed rule references § 570.601 (affirmatively furthering fair housing) §§ 570.912 and 570.913 need to be amended to reference § 570.601 to reflect the applicability of these sanctions to the duty to affirmatively further fair housing.

HUD Response: HUD understands the commenters' concerns regarding the absence of an enforcement provision in this final rule with respect to the duty to affirmatively further fair housing. This final rule, however, is a planning rule, not a rule directed to the enforcement of the duty to affirmatively further fair housing. As a planning mechanism, this rule provides for a review by HUD of the AFH to determine compliance with the standards set forth in § 5.154, and for acceptance, or nonacceptance and resubmission (in the case of nonacceptance) of an AFH if the AFH fails to meet these standards. While HUD declines to include a provision in this planning rule that would specifically set out the process for enforcing the duty to affirmatively further fair housing, HUD notes that it already has the authority to enforce this statutory obligation and that HUD uses its existing Fair Housing Act, title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, and the Americans with Disabilities Act regulations and processes to accept complaints and conduct compliance reviews regarding the duty to affirmatively further fair housing. As provided in this final rule, HUD also may follow procedures set out in 24 CFR parts 91 and 903 when it has information that a program participant's certification to affirmatively further fair housing may be invalid. HUD believes that it is unnecessary for the rule to reflect additional complaint receipt, investigation, compliance review, and enforcement procedures when such processes and authorities are already in existence under other regulations.

Comment: HUD's rule needs to clearly address oversight and accountability following acceptance of an AFH. Commenters stated that once an AFH is accepted, there remains the need for oversight and meaningful enforcement. The commenters recommended that HUD require annual performance reports to document actions taken to address or mitigate each of the goals identified in the AFH, describe the results of those actions, and specify which fair housing issues were impacted and how they were impacted. Commenters stated that, in addition to the standard review process, and to ensure in-depth evaluation of AFHs, the final rule should provide for periodic audits by HUD of selected AFHs, and that, in the event that program participants have not met their substantive benchmarks, HUD require that these participants provide specific reasons for why these goals have not met and disclose how the participant is working to overcome any barriers to completion. Commenters stated that a formal complaint process for community stakeholders to object to the program participant's actions or certification that they are affirmatively furthering fair housing is critically important, and must be added.

Other commenters stated that critical to effective enforcement of the AFH process is for HUD to: (1) Permit residents and the public to file complaints with HUD objecting to the AFH or to the failure to meet the duty to affirmatively further fair housing; and (2) establish an enforcement mechanism setting forth how complaints will be processed and what potential sanctions may result from violations. Commenters stated that, while the rule places great emphasis on, and significantly strengthens, public and community participation in the AFH process, the rule inexplicably includes no provisions that set forth the right of community members to complain about compliance with the duty to affirmatively further fair housing or the enforcement mechanism to be used in processing such a complaint. The commenters stated that this was especially disappointing because in recent years HUD has developed an internal process for accepting third party complaints alleging violations of the duty to affirmatively further fair housing that details how to handle and investigate such complaints. The commenters stated that, through the process developed for these matters, HUD accepted and investigated complaints of non-compliance with the affirmatively furthering fair housing requirement and established a uniform enforcement mechanism for ensuring compliance with the duty to affirmatively further fair housing.

Commenters stated that, based on the proposed rule, program participants are their own monitors, and that is the case under the current AI system—program participants essentially operate in a system of voluntary compliance with their duty to affirmatively further fair housing and that HUD's rule does nothing to change this system by not including concrete enforcement mechanisms in the rule. The commenters stated that transparent enforcement and true accountability is paramount to successful rules and regulations.

HUD Response: In response to earlier comments, HUD has already advised that it declines to add to performance review and monitoring that are already in place under consolidation plan and applicable public housing and Section 8 regulations. In addition, as noted in the response to the preceding comment, this rule is a planning rule and not a rule directed to the enforcement of the duty to affirmatively further fair housing. Procedures to receive and investigate complaints, conduct compliance reviews, challenge AFFH certifications, and obtain compliance are already available to HUD under regulations implementing the Fair Housing Act and other civil rights statutes.

Comment: Do not establish a public complaint or contestation of an AFH. In contrast to the above commenters, other commenters stated that they are aware of some stakeholders and advocates who are asking that HUD include a process for public complaints or contestation of

an AFH and the fair housing goals derived from that assessment, and that HUD provide interested members of the public with standing for individual actions concerning AFHs and fair housing goals. The commenters stated that they are strongly opposed to both of these possibilities. The commenters stated that recent decisions surrounding fair housing litigation have demonstrated the imagination and persistence of fair housing litigants, and that there are ample tools available for fair housing litigation without any additional grounds being created.

HUD Response: The AFH process contains opportunities for public involvement in the AFH process, which are provided in §§ 5.158, 91.105, 91.115, 91.401, 903.17, and 903.19. HUD anticipates that participation in the process will reduce complaints regarding the results. Furthermore, any aggrieved person can file a complaint with HUD regarding any fair housing-related matters, including an AFH. Since such complaint process already exists, HUD declines to include additional complaint provisions in the rule.

Comment: The new AFH process will not reduce litigation. Commenters stated that HUD repeatedly advised in the proposed rule that one of the goals of the new AFH process is to ''reduce the risk of litigation for program participants.'' The commenters expressed concern that the rule will increase litigation due to a lack of specificity as to what is expected of program participants, and as program participants pursue competing goals set by HUD. The commenters asked HUD to provide program participants with protection from litigation based on their compliance with the policies and procedures of the AFH rule.

HUD Response: One way in which this final rule is intended to help reduce the risk of litigation is by providing more specificity compared to the AI process that the AFH approach replaces. By creating an Assessment Tool that will allow program participants to identify housing segregation, disproportionate housing needs, and the contributing factors that affect fair housing choice and access to opportunity, program participants will better be able to direct their Federal and other resources and make other decisions relating to housing and community development in ways that fulfill their civil rights obligations, thus reducing the potential for liability. Public participation in the AFH process may also reduce the need to seek recourse in courts. Regarding protection from litigation, HUD cannot by regulation either grant or foreclose legal jurisdiction over particular claims in courts.

16. Procedural Issues

a. Period of Review of an AFH

Comment: The 60-day review period is too brief given the volume of AFHs to be reviewed and HUD's limited staff, and will result in an incomplete review. Many commenters expressed the concern that the 60-day review period is too brief for HUD to undertake a thorough review of AFHs. Commenters stated that HUD has limited staff and there will be times when HUD will receive many AFHs at once making it difficult for HUD to give all the AFHs the thorough and critical review that is needed, and consequently some AFHs may be deemed accepted based on an incomplete review.

Several commenters recommended that HUD phase-in initial AFH submission dates so that limited staff resources can provide the highest level of review for all AFHs and ensure that most AFHs will be reviewed within two years after the effective date of the regulation.

Several commenters recommended that, to avoid such a consequence, the rule should provide for a longer review period by HUD, such as 90 days or 120 days. The commenters submitted that 60 days is too brief a period to provide any meaningful review of the AFH and the likely result will be as ineffective a review process as the current AIs and consolidated planning review process.

Other commenters suggested that for any AFH that did not undergo a thorough review but HUD deems accepted the acceptance should be valid for only a one-year period.

Other commenters stated that the final rule must provide a backstop to prevent acceptance of inadequate AFHs.

HUD Response: In developing the proposed rule, HUD gave careful consideration to the period of time that HUD staff would need to properly review and evaluate AFHs and HUD determined that a 60-day period presented a reasonable period for HUD staff to review and determine whether to accept or not accept an AFH. In settling on a 60-day period, HUD considered that the AFH Assessment Tool would not only provide a streamlined format making it easier for program participants to submit an AFH, but also make it easier for HUD staff to review an AFH.

HUD points out that its review of an AFH does not end with the 60-day review period and HUD's possible acceptance of an AFH. HUD's review of strategies and actions to affirmatively further fair housing continues with HUD's review of a consolidated plan or PHA Plan. As stated in the proposed rule, ''an accepted AFH and completion of corresponding requirements related to affirmatively furthering fair housing in the consolidated plan and PHA Plan will be required for HUD to approve those respective plans.'' (See 78 FR 43715.)

However, HUD believes that a staggered submission deadline, as recommended by many commenters, would be helpful not only to HUD but to program participants, and the final rule adopts a staggered submission approach.

Rule change. In this final rule, HUD revises § 5.160 (Submission Requirements) to provide for a staggered submission deadline for AFHs. Entitlement jurisdictions that receive an FY 2015 CDBG grant of more than $500,000, and PHAs joining in submission with such entitlement jurisdictions will be the first program participants to submit their first AFH. States, Insular Areas, PHAs, and entitlement jurisdictions receiving an FY 2015 CDBG grant that is $500,000 or less will have a later first AFH submission deadline.

b. Approval Versus Acceptance of an AFH

Comment: HUD should approve an AFH, not simply accept. Commenters requested that there should be an active approval by HUD, not solely an acceptance of an AFH, and that HUD should allow sufficient time for review to be able to approve an AFH. Another commenter stated that, in spite of HUD disclaimers to the contrary, HUD's deemed acceptance of an AFH creates the impression of a ''safe harbor'' for jurisdictions that may be violating the Fair Housing Act on an ongoing basis. The commenter recommended that the deemed accepted provision be removed, and replaced with an audit-type review.

Commenters recommended that if HUD cannot perform a thorough review of any one AFH within the time period for AFH review, HUD should designate the AFH as un-reviewed, and not deem it accepted. In a similar vein, other commenters stated that HUD should eliminate the characterization of ''deemed accepted'' for AFHs that were not reviewed. The commenters stated that HUD must make an affirmative determination of AFH compliance, rather than allowing for acceptance by default.

Another commenter suggested that HUD not automatically deem accepted any AFH that HUD has not had the time

to thoroughly review unless the program participant submits evidence that demonstrates its AFH is affirmatively supported by a broad cross section of stakeholders representing each of the protected classes, and is not subject to any significant challenges. Other commenters recommended that HUD not review each and every AFH but undertake a sample of AFHs and the sample reviewed would be based on fair housing complaints directed to a particular program participant.

HUD Response: HUD believes that the final rule achieves the appropriate balance of interests by requiring program participants to submit AFHs to HUD for review and acceptance rather than requiring AFHs to be approved by HUD. Program participants have asked for flexibility in determining their goals, priorities, strategies, and actions to affirmatively further fair housing at the local level, and the rule provides this flexibility. However, HUD believes it would be inappropriate to create the perception of a safe harbor or limit a private right of action under the Fair Housing Act based on an ''approval'' of an AFH. For this reason, HUD has decided to limit its review to acceptance or nonacceptance. HUD understands the concerns of commenters about the ''deemed accepted'' provision, but HUD believes the time allotted for review of AFHs, coupled with the adoption of a staggered AFH submission approach, is sufficient.

c. Appeal of HUD's Acceptance of an AFH

Comment: The final rule should provide a right to appeal HUD's acceptance of an AFH. Many commenters asked that HUD establish a mechanism that enables advocates to appeal a HUD decision to ''accept'' an AFH. Commenters stated that such appeal would then trigger an immediate in-depth review by HUD of an AFH. Some commenters recommended that HUD provide for public comment on the AFH during HUD's review of the AFH. Commenters recommended that members of a community be allowed to file a complaint at any time, and that the final rule outline the specific process involved for filing a complaint, and provide that HUD respond to all complaints, in writing, within 90 days.

Other commenters stated that allowing a complaint to be filed will add additional layers of burden to the AFH process and might be easily abused. Commenters stated that the requirements for public participation in the AFH process and those involved in the consolidated and PHA Plans provide ample opportunities for the public to register their concerns. Commenters stated that any further appeal or complaint process for members of the public will unreasonably delay implementation of plans and recommends that HUD reject proposals to create a private right of action or any further appeal or complaint processes in the proposed rule.

Commenters recommended that if HUD adds an appeal process that the grounds for an appeal be narrowly defined and the burden of proof placed on the party challenging the AFH. Other commenters suggested that the final rule provide a process by which interested members of the public can file a challenge with HUD in cases where they believe that a participant has failed to meet the requirements of the regulation or failed to meet its obligation to affirmatively further fair housing. Commenters stated that such a challenge should trigger HUD's reconsideration of the AFH that was submitted, in light of the information provided by the party bringing the challenge.

Other commenters stated that HUD should reject recommendations by commenters to create a private right of action for a deficient AFH.

HUD Response: HUD believes that establishing a new appeal process specifically regarding HUD's decision to accept an AFH is unnecessary given that HUD maintains a complaint process for any fair housing matter. Further, HUD's requirement of robust community participation in the development of an AFH will create a forum for the public to seek changes. This complements and in no way diminishes the current complaint review process. The final rule provides at § 5.158, as did the proposed rule, that to ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other planning documents, as may be applicable. This section further provides that the consolidated plan program participant must follow the policies and procedures described in its applicable citizen participation plan adopted pursuant to 24 CFR part 91 (see §§ 91.105, 91.115, and 91.401) in the process of developing the AFH, obtaining community feedback, and addressing complaints. The jurisdiction must consult with the agencies and organizations identified in consultation requirements at 24 CFR part 91 (see §§ 91.100, 91.110, and 91.235). For PHA Plans, this section provides that PHAs must follow the policies and procedures described in §§ 903.13, 903.15, 903.17, and 903.19 in the process of developing the AFH, obtaining community feedback and addressing complaints.

The processes, both for the consolidated plan and the PHA Plan, require the program participant to provide a summary of the public comments and a summary of the comments or views not accepted and the reasons that they were not accepted. By applying the longstanding citizen participation requirements of the consolidated plan and the PHA Plan to the AFH, which were not applied to the AI, HUD submits that any serious deficiencies that may be in a proposed AFH or other concerns that members of the public may have about an AFH will be addressed in the citizen participation processes. For these reasons, HUD's final rule does not need to provide another public comment period during the HUD review of AFHs.

With respect to filing a complaint that a program participant has failed to meet the requirements of the regulations or failed to meet its obligation to affirmatively further fair housing, nothing in the proposed rule or in this final rule prohibits a member of the public from notifying or filing a complaint with HUD that a program participant has violated a statutory or regulatory requirement, whether such requirement is the duty to affirmatively further fair housing or another program requirement. As noted earlier in this preamble, HUD has existing procedures under the Fair Housing Act and other civil rights statutes to handle such complaints, including complaints that question a program participant's AFH.

d. Distinguishing AFH Planning From Affirmatively Furthering Fair Housing

Comment: Clarify the relationship of an acceptance of an AFH to the duty to affirmatively further fair housing. Commenters stated that acceptance of an AFH should mean that HUD has determined that a program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Act, and has complied with other civil rights laws, regulations or guidance. According to a commenter, if HUD is not willing to indemnify a program participant based on HUD's acceptance of the participant's AFH, HUD should include in the final rule a list of safe harbor criteria and guidance for compliance and noncompliance. Commenters further stated that the purpose of preparing the AFH and submitting it to HUD for review and approval, and the program participant's good faith efforts

in addressing its fair housing goals, should mean that the jurisdiction has complied with its legal obligation to affirmatively further fair housing. Commenters stated that program participants that comply with the standards of HUD's regulation must be provided with a safe harbor from litigation.

In contrast to these commenters, other commenters stated that the final rule should clarify that an accepted AFH does not provide a determination of compliance with the obligation to affirmatively further fair housing, including, but not limited to, any ''safe harbor'' provision. The commenters stated that, in this regard, HUD should clarify that the final rule does not foreclose litigation, and that HUD specifically disclaim any notion of a ''safe harbor'' for jurisdictions with a current AFH plan that has been accepted by HUD.

HUD Response: The preparation and submission of an AFH that is accepted by HUD does not fulfill a program participant's obligation to affirmatively further fair housing, rather it is a first step towards that duty. As stated in HUD's proposed rule, and earlier in this preamble to the final rule, the purpose of the AFH is to provide and aid program participants with a more effective means of meeting the statutory obligation to affirmatively further fair housing. Whether a program participant, in fact, affirmatively furthers fair housing depends upon the actions the program participant takes, not the actions a program participant states that it plans to take in its AFH.

For purposes of receiving funding from HUD, each program participant must certify that it will affirmatively further fair housing. In general, this means that a program participant will take meaningful actions to further the goals in its AFH, conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing. Specific certification language can be found in 24 CFR 91.225 (entitlements), 91.325 (States), 91.425 (consortia), 570.487(b)(1) (State CDBG grantees), 570.601 (all CDBG grantees) and 903.7(o)(3) (public housing agencies). The rule also defines affirmatively furthering fair housing for purposes of fair housing planning, at 24 CFR 5.152, as by stating that it means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. As this section provides, specifically, affirmatively furthering fair housing means taking actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

HUD explicitly stated in the proposed rule that HUD's acceptance of an AFH only means that the program participant has met the planning requirement described in the rule, but does not mean that HUD has determined that a program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act, or with other civil rights statutes and regulations. HUD reiterates that statement in this final rule.

Comment: Notify program participants of acceptance of its AFH. Commenters recommended that HUD send program participants acknowledgement of acceptance of their AFH.

HUD Response: As described in § 5.162 of this final rule, program participants will know that their AFH has been accepted 61 calendar days after the date that HUD receives the AFH, unless HUD has provided written notification that it does not accept the AFH.

e. Submission and Response Deadlines

i. 45 Days To Resubmit Nonaccepted AFH

Comment: Allow more than 45 days to revise a rejected AFH. Commenters asked that HUD allow more than 45 days to resubmit an AFH to permit participants to develop the changes and obtain whatever governing body approvals it may need before resubmitting it. The commenters stated that many governing boards meet only on a monthly basis.

HUD Response: HUD understands that there may be circumstances where program participants will require more than 45 days to resubmit an AFH that HUD will accept. Therefore, this final rule states that HUD will provide program participants with a specific time period to revise and resubmit the AFH, and that this period will be at least 45 days, but may be greater if so warranted.

Rule change. HUD revises § 5.162(c) to state that HUD will provide a program participant with a time period to revise and resubmit the AFH of no less than 45 calendar days after the date on which HUD provides written notification that it does not accept the AFH.

Comment: Clarify the process to revise a rejected AFH. Commenters stated that HUD's proposed rule was unclear whether the public comment period required by 24 CFR part 91 applies to AFHs that are resubmitted because they were originally rejected by HUD. The commenters stated that if the public comment period does apply, that would make it difficult to meet the 45-day resubmission deadline of paragraph. Commenters asked that HUD clarify whether another public comment period and consultations are not required when resubmitting a rejected AFH.

HUD Response: HUD has revised § 5.162(c) to clarify the process for revisions and resubmissions of an AFH. Program participants will be afforded a period of time no less than 45 days after the data on which HUD notifies the program participant that it does not accept the AFH.

ii. Comment Period on Draft AFH

Comment: HUD should require jurisdictions to provide a longer comment period on draft AFHs. Commenters stated that HUD should require jurisdictions to provide a 45-day to 60-day public comment period on their draft AFHs. Commenters stated that a longer period is important to ensure that the process is open and inclusive of all members of the community.

HUD Response: HUD's consolidated plan regulations provide and have long provided for a minimum 30-day public comment period for its citizen participation requirement. As stated earlier in this preamble, HUD emphasizes that this is the minimum and not maximum period of time provided for the citizen participation requirement under the consolidated planning processing. With respect to PHAs, this final rule adopts the provisions in the proposed AFH rule that PHAs must follow the policies and procedures in 24 CFR part 903 pertaining to community input.

iii. 270 Day Submission of AFH

Comment: The 270-day submission places the AFH process outside of the Consolidated Plan process. Commenters stated that the requirement that a participant must submit an initial AFH to HUD at least 270 calendar days before the start of the program participant's program year substantially places the AFH process outside many communities' consolidated plan process and will not integrate fair housing

concerns into the consolidated plan process but will force a participant to conduct a separate process with associated expenses and allocations of scarce administrative resources. Commenters stated that participants should be allowed the option to choose, based on local conditions and characteristics of the participant and its community, to prepare the AFH within its consolidated plan process and timing schedule.

Other commenters stated that the 270 days is too long a submission prior to the consolidated plan. The commenters stated that State participants would have to start the AFH/consolidated plan process in mid-December of 2013 to meet a 2016 due date, or almost 2 and ½ years before the consolidated plan would become effective. The commenters stated that with this length of time since the start of the development of the AFH, the data that is used for the AFH may not be valid by the time the AFH is submitted, and that the data should be fresh when program participants are thinking about fair housing at the same time consolidated plans are being developed.

Other commenters stated that under the proposed rule, an AFH would be due 270 days before a consolidated plan participant could begin its plan, and that the ''begin'' date would occur after 60 days of HUD review of the AFH, a total of 330 days. Commenters stated that, in effect, this would mean State grantees would have to start their AFH and consolidated planning efforts a minimum of 19 months ahead of the consolidated plan start date. Commenters stated that the time and resources necessary to complete the AFH and consolidated planning processes are simply too long and intensive, and that the effect of this AFH and consolidated planning processes would be that program participants would be in a constant planning and reporting cycle, draining staff time and resources away from effective implementation and monitoring of identified goals and objectives of both the AFH and consolidated plan.

HUD Response: The 270-day period remains in the final rule but that period only pertains to the first AFH to be submitted by program participants. The final rule provides ample time to prepare the first AFH and better aligns with the consolidated and PHA planning processes. HUD believes the 270-day time period is needed to allow the results of the AFH to inform the consolidated and PHA plans.

Comment: Clarify when the 270 days commences, and clarify what program year means. Commenters asked that the submission of the AFH 270 days in advance needs to be clearly defined in the rule. The commenters asked whether the submission deadline refers to the start of the program participant's fiscal year or the due date of the consolidated plan. Other commenters asked whether ''program year'' as used in the rule refers to a PHA's fiscal year, the federal fiscal year, or the calendar year. The commenters stated that many PHAs participate in multiple programs, and they operate on a mix of schedules, rendering the term ''program year'' largely meaningless.

HUD Response: HUD believes that the staggered submission deadline provided in § 5.160, which divides program participants into categories, clarifies what is meant by program year and fiscal year.

Comment: Reconcile contradiction in AFH submission between § 5.160(a) and § 5.160(c). Commenters stated that the proposed regulations provide the requirements for submission of the AFH to HUD in terms of submission deadline and frequency. Commenters stated that proposed § 5.160(a)(1) and (a)(2) state the submission deadline for initial AFH and subsequent AFH Statements, respectively as follows: (1) ''. . . each program participant . . . shall submit an initial AFH to HUD at least 270 calendar days before the start of the program participant's program year,'') and (2) ''After acceptance of its initial AFH, each program participant . . . shall submit subsequent AFHs to HUD at least 195 calendar days before the start of the jurisdiction's program year.'') Commenters stated that these two provisions contradict proposed § 5.160(c) (Frequency of submission): (''Each consolidated plan program participant must submit an AFH at least once every 5 years, or as such time agreed upon by HUD and the program participant in order to coordinate the AFH submission with time frames used for consolidated plans, . . .'') Commenters stated that HUD's Consolidated Plan regulations require entitlement jurisdictions to submit their Consolidated Plan One-Year Action Plans annually 45 days prior to the start of jurisdiction's program year, and therefore, it is unclear whether HUD expects the localities to submit an AFH on an annual or 5 year basis.

Commenters further stated that, in addition, the proposed rule at § 5.160(a)(1), which requires submission of the initial AFH Statement 270 calendar days prior to the start of a jurisdiction's program year would result in localities having to formulate and submit their initial AFH during their CAPER formulation and submission process for the prior program year's consolidated plan. Commenters stated that attempting to formulate and submit both Federally-required reports within the same time frame would create an excessive administrative burden.

Commenters recommended that HUD: (1) Modify proposed § 5.160(a)(1) and (a)(2) to provide clarification and be consistent with proposed regulation § 5.160(c) regarding frequency of submission; and (2) modify proposed regulation § 5.160(a)(1) to change the submission deadline to relieve the administrative burden to be closer the consolidated planning cycle (for example, 180–210 calendar days before), and provided the following suggested language: The amended regulation § 5.160(a)(1) may be modified to read as follows: ''. . . each program participant . . . shall submit an initial AFH to HUD at least (180–210) calendar days before the start of their 3- or 5-year consolidated planning process, . . .'').

Finally, PHA commenters stated that a PHA that elects to submit an independent AFH is required to update its PHA Plan annually, while all other program participants are required to submit only every 5 years? The commenters asked HUD to justify this position.

HUD Response: The staggered submission deadlines provided in the final rule address the concerns raised by the commenters. In addition, as noted earlier in this preamble, under the overview of changes made at the final rule stage, PHAs will be required to submit AFHs every 5 years.

f. Abbreviated AFH for Small Entities

Comment: Allow small program participants to submit an abbreviated AFH. Commenters requested that HUD allow small program participants to submit an abbreviated AFH. Commenters stated that small program participants do not have the resources or staff to develop the AFH envisioned in the proposed rule. Commenters stated that small program participants have smaller staffs which would be burdened with these new data requirements and goals in the rule. The commenters stated that little data is available at the jurisdiction level for small jurisdictions but only available at county or even State regional level resulting in a skewed measurement that can falsely shape the AFH. Commenters suggested that an abbreviated AFH would focus solely on (1) a summary of fair housing issues in the jurisdiction, if any, (2) community input through the Consolidated Plan, and (3) a discussion of the use of CDBG, HOME, and other

possible resources to address fair housing issues in the community.

HUD Response: HUD recognizes that a ''one size fits all'' approach may place the same burdens on all entities but that such small entities have fewer resources to deal reasonably with such burdens. As discussed in Section II.D of this preamble, the final rule provides for a staggered AFH submission deadline. Certain program participants (States, Insular Areas, PHAs) and small program participants (qualified PHAs and jurisdictions that receive a small CDBG grant in fiscal 2015) have the option of submitting their first AFH at a later date than provided for entitlement jurisdictions that receive an FY 2015 CDBG grant of more than $500,000. The staggered submission recognizes the capacity challenges, especially of small entities, and it is HUD's expectation that by the time their AFHs are due, the AFH approach and submission requirements will be more refined and these small entities and HUD can benefit from the experience of program participants that have already submitted AFHs.

The term ''qualified PHA'' was established by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008) and defines such PHA as one that has a combined unit total of 550 or less public housing units and section 8 vouchers; is not designated as troubled under section 6(j)(2) of the 1937 Act, and does not have a failing score under SEMAP during the prior 12 months. HERA exempted qualified PHAs from the requirement to prepare and submit an annual plan. As discussed in Section II.D of this preamble, an FY 2015 CDBG grant of $500,000 or less has been designated a small CDBG grant.

Rule Change. Section 5.160 provides that PHAs, and entitlement jurisdictions that receive an FY 2015 CDBG grant that is $500,000 or less, as well as States, and Insular Areas, may submit their first AFHs at a later date than entitlement jurisdictions that receive an FY 2015 CDBG grant of more than $500,000 and PHAs that jointly submit an AFH with an entitlement jurisdiction that receives an FY 2015 CDBG grant of more than $500,000.

g. Recently Completed AIs

The proposed rule asked the question whether HUD should waive or delay preparation and issuance of an AFH for program participants that recently conducted a ''comprehensive'' AI. Although a few commenters stated that the AFH should not be waived because the AI is a failed process, overwhelmingly commenters responded yes, that the AFH should be waived or delayed because significant time and resources already went into preparation of the AI. Specific comments were as follows:

Comment: Allow the use of a recently completed AI to comply with first AFH submission requirement. Commenters stated that developing an AI can be a costly and time-consuming effort and the product of that effort should not be discarded and that it would seem unfair and a waste of resources to require a program participant that, in good faith, recently completed a comprehensive AI to start all over and create a new AFH. Commenters requested that HUD not require program participants to create a new AFH if an AI was completed within 5 years of the date of the final AFH and the program participant's current consolidated plan has already been submitted or their next Consolidated Plan is due to be submitted within 12 months or less of the date the AFFH final rule. In that case, the AFH would be required to be submitted in conjunction with the program participant's next 5-year consolidated plan.

Other commenters ask that HUD allow a completed Fair Housing and Equity Assessment (FHEA) to count as an AFH. Commenters recommended that Regional Analysis of Impediments developed in support of the Sustainable Communities program should also be permitted to continue for some period of time.

HUD Response: HUD believes that the staggered AFH submission deadline provided in this final rule addresses to a considerable extent the commenters' concerns about recently completing an AI and then having to, perhaps within a short period of time, complete an AFH. HUD, however, wanted to ensure that for recipients of an FY2010 or 2011 Sustainable Communities Competition award that completed a regional analysis of impediment (RAI) in connection with such award, and where the RAI was submitted within 30 months prior to the date when the program participant's AFH is due, such RAI would be accepted in lieu of the AFH. The analysis required under the Sustainable Communities competition award is a more rigorous analysis and more comparable to the AFH approach provided in this rule.

Rule change. HUD has revised § 5.160 to provide that entitlement jurisdictions that participated in and signed on to a HUD-approved RAI in accordance with a grant awarded under HUD's FY 2010 or 2011 Sustainable Communities Competition that was submitted within 30 months prior to the date when the program participant's AFH is due will be accepted in lieu of the AFH.

h. Resolving Disputes on the Content of a Joint or Regional AFH

In the proposed rule, HUD asked commenters what process should guide the resolution of disputes between collaborating program participants if an AFH is not accepted because of disagreements between the collaborating program participants. The comments were as follows:

Comment: Provide for dispute resolution and set an end date for such resolution. Commenters stated that a dispute among program participants is particularly worrisome, because failure to submit a consolidated plan within the federal fiscal year precludes the ability of the program participant to work through the issues and ever receive funding. Commenters requested that HUD allow a program participant, caught in this situation, to proceed to submit its consolidated plan, and then allow the program participant a specific amount of time for the participant to work through differences with HUD. Commenters stated that it is critical that the process for resolving disputes about the content of an AFH should not jeopardize receipt of critical funding. The commenters stated that HUD should assure that resources do not get unreasonably delayed and establish a review/approval/dispute process that is responsive to local operational needs such that funds continue to flow while these issues are addressed, barring a clearly unresponsive noncompliant program participant.

Commenters stated that there needs to be some HUD Headquarters involvement where a disagreement continues beyond some reasonable period, such as 60 to 90 days. Commenters stated that meeting with HUD to facilitate agreement and/or mediation as a last resort would be a great process to guide the resolution of disputes between program participants. The commenters stated that HUD would be in the best position to provide technical assistance to iron out any differences.

Other commenters stated that HUD should offer technical assistance with the disapproval of the first AFH submitted, and needs to be clear about all issues in the first letter of disapproval, so a program participant can expect, once identified issues are addressed, approval of the AFH would be forthcoming, rather than learning that additional issues have been identified.

Commenters stated that the rule should provide for a dispute process so that everyone knows how to resolve a

dispute and funding will not be jeopardized.

In contrast to the foregoing commenters, other commenters stated that HUD should not concern itself with the internal problem-solving mechanisms of the regional collaboration. Commenters stated that the party responsible for submitting the regional AFH to HUD should have authority over disputes, as they are lead agency and responsible for the AFH. Commenters stated that if a participant does not agree with the AFH, they can submit a dissenting opinion. This should include ability by the dissenter to not do the activity they disagree with, or to do activities they deem more appropriate.

HUD Response: HUD appreciates commenters responding to the specific question posed on this issue. On further consideration, HUD declines to include a dispute resolution process in the rule and has also removed the provisions regarding PHA dissenting opinions. Since joint and regional collaborations are entirely voluntary, HUD anticipates that disputes among collaborative program participants would be the exception as the program participants themselves selected the collaborative relationship. HUD also encourages MOUs to be entered into by collaborative program participants as a means of resolution, so that if disputes do arise, the collaborative program participants can resolve issues among themselves without HUD intervention.

i. Impact of Disaster Situations on an AFH

Comment: Serious consideration must be given to timing of submission of an AFH that must be revised as a result of a declared disaster. Commenters stated that the requirement that an AFH be revised in the event of a Presidentially-declared disaster is appropriate but when the revision must be done and submitted to HUD must be considered in light of the multiplicity of tasks required during disaster recovery. Commenters stated that the program participants will likely be consumed with disaster recovery tasks for some time, and that any requirement by HUD to revise the AFH within a brief period following the disaster may divert human resources from disaster recovery. Commenters stated that HUD must recognize that a program participant's first responsibility will be to deal with the victims of the disaster. Commenters stated that HUD should leave preliminary determinations of the need for and timing of revisions to the local jurisdiction.

Commenters stated that the rule should integrate revising the AFH with the timeline for the Action Plan recovery expenditures required under HUD's Community Development Block Grant–Disaster Recovery (CDBG–DR) program, and recommended that HUD establish a requirement that, as part of the Action Plan process under CDBG–DR, grantees be required to discuss in the Action Plan how the AFFH related data that the CDBG–DR Notice provides impacts the barriers identified in the AFH and/or creates any new barriers, and how the Action Plan's programs address those barriers. Commenters stated that a uniform requirement of a revision following a disaster calls for specificity not only regarding the timing and submission of the revised AFH but the content. Commenters stated that the elements included in revision of the AFH should be a modified or condensed set of elements that target the most impacted aspects of the disaster rather than require a complete revision and rewrite of the AFH. Additionally, commenters stated that HUD should at least exempt grantees from the public hearings, only when a revision is needed due to a major disaster.

Other commenters also stated that there should be no assumption that a natural disaster automatically requires jurisdictions to deviate from the priorities set out in a compliant AFH. Commenters stated that this is an issue that would need to be addressed on a case-by-case basis. Commenters stated that, in some cases, a disaster could have no effect on compliance with the AFH if it is fairly localized in a rural area or the low-income housing is repairable and the most immediate need would be to get people back into their homes. Commenters stated that revising an AFH following a disaster should only be required where the disaster requires substantial reconstruction of new housing, not those primarily requiring repair of existing housing. Commenters stated that HUD's rule needs to allow some flexibility and discretion in determining whether and when a jurisdiction needs to revise its AFH.

Other commenters state that while HUD must give program participants adequate time to revise an AFH in the event of a major natural disaster, program participants should not be exempt from revision as a result of a major natural disaster. Commenters stated that natural disasters confront communities with a challenge to rebuild and to start over, and that this presents a totally unique opportunity to rebuild without the pre-disaster patterns of segregation. Commenters stated that the rule must anticipate these pressures and create the circumstances where fair housing practices can be applied and a positive pro-integrative transformation can take place. Other commenters similarly stated that natural disasters, while creating many barriers, also can provide opportunities to increase access and better inclusion in the future, and that these opportunities should be pointed out to the entities and they should be monitored to see how well they serve fair housing goals during the disaster and in their rebuilding efforts. Commenters stated that the AFH and disaster relief goals can and should be coordinated so that disaster relief funds are not misdirected to maintain the status quo, including high levels of racial segregation and low levels of affordable housing in high opportunity areas.

Some commenters suggested that HUD should work with the Federal Emergency Management Agency (FEMA) on developing appropriate recommendations and guidelines instead of establishing a new and separate mandated process. In addition to opposing a mandate to revise an AFH as a result of a disaster situation, commenters stated that HUD should be precluded from denying relief to jurisdictions due to disputes about the AFH and the actions identified therein. Commenters stated that it would be unconscionable that HUD use disaster relief funds as leverage in bona fide disputes with local jurisdictions.

Other commenters recommended that HUD should consider an AFH template specifically for a disaster-declared area, similar to what it does with waivers requests for the use of CDBG–DR funding, with options that a grantee can utilize under various categories. The commenters stated that the template should establish fair share allocations of disaster recovery resources for households based on income, sex, age, national origin, disability etc. to ensure members of classes of persons protected under the Fair Housing Act receive access to disaster recovery funds at a rate equal to the degree they were impacted by the disaster; require housing units rebuilt in the wake of a disaster to be ''visitable'' to persons with disabilities; and require a disaster vulnerability assessment of neighborhoods and ensure that in neighborhoods where there are concentrations of persons protected under the Fair Housing Act such residents receive fair access to infrastructure to remediate the vulnerability of these areas to future disaster.

Other commenters suggested that HUD provide a guidebook for

jurisdictions to use to modify their AFH post-disaster plans and to lawfully exercise opportunities posed by large rebuilding programs. In the immediate aftermath of a major disaster jurisdictions face many challenges in gearing up to rebuild. The commenters stated that, by pre-developing guidance, HUD would ensure that the process of modifying the AFH would be informed by best practices and proceed smoothly.

HUD Response: HUD appreciates the very good suggestions offered by commenters regarding preparation of an AFH in the face of a disaster situation causing significant damage to an area or areas of the U.S., and, thereby, possibly requiring changes to a program participant's AFH. HUD wholeheartedly agrees with the commenters that their first responsibility is to assist the residents in the areas affected by the disaster. HUD will consider working with FEMA on guidance related to the revision of an AFH after a disaster.

Rule change. HUD has revised § 5.164 (Revising an Accepted AFH) to provide that a program participant must revise its AFH whenever a ''material change'' in circumstances occurs in the jurisdiction of a program participant, which is a change that affects the information on which the AFH is based to the extent that the analysis, fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances.

Revised § 5.164 provides examples of what constitutes a material change such as a Presidentially declared disaster, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in the program participant's area that is of such a nature as to significantly impact the program participant's duty to affirmatively further fair housing; significant demographic changes; new significant contributing factors in the participant's jurisdiction; and civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders. While a Presidentially declared disaster is the most prominent example, it is only one example, and a material change is not limited to Presidentially declared disasters. Other disasters that cause significant damage to housing or infrastructure, result in significant displacement of populations, or have significant disproportionate effects based on protected class in their direct effects in response or recovery, would be among the types of disasters likely to significantly impact the steps required to affirmatively further fair housing and therefore be consider a ''material change.'' HUD will work with grantees that experience such events and provide additional clarifying guidance as may be needed given the material change at issue.

Revised § 5.164 further provides that where a revision to an AFH is required because of a material change in circumstances, the revision shall be submitted within 12 months of the onset of the material change in circumstances, or at such later date as HUD may provide, and that where a revision is required due to a Presidentially declared disaster, the time for submission shall be automatically extended to the date that is 2 years after the date upon which the disaster declaration is made, and the deadline may be further extended upon the request for good cause shown.

Revised § 5.164 also provides that HUD may require a program participant to revise an AFH upon written notification to the program participant specifying the reasons why HUD determined a revised AFH is necessary. Revised § 5.164 allows, however, for a program participant to respond to HUD and advise of reasons why the program participant believes a revised AFH is not necessary.

j. Need for Safe Harbor

Comment: Provide a safe harbor for program participants that faithfully follow the requirements in the AFH rule. Commenters stated that the proposed rule lacks a ''safe harbor''; that is, that the rule provides no assurances that a program participant has sufficiently met its obligation to affirmatively further fair housing. Commenters stated that a safe harbor is especially important in the initial years of implementation of the new AFH process because it is a major change from the AI process, and, as with any transition to a new system, the new AFH approach may not play out as HUD envisioned. Commenters stated that HUD needs to recognize program participants for their good faith efforts to comply with new requirements, and hold them harmless for factors outside of their control. Commenters stated that they appreciate HUD stating that, through this new AFH process, HUD expects to reduce litigation and the commenters suggest that including a safe harbor would definitely reduce litigation.

Commenters stated that part of the reason for requesting a safe harbor is that HUD must recognize that there are factors beyond a program participant's control, and that such factors include operating under a consent decree pursuant to a court order that requires a program participant to take action in accordance with the decree that may conflict with the AFH rule, or a program participant is faced with concentrations of populations that occur for nondiscriminatory purposes, as for example, populations surrounding HUD-funded Historically Black Colleges and Universities.

Other commenters clarified that they are not seeking a safe harbor that the program participant has fulfilled its duty to affirmatively further fair housing, but rather the commenters stated that they are seeking a safe harbor that, if a program participant submits an AFH, and if HUD approves the AFH, then the program participant is considered in compliance with the AFH planning requirements.

HUD Response: As stated earlier in this preamble, this rule does not assess whether a program participant has carried out its statutory obligation to affirmatively further fair housing. As also stated earlier in this preamble, an AFH will be deemed accepted after 60 calendar days from the date HUD receives an AFH unless HUD has provided the program participant(s) with notification that HUD does not accept the AFH.

17. Entitlement and Nonentitlement Jurisdictions and Role of the States

Comment: State AFHs should cover only nonentitlement jurisdictions. Commenters stated that State AFHs should cover only the non-entitlement jurisdictions, and should not be required to cover entitlement jurisdictions. Commenters stated that entitlement jurisdictions will be required to prepare their own AFH, therefore requiring the State to also complete an assessment of the same area would be redundant and a waste of time and money. Commenters stated that the basis for States preparing the AFH is based on the use of CDBG, HOME, ESG, and HOPWA funding, and that States use these resources primarily in non-entitlement jurisdictions, and that, in fact, States may not legally use most of their HUD resources in entitlement jurisdictions, just as entitlement jurisdictions are required to use their HUD funding within their own geographic boundaries. Commenters stated that since entitlement jurisdictions will be required to prepare their own AFHs, having the State do an assessment of these same areas would be redundant and a waste of resources. Commenters stated that if States choose to participate in regional AFHs that include entitlement jurisdictions, they may do so and the AFH would include the entitlement jurisdictions. Commenters recommended that the definition of a State AFH (§ 5.152

Definitions) should be limited to non-entitlement areas of the State.

Commenters stated that HUD does not appear to understand how States operate, and how they are different from entitlement jurisdictions. Commenters stated that what a State can accomplish is different from what an entitlement community can accomplish. The commenters stated that the geographic scope of entitlement communities is limited and their structures of control are far greater, both politically and economically. The commenters stated that State entities cover widely varying geographies and tend to have far more limited capacity to control political and economic outcomes. Commenters stated that, throughout the proposed rule, guidelines that may be appropriate to entitlement local governments are being applied inappropriately to State programs.

Commenters stated that the new mapping system to gather data is not workable for State grantees. Commenters stated that it would be helpful if when HUD designs mapping systems for collecting data they work with a sub-committee that includes State grantees. The commenters stated that the whole data gathering system for the e-con planning suite is another example of mapping systems that do not work for State grantees. It is fine if HUD wants to offer this mapping system as a tool that can be used but its use should not be made mandatory.

To resolve the treatment of States in the AFH regulations, commenters recommended that HUD have separate regulatory sections for States and local governments that acknowledge the differences in their needs, capabilities and size of geography. Commenters stated that HUD's proposed rule did not acknowledge that State governments operate at a different level of responsibility and for a different geographic area of coverage; and that States are more like HUD in their administration of housing and community development programs than local governments.

Commenters further stated that States have limited influence over local government actions that could be most effective addressing a fair housing issue, and that while there may be significant fair housing issues in a locality, a State may have no ability to influence the locality, and, therefore, a State cannot include goals for mitigating the factors contributing to the fair housing issue. Commenters stated that States do not have control over zoning and local land use decisions; that land use decisions are local responsibilities that can be informed by using geographic data systems and maps that analyze current demographic and socio-economic conditions. The commenters stated that State AFHs should not be rejected under § 5.162(b) if they do not address local issues.

Commenters stated that providing separate sections for State and local governments is not unprecedented, pointing to HUD's Consolidated Plan regulations at 24 CFR part 91 that separate certain State and local requirements in recognition of their differences. Commenters further recommended that HUD draft regulatory sections applicable to States in close consultation with a wide variety of States (small and large States; States with many local entitlement jurisdictions and States with few local entitlement jurisdictions; and States with few metropolitan areas and states that are predominantly metropolitan) and their associations, such as the Council of State Community Development Agencies (COSCDA) and the National Council of State Housing Agencies (NCSHA).

Commenters stated that while HUD specifically addresses four distinct types of program participants, States apparently fall under the more generic category of ''jurisdiction'' per § 91.5. Commenters stated that this becomes problematic when examining the language describing the required elements of the analysis, which speaks in terms of various signifiers within ''the jurisdiction and region.'' Commenters stated that, in the case of States, what this means is not altogether clear. Commenters asked that HUD clarify whether the State analysis covers the jurisdiction (which the commenters said taken literally would mean the State as a whole) or only those portions of the State nonentitlement areas that are subject to the various CPD programs (noting that the geography of entitlements varies with each program). The commenters stated that the inclusion or exclusion of entitlement jurisdictions with their primarily urban/suburban populations would produce very different assessment outcomes.

Commenters recommended that regional analysis should only be required when a regional AFH is prepared. The commenters stated that since a State's jurisdiction is much larger than a local jurisdiction's, the rule should require only a statewide analysis, but allow those States that prefer to undertake smaller geography analyses to do so. Other commenters stated that HUD should revise § 5.154 (d) and (e) of the proposed rule to establish different requirements that are appropriate to State governments.

Commenters stated that if HUD does not distinguish the responsibilities of the State from nonentitlement jurisdictions in the final rule, HUD must clarify that a State is not responsible for the failure of its subrecipients to comply with the requirements of this rule or to monitor their compliance. Commenters stated that States should not be bound by administrative actions taken by HUD against a local jurisdiction that fails to submit an acceptable AFH. Commenters stated that in the case of a local jurisdiction's failure to submit an accepted AFH, and HUD withholds the jurisdiction's CDBG award, the State jurisdiction should not be prohibited from awarding other CPD funds to the local jurisdiction. Commenters stated that States are better equipped and suited to develop policies and priorities for distributing funds according to procedures that seek to minimize concentrations and promote choices of places to live. Commenters stated that States should only be responsible for monitoring their subgrantees' efforts to affirmatively further fair housing, not all of the jurisdictions in the non-entitlement areas, and that for non-entitlement areas within the State that have not been funded by the State, the final rule should not expect States to be held responsible for subgrantees' actions to affirmatively further fair housing.

Other commenters stated that States, particularly, should be held accountable for the duty to affirmatively further fair housing based not only on how States expend HUD funds, but also on the level of compliance they require of local jurisdictions, including those that do not receive HUD funds. Commenters stated that State laws and regulations governing zoning and preventing exclusionary practices are one such mechanism for encouraging compliance. The commenters stated that expenditure of State discretionary funds (including non-HUD funds as well as non-federal funds) for housing production and preservation, economic development, water and sewer infrastructure, transportation, and school building facilities can also have a powerful impact and should be included in the creation and implementation of an AFH.

Finally, commenters addressed the consultation requirement and noted that the proposed rule states at § 91.110(a)(2) that the ''State shall consult with state and regionally-based organizations that represent protected class members . . . and other public and private fair housing service agencies, to the extent such agencies operate in the State.'' Commenters recommended that States be required to consult with entities in non-entitlement areas only and that the

focus should be on these non-entitlement areas in these consultations. Commenters stated that regarding consultation by States, only statewide public housing authorities must be consulted in developing an AFH. Commenters stated that the proposed rule at § 91.110 (a)(1) provides: ''The State shall consult with any state housing agency administering public housing (PHA) concerning consideration of public housing needs, planned programs and activities, the AFH . . .'' Commenters stated that the language should indicate clearly that it is only statewide housing authorities that must be consulted. Commenters stated that if HUD's intent was broader, that language should be limited to ''representatives of public housing authorities covered by the state's Consolidated Plan'' not all public housing authorities.

HUD Response: The commenters raise very valid points about the differences between entitlement jurisdictions and the role of States with respect to receipt, distribution, and expenditure of HUD funds. HUD believes a rule change is not necessary, however, in recognition of the unique role that States play, HUD intends to develop a format of the Assessment Tool that is more tailored to the activities of States.

18. Regional Collaboration and Regional Analysis.

Comment: It is important for PHA and local jurisdictions to collaborate: Require a letter affirming cooperation. Commenters stated that currently, in most locations, fair housing planning between jurisdictions and PHAs is not significantly interwoven. Commenters stated that PHAs are oftentimes distinct legal entities outside the control of local governments, even though they may be located within the geographical boundary of a jurisdiction, and that the only linkage may be the appointment of PHA board members by the local elected official or body. Commenters stated that notwithstanding a strong linkage, a jurisdiction's discussion with PHAs is often very helpful in better understanding the real ''impediments'' a PHA's residents face in trying to locate affordable housing outside of the public housing developments and gaining a better understanding of the nuances of any discriminatory actions they may encounter, and that therefore, it is important for jurisdictions and PHAs to come to the table and fully collaborate in the development of the AFH.

Commenters requested that to ensure such cooperation, HUD should require a letter affirming cooperation between the two entities in the development and implementation of the AFH. Other commenters stated that HUD should require a meeting of the entities seeking to engage in joint participation with HUD's staff in FHEO. Commenters stated that HUD should issue a sample agreement for use between or among program participants seeking to jointly undertake the AFH planning process.

HUD Response: HUD appreciates the value that the commenters see in a joint participation by PHA and local government, and HUD seeks to be helpful to such entities in their efforts to jointly undertake AFH planning, but HUD declines to require such entities to execute a letter or agreement affirming cooperation or meet with FHEO staff. As noted in response to an earlier comment, HUD encourages the creation of MOUs to govern the joint participation process when completing an AFH.

Comment: Clarify whether a regional analysis is required of every AFH and if so, define ''region.'' Commenters stated that § 5.154(d)(2) requires analysis of various data ''within the jurisdiction and region.'' Commenters stated that the mandated nature of this provision, ''that the program participant must identify, within the jurisdiction and region, integration and segregation patterns and trends across protected classes; racially or ethnically concentrated areas of poverty; whether significant disparities in access to community assets exist across protected classes within the jurisdiction and region; and whether disproportionate housing needs exist across protected classes'' appears to require a participant to in effect conduct a regional AFH effort and eventual plan without drawing any distinctions between a community's jurisdiction where it practices a higher level of responsibility and influence than for a ''region.'' Commenters stated that for many participants this provision will be burdensome and ineffectual especially for larger metro regions of a large number of diverse and independent governmental entities. The commenters stated that the provision as worded will mandate a high level of added expense and administrative burden. The commenters asked HUD to clarify whether the intention of the rule is to require a regional analysis only when there is a regional plan, or for every AFH.

Other commenters stated that a regional analysis should only be required when a regional AFH is prepared. The commenters recommended that HUD modify the rule so that it is clear that the analysis applies to the jurisdiction or, if a regional AFH is prepared, the region consisting of the regional AFH participants.

Commenters stated that if HUD is requiring a regional analysis for every entity submitting an AFH, then HUD must define what is meant by a ''region.'' Commenters stated that the definition of a region indicated in HUD's proposed rule is that a region is the area in which two or more program participants collaborate on a single AFH. Commenters stated that this definition is problematic for many reasons, one of the most important being that it could perpetuate a core problem with current strategies to affirmatively further fair housing. The commenters stated that under current regulations, communities can form a consortium for purposes of obtaining HUD funds subject to the requirement to affirmatively further fair housing, but that it is often the case that asset-rich communities—often times communities greatly in need of affirmatively furthering fair housing—have little incentive to join a consortium.

Commenters asked whether a region for State AFH planning purposes is the State and surrounding States, or all the regions within a State, however those are defined. Other commenters also asked that HUD exempt states from analyzing data for regions.

HUD Response: All program participants must use HUD-provided data and that data will include regional data. A look at regional data is important because the demographic makeup of a program participant's population may be very different from the demographic makeup of the larger region's population. For example, certain communities within a region may have large concentrations of persons with disabilities when compared to the broader region, or a disproportionately small percentage of families with children when compared to the larger region, or contain most of the region's racially or ethnically concentrated areas of poverty. Therefore, an examination of such data is important in order to accurately assess the factors that contribute to a program participant's own fair housing issues.

With respect to the set of comments requesting that HUD clarify the definition of a region when referring to ''regional data'' or a ''regional analysis,'' the Assessment Tool will address this request.

With respect to the set of comments requesting that HUD require particular communities to participate in a regional AFH, HUD declines to impose such a requirement. Program participants should determine whether they want to

collaborate with other program participants and, if so, who they want to collaborate with.

Comment: HUD must provide incentives to achieve regional collaboration because regional collaboration is difficult. Commenters stated that many fair housing issues transcend local jurisdictions but they are not convinced that increased collaboration will result from HUD's rule. Commenters stated that the proposed rule encourages regional collaboration in the development of AFHs, but stated that there are many factors that make regional collaboration difficult. Commenters stated that without these incentives, jurisdictions may be reluctant to take on the challenge of inter-jurisdictional collaboration. Commenters stated that policies adopted by one jurisdiction or region are not simply voted on by another jurisdiction. Commenters stated that the difficulty is that decisions are made within the boundaries of the jurisdictions, and though collaboration can be attempted, the politics of ideology and money often get in the way of noble regional efforts.

Commenters also stated that HUD must ensure that all program participants that participate in regional AFHs identify priorities, set goals appropriate to the needs in individual jurisdictions, adopt spending plans and strategies to achieve goals, and establish timetables, benchmarks and measurable outcomes for each goal. Commenters stated that they are concerned that regional collaboration efforts over the past 15 to 20 years have more often resulted in overly-generalized analyses which fail to provide accountability for individual jurisdictions, and recommend few, if any, meaningful actions to overcome fair housing barriers. Commenters stated that HUD must take care to avoid this result in the proposed rule. Commenters stated that § 5.156(d) of the proposed rule states only that ''A Regional AFH does not relieve each regionally collaborating program from its obligation to analyze and address local fair housing issues and determinants that affect housing choice within its respective jurisdiction.'' Commenters expressed concern about the sufficiency of this provision and recommended that this section should be amended to require that regionally collaborating programs, especially those exercising land use and zoning powers, are required not just to analyze barriers within their own boundaries but also to adopt jurisdiction-specific actions to overcome those barriers. Commenters stated that HUD might also provide more detail about how such regional planning would work in non-contiguous jurisdictions.

Other commenters stated that the need to analyze and address local fair housing issues and contributing factors creates burden and does not relieve collaborating regions from burdens as suggested by HUD's promotion of regional collaboration. Commenters stated that it is counterintuitive to suggest or even encourage participants to engage each other in developing a regional AFH if participants are still required to provide an analysis of local issues as stated in § 5.156(d). Commenters stated that a regional AFH would only benefit from reduced burden if the issues at the regional and local level are consistent to the extent that one analysis would cover both levels, but that participants would not know this until well into the AFH process. Commenters stated that this may result in increased costs and use of resources, as well as delays in completion of the AFH, which is the opposite of HUD's promotion of regional collaboration on AFHs. Commenters stated that they agree that any regional analysis must tie back to each collaborating community with specific actions it will take to affirmatively further fair housing, but that given the goal of connecting the AFH with future consolidated plans, this requirement could be better crafted to incentivize partnership. Commenters stated that with the tight timeframe for the completion of the AFH within one year before the submission of the consolidated plan, communities are developing recommendations for fair housing twice within a 2-year period, creating redundancy.

Commenters suggested the rule include stronger language recommending the creation of regional AFHs in large metropolitan regions that focus on robust analyses of fair housing conditions and include broader regional recommendations, and that the rule not include recommendations specific to individual program participant jurisdictions. Commenters suggested that for each consolidated plan completed by jurisdictions within the region covered by the regional AFH, the AFH should include strategic plan recommendations to affirmatively further fair housing tied both to the analysis and recommendations included in the regional AFH. Commenters stated that under this model the regional AFH becomes the ''existing conditions report'' for multiple communities on the state of fair housing in the region, with each community using the consolidated planning process to develop local implementation in response. The commenters stated that since only one regional AFH would be needed in each of these regions, the reporting burden for individual program participants within each region would be reduced, but clarified that in recommending this model of a regional AFH, the regional AFH would be developed in active collaboration with program participant jurisdictions.

Other commenters stated that for regional collaboration to be meaningful it must not be conducted exclusively by jurisdictions consisting of uniform or near-uniform demographics.

Other commenters stated that, as proposed, the rule encourages only narrow partnerships, primarily among existing CDBG or HOME consortia, and given the regional scope needed to properly analyze and contextualize the provided data, these small collaborations will need to use scarce administrative dollars to find outside assistance. The commenters stated that while there is some efficiency to be gained from these types of collaborations, the most effective AFHs will be based on regions defined by the boundaries of MPOs or Regional Councils.

Commenters stated that regional jurisdictions do not necessarily conform to MSA boundaries, and that many have the capacity to perform the analysis and policy recommendation tasks necessary to complete a regional AFH. Commenters stated that none of the materials released by HUD in association with the proposed rule mention the FHEA or the RAI being developed by participants in the Sustainable Communities Regional Planning Grant program, and this is a mistake on HUD's part. Commenters stated that these regions are large enough to capture the dynamics that create both RCAPs and areas of opportunity, and that they also have existing agencies with the capacity to provide rigorous data analysis and community engagement, linking fair housing efforts with other Federal planning efforts, such as transportation.

Other commenters expressed concern that the rule would allow non-contiguous jurisdictions to collaborate on a regional AFH. The commenters stated that as proposed, the rule would allow any two jurisdictions across the nation to form a regional AFH, and this allows for illogical and counterproductive collaborations. The commenters stated that this would allow a partnership of all-white communities to submit a regional AFH that could mask the fair housing issues in their jurisdictions. The commenters

stated that this risk is intensified given that the proposed rule does not require specific outcomes and allows AFHs to identify only one issue.

Other commenters stated that the importance of assessing housing needs on a regional basis should be emphasized, including in the definitions of ''disproportional housing needs,'' ''segregation'' and ''fair housing choice.''

HUD Response: HUD understands that regional collaboration can be challenging, but believes that, in many cases, the benefits will outweigh the challenges, and HUD will continue to encourage regional collaboration and provide incentives, such as bonus points in HUD notices of funding availability (NOFAs), where feasible.

With respect to commenters' concern that regional collaboration will produce overly generalized analyses and fail to provide accountability for individual jurisdictions, the proposed rule specifies that a regional AFH must include barriers to fair housing at both the local and regional levels, and that participating in a regional AFH does not relieve program participants from analyzing and addressing fair housing issues and contributing factors within individual jurisdictions.

As the rule makes clear, when collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all participants are accountable for the analysis and any joint goals and priorities. Program participants are also accountable for their individual analysis, goals, and priorities. (See § 5.156(a)(3).) For example, in a regional collaboration involving two entitlement jurisdictions and two PHAs, the entitlement jurisdictions may conduct certain parts of the joint analysis and the PHAs may conduct other parts. HUD believes it is best left to the program participants in a joint or regional collaboration to decide how their individual expertise may best contribute to a joint or regional AFH. However, notwithstanding the division of labor that program participants may choose, each program participant is accountable for the joint analysis, goals, and priorities in a joint or regional AFH, as well as being accountable for any individual analysis, goals, and priorities that the participant includes in the joint or regional AFH.

Rule clarification. HUD has revised the final rule to clarify that joint participants and regionally collaborating participants must not only analyze and address local fair housing issues and contributing factors that affect choice but must also set goals within their respective geographic areas of analysis. (See § 5.156(e).)

With respect to commenters suggestion that regional collaboration will not be as meaningful if collaboration is only among regions with like demographics, and those that stated that regional jurisdictions do not necessarily conform to MSA boundaries, HUD declines to impose additional requirements for jurisdictions that choose to collaborate on regional AFHs, in order to require a particular demographic mix. HUD notes that all program participants must conduct an analysis of fair housing barriers both within a local jurisdiction and at the regional level, which will prevent jurisdictions from conducting a narrow analysis of patterns solely within the jurisdiction.

With respect to the comments regarding FHEAs prepared with support from the HUD Sustainable Communities Initiative, HUD encourages communities that have prepared a FHEA to use this process and analysis to inform the creation of a RAI. HUD will provide guidance to grantees on how to convert a FHEA to a successful Regional AFH.

With respect to the comments regarding RAIs prepared with support from the HUD Sustainable Communities Initiative, HUD noted earlier in this preamble that a RAI prepared in connection with an FY 2010 and FY 2011 Sustainable Communities Initiative award will be accepted by HUD as the program participant's first AFH due under the submission requirements of § 5.160. (See § 5.160(a)(2).)

With respect to commenters' concern that allowing noncontiguous jurisdictions will result in ineffective collaborations, HUD has revised § 5.156(a)(1) to clarify that regionally collaborating participants need not be contiguous but must be located within the same CBSA, as defined by OMB at the time of submission of the regional AFH. Alternatively, if the program participants are not located in a CBSA, the program participants may submit a request in writing to HUD seeking approval as regionally collaborating program participants for the reasons stated in the request. The term ''Combined Statistical Area'' was removed from the final rule due to concerns with adding an unnecessary level of complexity and administrative burden in the provision of Federal data for program participants.

While all forms of regional collaborations are greatly encouraged, HUD acknowledges that there may be administrative challenges to providing the data, maps, and tables for some elements in the Assessment Tool that will need to be provided to some types of regional collaborations. For instance, program participants seeking to do a regional AFH, that are not in the same CBSA, could likely have numerous issues with aggregating different types of data. HUD notes that it will work with program participants to address such challenges, but may be limited by considerations with the format in which the data may be realistically provided. HUD will nevertheless endeavor to provide such collaborations with appropriate leeway in submitting their AFHs in a manner so that they can be accepted by HUD.

Whatever form of collaboration is selected by program participants and approved by HUD, HUD reiterates that the rule specifies that a regional AFH must include barriers to fair housing at both the local and regional levels, and that participating in a regional AFH does not relieve program participants from analyzing and addressing fair housing issues and contributing factors within individual jurisdictions. (See § 5.156(e).)

With respect to commenters' request that the definitions of ''disproportionate housing needs,'' ''segregation'' and ''fair housing choice,'' emphasize the importance of assessing housing needs on a regional basis, please see HUD's earlier response to comments about suggested revisions to these terms.

Comment: Mandate that municipalities consider regional needs for members of a protected class. A commenter stated that the most crucial omission in the proposed rule is allowing municipalities the option of taking a regional approach to affirmatively furthering fair housing rather than mandating consideration of regional needs for increased housing opportunity for members of protected classes. The commenter stated that this flaw allows affluent communities that have excluded members of protected classes to continue excluding because they have no existing concentrations of class members who are being denied fair housing. A program participant could argue that it has no need to allow the development of additional subsidized housing that might be affordable for protected class members because it had no existing residents who would be income-eligible.

Other commenters stated that the rule should require participants to analyze the regional impacts of local decisions and implement strategies that make measurable progress toward promoting integration and reducing disparities in access to community assets across jurisdictional lines. The commenters

stated that in many cases this will require the sort of regional collaboration that the proposed rule encourages.

HUD Response: All program participants submitting an AFH must take regional needs into consideration. The regulatory text at § 5.154(d)(2), entitled ''Analysis of data'' requires identification of various issues ''within the jurisdiction *and* region'' (emphasis added). With respect to commenters' request that participants analyze regional impacts of local decisions, HUD believes that the requirement that participants analyze issues and impacts of both a jurisdiction and a region addresses the commenters' concern.

Comment: Regional assessment is at odds with consultation requirements. Commenters stated the proposed rule at § 5.156(a) (Regional assessments and fair housing planning) indicates that consultation with adjacent units of general local government, while encouraged, is not mandatory. The commenters stated that the rule provides that two or more program participants (regionally collaborating program participants) may, and are encouraged to, collaborate to conduct and submit a single regional AFH to evaluate fair housing issues and contributing factors from a regional perspective (Regional AFH). The commenters stated that, however, proposed regulations in 24 CFR part 91 regarding the formulation of a locality's consolidated plan require consultation with adjacent localities. The commenters stated that HUD's regulation at § 91.100(a)(5) (Consultation; local governments, General) provides that ''[t]he jurisdiction also *shall consult* with adjacent units of general local government, including local government agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.'' (Emphasis added.) The commenters stated that to require a central city in a metropolitan area, such as New York City, to consult with adjacent local governments, and by implication, request that such localities use their limited entitlement grant funds to assist the central city to meet its fair housing goals, may not be practical or financially feasible.

The commenters requested that § 91.100(a)(5) be amended to be consistent with the proposed regulation § 5.156(a). The commenters stated that § 91.100(a)(5) should be revised to read as follows: ''The jurisdiction *may also consult* with adjacent units of general local government, including local government agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.'' (Emphasis added.)

HUD Response: HUD agrees with commenters and is maintaining existing consultation requirements, which provides in § 91.100(a)(5) that jurisdictions should consult with adjacent units of general local government.

Comment: Allow PHAs to participate in a regional AFH. Commenters stated that an option for PHAs to participate in a regional AFH should be specifically stated in the rule and cited to § 5.156 and § 903.15. The commenters stated that most PHAs in cities that are HUD 'entitlements' should collaborate in their city's AFH, but that for PHAs in cities participating in a regional AFH, an additional option should be added to the list in § 903.15.

HUD Response: HUD agrees with the commenters and has made explicit that PHAs have the option to participate in a regional AFH.

Rule change. The final rule revises the proposed definition of ''regionally collaborating program participants'' in § 5.152, now entitled ''regionally collaborating participants,'' to state that ''A PHA may participate in a regional assessment in accordance with PHA Plan participation requirements under 24 CFR 903.15(a)(1).''

Comment: Allow States to participate in a regional AFH. It is not clear from the proposed rule whether or not States are able to be a partner in a regional AFH and what that collaboration would look like.

HUD Response: States are encouraged to participate in joint or regional AFHs, particularly with program participants within their own jurisdictions. In cases where the participants are not located in the same State or CBSA, the participants must submit a written request to HUD for approval stating why the collaboration is appropriate.

Rule change. The final rule provides that program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The collaboration may proceed upon approval by HUD. (See § 5.156(a)(2).)

Comment: Regional councils of governments, Metropolitan Planning Organizations and other regional planning bodies should be permitted to serve as the lead entity for Regional AFHs. Commenters stated that regional councils of government should be explicitly permitted to serve as the ''lead entity.'' The commenters stated that the preamble to the draft rule calls for a ''lead entity,'' but states that the lead entity must be a ''member.'' The commenters stated that regional councils serve all local governments in the region and are in a strong position to oversee and administer preparation of an AFH.

The commenters also stated that the opportunity presented by the revisions of the AFH process for HUD grant participants is an opportunity to build on existing capacities in regional partnerships which would further the intentions of the proposed rule to include incorporation of fair housing issues across the spectrum of regional decisions. The commenters stated that specifically, many regional planning commissions, MPOs and/or councils of government already prepare detailed assessments of housing needs within a region, utilizing many of the same data sets, assessment tools, and public participation techniques envisioned for AFH planning in the proposed rule, but that because these institutions are not formally participants in the consolidated planning process, they have not traditionally been involved in consolidated planning nor in coordinating consolidated plans with other regional land use and transportation plans.

The commenters stated that HUD should add language at the final rule state to maximize the opportunity and flexibility for a variety of regional institutions to be involved in AFH planning processes. The commenters stated that HUD should make it reasonably easy for participants to designate other agencies or institutions (including county governments, MPOs, Regional Planning Commissions, etc.) as lead agencies in development of AFH plans and assessments, and that HUD should support a wide range of institutional partnership structures at the regional and state levels in the preparation of AFHs, even to the extent of including non-participants in the governance structure of these organizations. The commenters stated that the exact institutional configuration of regional AFH planning agencies should be allowed to vary from state to state, with states encouraged to utilize existing structures of regional governance and collaboration.

The commenters further stated that like other Federal agencies which administer grant programs with regional entities (and the commenters cited to EPA, DOT), HUD should strive for

flexibility in the form of regional collaborative partnerships for AFH preparation, both to leverage existing partnerships in AFH development, but also to catalyze increased integration between housing and community development issues with larger regional development plans, and noted that participation in regional AFHs would be voluntary. The commenters stated that rather than writing rules and policies with a ''one-size-fits-all'' approach standardized across the country, HUD should be flexible in encouraging AFH preparation on a regional level and working with existing regional institutions, but noted that this flexibility must be combined with strong standards to ensure that regions and individual communities are making progress in their goals to affirmatively further fair housing.

HUD Response: HUD agrees with the commenters that a variety of regional institutions should be involved in AFH planning processes. For this reason, HUD requires consultation with local and regional government agencies with metropolitan-wide planning and transportation responsibilities in § 91.100. HUD also agrees that collaboration to prepare a regional AFH can take many forms and that the rule should be flexible to allow for a range of regional collaborations, which is provided for in § 5.156(a).

HUD declines to expand the definition of a ''lead entity,'' at § 5.156(a), to include any entity that is not a program participant. HUD has revised the final rule to clarify that the lead entity need not be responsible for the preparation of an AFH (by deleting ''the development'' of the regional AFH from the ''lead entities'' responsibilities). A lead entity is responsible for overseeing the submission of a regional AFH and obtaining the express consent of all other regionally collaborating program participants who join in the regional AFH. In addition, where alignment of program years and/or fiscal years is not possible, the submission deadline for a regional AFH will be based on the lead entity's program years and/or fiscal years. Regional councils of governments, MPOs, and other regional planning bodies may lead and coordinate the development of a RAI, as long as a regionally collaborating participant serves as a lead entity for submission purposes.

19. Bonuses and Incentives

a. Bonuses and Incentives, Generally

Comment: Reward HUD program participants that show progress in affirmatively furthering fair housing. Commenters suggested that HUD reward participants that can demonstrate integration within their jurisdiction or substantial efforts to promote integration within their jurisdiction. The commenters stated that such rewards could include bonus points awarded under competitive funding, additional or set aside funds, and/or reduced regulatory burdens for such participants. The commenters stated that these rewards would be communities that are moving in a positive direction; that is, they are at, near, or moving closer to the demographics of their region. The commenters stated that diverse communities should be offered higher marks for their progress (intentional or not) and be given preference over exclusionary communities for Federal investments. The commenters stated that would be a much stronger incentive if it were tied to regional plans that included the potential for other Federal agencies (especially those of the Sustainable Communities Partnership—HUD, EPA, DOT—and the Department of Education) to consider a community's ranking or score related to inclusion and integration. Other commenters stated that HUD should provide priority scoring on competitive grants for projects and activities that implement stated goals in adopted AFHs (similar to Preferred Sustainability Status adopted by some Partnership for Sustainable Communities agencies, but with inclusion of additional agencies that have authority over issues related to fair housing, including Treasury, DOJ, EDA, USDA.

HUD Response: HUD appreciates these suggestions and will take them into consideration.

Comment: Include the Qualified Allocation Plan (QAP) in the AFH analysis. Commenters stated a QAP should be included in an AFH analysis, and that the QAP should include incentives and/or bonuses for proposals that will affirmatively further fair housing.

HUD Response: A QAP is the mechanism by which state housing finance agencies establish the criteria by which applicants will be awarded low-income housing tax credits (LIHTC). QAPs are required by statute to include certain specified criteria and preferences; however, states are permitted discretion in other program design elements. Because the LIHTCs are the largest producer of affordable housing in the country today, QAPs have a significant impact on the location and occupancy of new affordable housing units. Accordingly, QAPs play a key role in shaping local fair housing issues. Program participants, including States, will be required in the Assessment Tool to analyze data on the location and occupancy of affordable LIHTC units and to consider the impact of a QAP on fair housing issues in their jurisdiction. HUD welcomes innovative approaches by States to encourage state housing finance agencies to affirmatively further fair housing through benefits and incentives.

Comment: States can provide incentives for their subgrantees to affirmatively further fair housing. Commenters stated that a State can choose to fund non-entitlement communities that plan to address fair housing issues that are identified in the AFH. The commenters stated that States can also, to the extent feasible, use HOME funds to directly address fair housing issues in non-entitlement areas.

HUD Response: HUD welcomes innovative approaches by States to ensure that subgrantees effectively affirmatively further fair housing.

b. Bonuses and Incentives for Regional Collaboration

Comment: Incentives are necessary to achieve regional collaboration because of the difficulties involved in collaborating beyond regions. Commenters stated that encouragement of regional collaboration by HUD is an important acknowledgement that segregation does not stop at a community's borders. The commenters stated that it is also important because there are many factors that make regional collaboration difficult, and if HUD wants to encourage regional AFHs, HUD should provide incentives—financial or non-financial—for such efforts. The commenters stated that without these incentives, jurisdictions may be reluctant to take on the challenge of inter-jurisdictional collaboration. Commenters stated that because of the difficulties of collaborating regionally, incentives will need to be of great worth. Some commenters stated that the best incentive is money, but recognized that HUD's ability to provide financial incentives is limited. Some commenters stated that awarding bonus points for collaborative and cooperative approaches is an excellent idea to increase the potential for diverse input into the document, especially for competitive funding, such as has been done in HUD's Continuum of Care and Sustainable Communities competitions.

Other commenters suggested non-financial incentives that HUD should consider to encourage regional collaboration among local governments

and States and greater engagement with public housing planning, including: (1) National level partnerships: The commenters stated that HUD should continue to build strong partnerships at the national level, opening the doors to encourage collaboration at the local and regional level. The commenters stated that national level partnerships can be effective in setting the tone at the local and regional levels and can catalyze regional planning in partnership with other public and private agencies. The commenters stated that partnerships develop and increase capacity, ensure coordination among stakeholders, increase program efficiency and sustainability and, most importantly, help to meet the needs of the community. As an example of such national partnerships, the commenters cited to the partnership between HUD and DOL, under the American Recovery and Reinvestment Act, 2009, which was created to encourage PHAs and local Workforce Investment Boards (WIBs) to collaboratively identify opportunities to train and place public housing residents into jobs created by PHAs' Recovery-funded capital improvement projects. (2) Grant Application Bonus Points: The commenters stated that awarding bonus points in HUD grant applications for creating partnerships with other local governments and Federal grant programs will assist in increasing capacity, avoid duplication of services, and create sustainability. As an example of this effective grant bonus points, the commenters cited to the recent NOFA in which HUD awarded bonus points for applicants that have received Preferred Sustainability Status.

Other commenters stated HUD should request the Department of Treasury to provide incentives for states to grant regions a direct allocation of low-income housing tax credits if: (1) They have an approved regional AFH that is aligned with their Regional Transportation Plan; and, (2) their QAP will help implement goals of the AFH. However, the commenters did not provide suggestions on what incentives should be offered.

HUD Response: HUD appreciates these suggestions offered by all commenters, and will take them into consideration.

Comment: Reward regional collaboration by giving priority in the provision of HUD technical assistance. Commenters stated that regional collaborations and large urban counties should be allowed to have some priority in the provision of HUD fair housing technical assistance. Commenter stated that these potential collaborations may be more complicated in nature and may have a greater need for technical assistance, especially at the planning stage.

PHA commenters submitted similar comments stating that HUD needs to consider that the governance of public housing agencies varies from state to state. The commenters stated that not all local governments have authority over their local PHA or even the ability to require the PHA to engage in any type of collaborative effort or planning, nor do many local governments financially support (or have the means to financially support) the local PHA. The commenters stated that one way to promote regional collaboration would be to provide the technical assistance needed to bring all parties to the table and then assurance that the work product will be accepted by HUD. The commenters stated that in large regions with many HUD-funded jurisdictions, including multiple PHAs, there are often multiple HUD representatives assigned to the local jurisdictions. The commenters further stated that when local jurisdictions meet to discuss common issues, they sometimes find that the guidance they have been given by their various HUD representatives is not consistent. The commenters stated that a consistent message from HUD would be one way to promote regional collaboration.

HUD Response: With respect to commenters seeking first priority for HUD technical assistance, HUD will not commit to prioritize which program participants receive technical assistance, but as HUD has stated in its proposed rule and reiterates in this final rule, HUD is committed to providing technical assistance to all program participants throughout the process and as promptly as possible.

Comment: Consider a broader meaning of regional collaboration, and require AFHs to include entire metropolitan regions. Commenters stated that the rule considers a ''regional'' collaboration to be a collaboration of two or more program participants. The commenters stated that the most obvious collaborations would arise from jurisdictions that are members of HOME consortia, but that a two-community ''region'' or even a HOME consortium is hardly a true region. The commenters stated that housing discrimination may be localized, but public policies that discourage housing choice occur over a much broader area. The commenters stated that while they would not discourage such smaller collaborations if such collaborations are the only ones possible, the commenters felt that HUD should encourage program participants to consider broader regional collaborations that align with other regional planning processes, such as those of a metropolitan planning organization or regional planning council.

The commenters stated that § 5.156(b) requires that entitlement jurisdictions coordinate program years and submission deadlines. The commenters stated that this requirement works well for existing HOME consortia as these entities have already aligned their program years, but that many urban counties have discovered, during negotiations over HOME consortia, the adjusting of program years can be a barrier to collaboration, particularly for smaller jurisdictions that fear the fiscal and budgeting impacts of such a change. The commenters stated that steps should be taken to ensure that this issue does not prevent regional collaboration in the development and implementation of AFHs.

The commenters also stated that § 5.156(d) states that the preparation of a regional AFH ''does not relieve each regionally collaborating program participant from its obligation to analyze and address local fair housing issues and contributing factors that affect housing choice within its respective jurisdiction.'' The commenters stated that they agree that any regional analysis must connect each collaborating community with specific actions it will take to affirmatively further fair housing, but that given the goal of connecting the AFH with future consolidated plans, this requirement could be better crafted to incentivize partnerships. The commenters stated that with the tight timeframe for the completion of the AFH within one year before the submission of the consolidated plan, communities are developing recommendations for fair housing twice within a 2-year period, and this creates redundancy.

Conversely, other commenters recommended that the final regulations allow regional AFHs to focus on robust analyses of fair housing conditions and to include broader regional recommendations for implementation, leaving recommendations for actions specific to individual entitlement jurisdictions to the consolidated planning process. The commenters stated that such local recommendations should be consistent with the analysis included in the regional AFH, and supportive of the implementation steps included in the regional AFH. The commenters stated that under this model the regional AFH becomes the ''existing conditions report'' for multiple communities on the state of

fair housing in the region, along with steps that can be taken throughout the region, with each community using the consolidated planning process to develop recommendations for response within their own jurisdiction. The commenters stated that these two efforts will be connected and supportive of one another, but not redundant.

Other commenters suggested that HUD strengthen its regional emphasis by requiring AFHs to include entire metropolitan regions (working through MPOs, large PHAs, and/or counties) and to measure existing conditions (housing segregation, poverty concentration and opportunity assets) as well as the goals and progress of the consolidated plan based on a region's demographics and opportunity structures. The commenters stated that while metropolitan regions should be the scope and scale for assessing and addressing integration and housing opportunity, local jurisdictions cannot be let ''off the hook.'' The commenters stated that each community within a metro region (and unincorporated areas that aren't within local jurisdictions but part of the metro area) must be included in both the analysis of available data in the AFH and the plans and goals reflected in a regional consolidated plan, and that each local community's current situation as well as its goals and progress should be measured against regional demographics, trends, and assets. The commenters suggested that a community's progress should be assessed and measured in connection with its region.

The commenters further stated that a community's goals should be based on regional goals, which should be based on regional demographics and opportunity structures. The commenters stated that, in this way, the most pressure for making progress toward greater inclusion would be put on communities that have done the least (the most exclusive), have the most (community assets—schools, jobs, tax base, etc.), and whose racial and economic demographics are the farthest away from the region's demographics. The commenters stated that, at the same time, communities that are moving in a positive direction (becoming increasingly diverse and inclusive and closer to the region's demographic and economic mix) should be viewed in a more positive light and given credit for their progress. The commenters concluded by stating the need to ensure that communities with fewer assets (in relationship to its region) such as lower fiscal capacity, lower incomes, and struggling schools are not viewed in the same light as their wealthier neighbors.

HUD Response: With respect to the set of comments regarding timing of submissions, HUD encourages program participants preparing a regional AFH to align submission deadlines using procedures already available for changing program year and fiscal year start dates. Where such alignment is not practicable, program participants may still collaborate but may require incorporation into their respective plans at different time periods that more closely align with their consolidated plan or PHA Plan cycle.

With respect to the set of comments requesting that HUD require all or a majority of jurisdictions within a metropolitan area to participate in a regional AFH, HUD declines to impose this as a requirement in the rule. HUD prefers to preserve flexibility in the rule and believes that program participants should determine the other program participants with which they collaborate on a regional AFH.

HUD agrees with the comment that it should encourage program participants to consider broader regional collaborations that align with other regional planning processes, such as those of a metropolitan planning organization or regional planning council. HUD will work with the DOT to include guidance on partnering with metropolitan planning organizations in the guidance it provides to program participants.

With respect to the set of comments requesting that HUD clarify whether regionally collaborating participants must set fair housing goals specific to individual jurisdictions included in the regional AFH, HUD has changed the language of the rule to make clear that they must do so.

Rule clarification. In § 5.156, HUD clarifies that each regionally collaborating program participant must set goals for its geographic area of analysis.

Comment: Incentives for regional collaboration may harm rural communities. Commenters stated that providing incentives to program participants that engage in regional collaboration can work to the disadvantage of rural communities that are in critical need of resources because they will not be able to gain bonus points for competitively distributed funding, and therefore may not be rated sufficiently high in a funding competition to secure funding.

HUD Response: HUD appreciates commenters raising this concern. HUD will seek to encourage jurisdictions to collaborate with rural communities. As HUD's final rule provides, a regional AFH does not require regions to be contiguous, subject to HUD approval. In addition, in its funding competitions, HUD structures any bonus points in a manner that avoids precluding any applicant from the ability to obtain bonus points.

Comment: Allow States to award bonus points to subgrantees. Commenters stated that HUD should allow States to structure ''bonus points'' and criteria for awarding bonus points to subgrantees. The commenters stated that State grantees would be better served by allowing them to structure their evaluation of applications from subgrantees to consider the degree to which the applicant's proposal encourages regional collaboration.

HUD Response: HUD welcomes innovative approaches by States to ensure that subgrantees effectively affirmatively further fair housing, consistent with program requirements.

Comment: Reward bonus points for regional AFHs that are effective not simply because they are regional AFHs. Commenters stated that rather than merely allowing regional AFHs, the final rule should give incentives to jurisdictions that are willing to reach out and work together to improve housing choice. The commenters stated that it may require more time and political leadership from a jurisdiction to be part of a meaningful regional AFH process, but it also could result in a more effective fair housing strategy. The commenters stated that regions often work together on transportation planning, so it would make sense to give incentives for regional fair housing planning as well.

HUD Response: The reason that HUD strongly encourages collaboration by program participants (whether regionally collaborating program participants or joint participants) is that HUD expects that jurisdictions working together will more effectively affirmatively further fair housing, and may be able to reduce costs by sharing resources. HUD already strongly encourages collaboration by program participants (whether regionally collaborating participants or joint participants) because HUD expects that the very fact that jurisdictions are working together will lead them to more effectively affirmatively further fair housing.

Comment: Provide an incentive for PHAs to participate in Regional AFHs by providing an Option 4 similar to Option 3. HUD could provide an Option 4, similar to Option 3, which would allow any PHA that primarily serves an area covered by a regional AFH to be bound by the regional AFH, whether or not the PHA participates in its

preparation. The commenters stated that an Option 4 concerning regional AFHs would go further to incentivize regional collaboration, as well as make this option more viable to PHAs. The commenters recommended that HUD incorporate in § 903.15, in a new Option 4 or such other section as HUD determines best, the option for two or more PHAs to join together to submit a regional AFH, with or without Con Plan jurisdictions.

HUD Response: HUD has reordered and substantially revised PHA options to participate. HUD is now providing a new Option 2 entitled ''Assessment of Fair Housing with PHAs,'' which allows PHAs to engage in joint collaboration in the preparation and submission of the AFH. PHAs may also engage in an AFH with a group of PHAs under Option 2, or may engage with State or relevant CDBG jurisdictions under Option 1, entitled ''Assessment of Fair Housing with Units of General Local Government or State Government Agencies.''

20. Public Housing Issues and Options 1, 2, and 3

a. PHA Certification

Comment: PHA's certification, in particular, is subject to challenge. Commenters stated that proposed § 903.2(d)(3)(i)(A) Validity of Certification, which is moved to § 903.15(d) in this final rule, indicates that a PHA's certification that it is affirmatively furthering fair housing is subject to challenge if it ''does not reduce racial and national origin concentrations in developments or buildings and is perpetuating segregated housing.'' The commenters stated that there is danger that this provision could be interpreted to preclude the use of capital funds or other resources to rehabilitate, modernize, or otherwise improve the living conditions for existing residents of public housing who choose to remain in their homes and communities. The commenters stated that they are especially concerned because challenges may occur after HUD has accepted an AFH completed by a jurisdiction required to submit a consolidated plan, by PHA that elects to prepare its own AFH, or by a State; and after HUD has approved a Consolidated Plan or a Public Housing Agency Plan. The commenters stated that therefore, after PHAs have complied with these requirements in good faith, and after HUD has reviewed documents and determined that they meet fair housing requirements, PHAs remain at risk of being found out of compliance with fair housing requirements, as a result of the certification. The commenters stated that PHAs should not be burdened with having to prove they are accomplishing tasks or outcomes which HUD does not define, nor should HUD be authorized to challenge civil rights certifications on the basis of general or ill-defined grounds.

Commenters recommended that to overcome the vagueness in the PHA civil rights certification, and to tie the assessment of compliance more to results, the rule should state that an action or set of actions qualifies as ''meaningful'' only if the PHA explains in its PHA Plan the measurable results it expects to see within a specified timeframe, explains how the anticipated results would further the goals identified in the applicable AFH, and then reports and assesses the actual results in a subsequent Plan. The commenters stated that these changes would advance the overall purpose of the rule, as stated in § 5.150, to provide ''a stronger accountability system governing fair housing planning, strategies, and actions.'' The commenters stated that their suggested changes also are consistent with language in proposed § 903.2(d)(3) and § 903.7(o)(3)(vii) that emphasize that compliance with the obligation to affirmatively further fair housing depends on the implementation of the plan and the results of actions.

HUD Response: Section 903.15(d) (formerly, § 903.2(d)) of this final rule applies to PHAs generally and is not limited in time to HUD's review of an AFH or PHA Plan (which includes the civil rights certification). HUD has clarified the validity of certification language to correspond with a PHA's civil rights and fair housing requirements, as well as the duty to adhere to the AFFH regulations in §§ 5.150–5.180.

Comment: Exempt certain program participants from submitting certifications. Commenters encouraged HUD to exempt certain agencies from submitting the certifications required by 24 CFR 903.2. Commenters stated PHAs operating under a consent decree pursuant to a court order, PHAs that have received a SEMAP deconcentration bonus, or PHAs that have otherwise made acceptable deconcentration certifications should be exempt as HUD has already determined that the PHA is acting in accordance with the goals of the proposed rule.

HUD Response: HUD will not exempt certain participants from submitting the statutorily required civil rights certification, which incorporates an AFFH certification, as implemented by HUD's rule at § 903.7(o). The fact that a PHA has received a deconcentration bonus is commendable but is not a basis for exemption from the AFFH certification.

Comment: Clarify that a PHA's AFFH certification applies to a PHA's Housing Choice Voucher Administrative Plan. Commenters stated that proposed § 903.7(o)(2) adds the specification that the certification applies to any plan that is incorporated in a PHA's annual or 5-year plan under other regulations. The commenters recommended that HUD state specifically that the AFFH certification applies to a PHA's HCV Administrative Plan, which includes numerous policies that are central to the obligation to affirmatively further fair housing, such as payment standards, occupancy standards, policies on housing search time, and how the PHA Plans to expand housing choices.

HUD Response: The AFFH rule provides that the civil rights certification implemented at§ 903.7(o) applies to all PHA plans and any plan incorporated therein. No category of PHAs has been excluded.

Comment: Clarify what ''contribution'' means in § 903.7(o)(3)(vi). Commenters stated that in the civil rights certification required in § 903.7(o), paragraph (3) states that a PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(d) and, among other things, complies with any contribution or consultation requirement with respect to any applicable AFH under 24 CFR 5.150–5.166. The commenters stated that it is not clear what is meant by ''contribution.''

HUD Response: The rule at § 5.156 sets out the roles PHAs may play when contributing to joint or regional AFHs, as well as setting out specific consultation requirements.

b. Planning Efforts Required of PHAs

Comment: Other planning efforts go beyond activities that PHAs can handle; other planning efforts should not be part of the AFH requirement. Commenters stated that the proposed rule takes an expansive view of the scope of a program participant's obligations entailing activities and strategies well beyond the usual scope of activities for a consolidated plan agency. Commenters stated that these include actions to influence local land use and zoning, social service delivery, public transportation, etc., and that while these actions may have some utility where a program participant is a unit of a local government that has a greater degree of direct control over these and other areas, they do not fit as well with the

varied scope of powers and responsibilities of PHAs and housing finance agencies (HFAs), especially those whose activities are limited to voucher administration. Commenters stated that this suggests that the other planning efforts and programs should not be tied in to the AFH requirement. The commenters stated that related to this concern is HUD's statement in the rule that it plans to use transportation and other data, and whether local/regional transportation agencies or other agencies agree with the data could be problematic. The commenters stated that if there are disagreements over not only data but also the goals or methods to be used, the process for reconciling these differences only adds to the administrative complexity and potential cost of implementation. The commenters stated that it is unclear how much leverage or authority the HUD programs associated with the AFH would have in these other areas.

HUD Response: HUD understands that the scope of activities in any program participant's jurisdiction, not only that of a PHA, that may impact fair housing choice and access to opportunity are broad and the rule acknowledges such broad scope. However, the Assessment Tool helps program participants to determine which activities or factors have greater impact than others, prioritize these factors, and establish goals to address those that are designed by the program participant as priorities.

c. Options for AFH Submission

Comment: Clarify which PHAs may participate under each of the three options. Commenters stated that PHAs are required to submit an AFH (and to conduct an AI) and the current rule limits Option 3 to PHAs ''covered by state agencies,'' but all PHAs are covered by one State agency or another. It appears that all PHAs have the option of participating in the State AFH and consolidated plan. If that is not the case, HUD must clarify language to indicate which PHAs may participate under a State's AFH. Finally, the regulation seems to permit agencies within jurisdictions subject to consolidated plan requirements and those which are not to conduct their own AFH. However, although PHAs outside of jurisdictions that are required to submit consolidated plans, ''may choose whether to participate or not with the State in the preparation of the state agency's AFH,'' they, ''will be bound either way by the state agency conclusions contained in the State's AFH.'' HUD should clarify this language. If PHAs have 3 options available, as it appears, the rule should state those choices clearly. If PHAs have only 2 options available, the rule should state so clearly. If PHAs outside local jurisdictions that are required to submit consolidated plans have only 1 option available, HUD should amend the proposed rule to allow those PHAs discretion to conduct their own AFH.

HUD Response: HUD agrees and has clarified the three options available to PHAs. The final rule collapses the proposed rule's Option 1 and Option 3 into a revised Option 1 entitled ''Assessment of Fair Housing with Units of General Local Government or State Governmental Agencies.'' As such, HUD is indicating that a PHA may participate in the development of an AFH with either a unit of general local government or a State governmental agency, as applicable, under Option 1. HUD has further clarified in § 91.110(a)(1) that only PHAs that operate on a State-level or that certify consistency with a State consolidated plan will participate with State Governmental Agencies under Option 1.

i. Option 1

Comment: The final rule must reinforce the acceptability of option 1. Commenters stated that the final rule must clearly reinforce the acceptability of the first option throughout the text of the final rule, including in the definition of ''affirmatively furthering fair housing'', the definition of ''fair housing choice,'' and in the opening subsection pertaining to the Assessment of Fair Housing. The final rule must recognize that affirmatively furthering fair housing may entail devoting resources to improve areas of concentrated racial and ethnic poverty by preserving and improving affordable housing, and by implementing investment policies that augment access to essential community assets for protected class residents who wish to remain in their communities—while protecting them from the forces of displacement.

HUD Response: As noted earlier in this preamble, the ''Purpose'' section of the rule and the definition of ''affirmatively furthering fair housing'' have been clarified in this final rule in a manner that indicates preserving affordable housing may be part of an appropriate strategy for addressing fair housing issues and contributing factors raised in the assessment of fair housing. The concept of affirmatively furthering fair housing embodies a balanced approach in which additional affordable housing is developed in areas of opportunity with an insufficient supply of affordable housing; racially or ethnically concentrated areas of poverty are transformed into areas of opportunity that continue to contain affordable housing as a result of preservation and revitalization efforts; and the mobility of low-income residents from low-opportunity areas to high-opportunity areas is encouraged and supported as a realistic, available part of fair housing choice.

Comment: Give PHAs the discretion to collaborate with whatever jurisdiction the PHA chooses. Commenters stated where a PHA operates in more than one jurisdiction, the agency must collaborate with the jurisdiction within which 60 percent of its housing is located unless, ''the majority is closer to 50 percent,'' in which case the agency may choose the locality with which it collaborates. Commenters stated that since PHAs will be attending to local political and policy relationships, they should have the discretion to collaborate with any jurisdiction within whose boundaries it operates housing, and that such jurisdiction will likely be the one where most of the PHA's housing is located, but there may be good reasons for PHAs to collaborate with other jurisdictions. The commenters stated that HUD's rule does not address agencies operated under forms of consortia in several jurisdictions, and that the agency may prefer to operate under a single AFH and may need to collaborate with one jurisdiction that includes 60 percent of its housing stock. Commenters stated that HUD should grant PHAs discretion to choose a jurisdiction without Federally-imposed conditions.

Similarly, commenters stated that HUD should modify standards in § 903.15(a)(1) which allows a PHA to participate in the AFH of ''its'' local jurisdiction rather than submit its own AFH. Commenters stated that the following changes ensure PHAs and localities consider use of all resources and reduce burdens for PHAs. The commenters recommended that which jurisdictions can collaborate should not be determined only with regard to where majority of ''hard units'' are located—that PHAs should have discretion to decide whom to collaborate with, so long as the PHA has some ''hard units'' or vouchers in the same geographical area as the chosen jurisdiction, and the joint AFH covers all the PHA's units and vouchers. Commenters stated that focusing on hard units will narrow the assessment and could lead to overlooking how changes in policies that affect where families use HCVs to rent homes could help overcome barriers to fair housing choice and promote desegregation and deconcentration.

Similarly, other commenters stated that amending Option 1 in § 903.15 to allow a PHA to participate in an AFH with a broad choice of program participants is one way that HUD can best encourage collaboration. Commenters stated that this would allow PHAs flexibility and control of the AFH process. Commenters stated that HUD should define ''hard units'' to include all Federally-assisted owned and managed units subject to a PHA's control including but not limited to Section 202 Supportive Housing for the Elderly, Section 8 Moderate Rehabilitation, project-based vouchers and RAD conversions. Commenters stated that many PHAs are currently converting their public housing stock to RAD project-based Section 8 or project-based vouchers, and that if HUD does not broaden the definition in the final rule, then formerly public housing units that will not be considered in PHAs' AFH processes. Commenters stated that in some cases a PHA's vouchers may be utilized primarily or substantially in an adjacent jurisdiction, which should be considered a basis for determining an applicable jurisdiction. Commenter stated that Option 1 does not accurately reflect HUD's intent to implement a full range of regionalization options, and needs to be clarified to allow and encourage two or more PHAs to work together on an AFH, within a regional boundary. Commenters stated that Option 1 is meant to cover PHAs that wish to file an AFH with another PHA in the region, although the language is unclear, and therefore must be modified to explicitly allow for PHAs that wish to submit an AFH with other PHAs in its region.

HUD Response: HUD appreciates the concerns raised by the commenters and agrees that PHAs should be given the option to choose a jurisdiction with regard to all units in their inventory, and that HUD should not question that selection unless the PHA is required under a VCA to participate with a specific jurisdiction.

Rule change. This final rule revises § 903.15(a) to incorporate these provisions.

Comment: PHAs should determine which Unit of General Local Government to work with. PHAs choosing Option 1 should have the discretion to decide which consolidated plan jurisdiction to work with in developing a joint AFH, provided the PHA has some ''hard units'' or some vouchers in the same geographic area as the consolidated plan jurisdiction, and provided the joint AFH covers all of the PHA's hard units and vouchers. Commenters stated that it is unclear if ''hard units'' means only public housing units or PHA-owned units that have PBVs or PBRA, or PBV units in properties that the PHA does not own. Commenters requested that HUD define ''hard units'' to include all PHA-owned units that have HUD-funded rental assistance, and all units, regardless of ownership, that have PHA-administered PBVs. Commenters stated that paragraph (a)(1) of § 903.15 assumes one jurisdiction ''governs the PHA's operation'' for HCV-only agencies, but that is untrue for some agencies, and the rule should allow an HCV-only PHA administering vouchers in the area of a sub-state consolidated plan jurisdiction to participate in the locality's AFH.

HUD Response: HUD agrees that PHAs should be given the option to choose a jurisdiction with regard to all units in their inventory, regardless of the type of HUD assistance attached. HUD has clarified Option 1 in § 903.15 to address this concern. However, if a PHA is under a VCA and such PHA chooses to participate with a unit of general local government or a State governmental agency, then it shall participate with the entity specified in its VCA.

Comment: Are PHAs administering HCV programs only limited to Option 1? Commenters stated that changes to the proposed § 903.15(a)(1) indicate that a Section 8 only PHA would choose Option 1 and coordinate with the jurisdiction that governs PHA's operation for developing the AFH. The commenters asked whether Section 8 only PHAs are precluded from choosing Option 2 or Option 3.

HUD Response: HCV-only PHAs will have all available options open to them. In addition, like all participating PHAs, HCV-only PHAs will have the ability to choose their level of involvement in the planning process.

Comment: Why not adopt preamble language on dissenting views in Option 1? Commenters stated that it appears that the difference between Options 1 and 3 is that the PHA can submit dissenting views under Option 1. The commenters asked why was the verbiage found in the Summary of Proposed Rule regarding submission of dissenting opinions for Option 1, but not included in the regulatory text at § 903.15(a)(1) of the proposed rule. The commenters stated that the rule takes an expansive view of the scope of a program participant's obligations that entails activities and strategies well beyond the span of a state HFA's control or involvement, such as actions to influence local land use and zoning, social service delivery and public transportation. The commenters stated that the proposed requirements may make sense where the program participant is a unit of local government, but they do not fit the powers and responsibilities of PHAs and state HFAs, that are without any oversight or management of public housing.

HUD Response: After receiving significant comment on dissenting opinions and on program participant disputes, HUD has removed the dissenting opinion from the rule. Instead, HUD encourages that jointly participating entities execute a MOU to govern the dispute resolution process.

ii. Option 2

Comment: Option 2 is a burdensome option. Commenters stated that in the case of PHAs who choose Option 2, documenting and analyzing the PHA programs and policies has been running at least 500 hours. Commenters stated that imposing this burden when there have been significant cuts in agency funding is a real cause for alarm. Commenters stated that, in particular, for HOME agencies which bore the brunt of budget cuts, the available Administrative funds have been cut severely and makes this added ''unfunded mandate'' almost impossible to take seriously.

Similarly, commenters stated that Option 2 permits PHAs to do their own AFH, but a PHA would still be required to contribute or consult in the formulation of the separate AFHs of jurisdictions that overlap with the PHA, and to implement initiatives that require their involvement. The commenter stated that § 903.15(c) would require PHAs doing their own AFH to update their AFH annually, and this is unnecessarily burdensome. All other PHAs would be required to update their AFHs every 5 years. The commenters stated that PHAs should be subject to the same 5-year AFH requirement as required of all other entities.

Other commenters stated that if the PHA selects Option 2 then the PHA must update its AFH yearly. The commenters stated that due to the comprehensive nature of the AFH plan, the AFH should be completed with the 5-Year PHA Plan. The commenters stated that the PHA Annual Plan would provide updates of agency's progress furthering the goals of the AFH. The commenters stated that the requirement for an annual update to the AFH should be removed because an PHA Annual Plan can meet the same objective as an annually updated AFH for the following reasons: (1) The Annual Plan will continue to focus on the goals of the AFH as it provides a progress report on

both the successes achieved and adjustments made related to the AFH goals; (2) It will retain an ongoing focus on the attainment of the AFH goals; and (3) It will streamline the process while achieving the intent of the AFH planning process.

HUD Response: HUD agrees with the commenters that if PHAs are engaging in the Independent PHA Planning Option, they do not have to engage in the exercise with a consolidated plan participant but may still be consulted for data; and if PHAs are engaging in the Independent PHA Planning Option, they may still engage in community participation with the consolidated plan entity's AFH preparation and may submit comments to allow a disagreement to be known.

Rule change. This final rule revises the paragraph on PHAs submitting an independent AFH and moves it from proposed § 903.15(a)(2) to § 903.15(a)(3), and removes proposed § 903.15(c), which had required such PHAs to update annually.

Comment: Small PHAs have no option other than Option 2, which is burdensome. Commenters stated that a PHA may conduct its own AFH with Option 2 and update its AFH every year. Commenters stated that small PHAs and consortia of PHAs that operate in communities are not subject to the consolidated plan requirement, and that these agencies may find that collaborating with development of a statewide plan is inappropriate. Commenters stated that they should not be burdened with a requirement to update AFHs annually nor be forced into an AFH collaboration that may not be in the agency's best interests or those of its participants. The commenters recommended that PHAs preparing an AFH under Option 2 should be subject to the same revision requirements as imposed on all other program participants.

Similarly, others commenters stated the proposed rule would require PHAs preparing their own AFH to update that assessment annually without any justification for this differential treatment. The commenters stated that while many PHAs may elect to participate in an AFH with their locality, many smaller agencies are located in localities which do not receive grants covered by this proposed rule and so do not prepare consolidated plans. The commenters stated that the only choices available to them are to participate in their state's AFH or prepare their own assessment, and the latter alternative carries with it the unreasonable burden of revising the assessment annually rather than quinquennially. The commenters stated that with Federal funding for PHAs at unprecedented low levels, PHAs simply will not have the funds or other resources to implement an exceptionally burdensome requirement for annual reviews and revisions. The commenters stated that HUD should not impose revision and updating requirements on PHAs that are more burdensome than requirements imposed on other program participants that are required to prepare an AFH and consolidated plan.

HUD Response: HUD agrees that PHAs should not have a higher burden under the Independent PHA Planning Option than consolidated plan participants engaged in drafting the AFH. However, HUD disagrees with the suggestion of only one option and reiterates that PHAs always have three options. They may always perform the AFH with units of general local government or State governmental agencies (as applicable), other PHAs in the region, or independently.

Comment: A PHA in a metropolitan area administering an HCV program should be required to consider the entire metropolitan area. Commenters stated that any PHA in a metropolitan area administering an HCV program that chooses Option 2 should be required to consider the entire metropolitan area as its geographic scope for the AFH and in certifying that it is affirmatively furthering fair housing choice. Commenters also recommended that, in § 903.15(a)(2), the PHA be required to consider the whole metro area as its scope for analysis and action.

HUD Response: PHAs choosing to conduct and submit an independent AFH, that are engaging in the HCV program, must include an analysis for the PHA service area and region, in a form prescribed by HUD in accordance with § 5.154(d)(2). This may include an entire metropolitan area or not, depending upon the state and locality. Their strategies and actions will address contributing factors, related fair housing issues, and goals in the applicable AFH, consistent with § 5.154, in a reasonable manner in view of the resources available. PHAs actions shall be related to the geographic scope of their operations. HUD encourages PHAs to collaborate with relevant entities.

Comment: A PHA choosing Option 2 must certify that it has reviewed and considered existing regional or statewide AFHs. Commenters stated that a PHA that chooses Option 2 and submits its own AFH should be required in the final rule to demonstrate and certify that it has reviewed and considered existing regional or statewide AFHs for the area.

HUD Response: This is not a requirement of the rule but a best practice.

iii. Option 3

Comment: Clarify which PHAs can opt for Option 3. Commenters stated that this section must be redrafted to spell out to whom this option is applicable and whether these agencies have any options for preparing AFHs or not. The commenters stated that most agencies not located in local jurisdictions required to submit consolidated plans may choose to participate in the States' AFHs and comply with goals in their consolidated plans, these agencies deserve the same set of choices as are available to agencies in a local jurisdiction. The commenters stated that this section is confusing as it pertains to agencies operating jointly with other agencies as consortia or simply under a memorandum of understanding concerning joint administration and management. The commenters stated that this section does not discuss options available to PHAs that may operate in more than one jurisdiction, one of which may prepare a local consolidated plan and one which may not. The commenters urged HUD to permit all PHAs the ability to perform their own AFH and certify their plans consistent with that assessment.

Commenters also stated it is unclear to which agencies HUD intends Option 3 to apply. The commenters stated that this option is likely attractive to some PHAs that overlap with a sub-state entitlement jurisdiction and are not interested in spending the staff time that Options 1 or 2 require. The commenters stated that any PHA (except one that administers only public housing that is located primarily or wholly within a sub-state jurisdiction that submits an AFH) should be able to opt to be covered by the state AFH, unless there is a regional AFH that covers its service area. The commenters stated that PHAs must still submit the civil rights certification and should have to explain how they will address fair housing issues and contributing factors in their own programs, even if the state AFH does not include goals or strategies directly applicable to the PHA. The commenters stated that AFHs of many local jurisdictions may not have appropriate regional focus to cover PHAs that serve suburban cities or towns too small to be entitlement jurisdictions.

HUD Response: HUD has removed Option 3 as a separate option and has incorporated Option 3 into Option 1.

Comment: Option 3 may result in a more cumbersome process for States. Commenters stated that this language (§ 903.15(a)(3)) seems to be an effort to entice local PHAs to participate in the statewide AFH process by requiring annual updates of local PHA developed AFHs. The commenters stated that they are concerned that the AFH process could become somewhat more cumbersome for States, depending on the expectations of the State when local PHAs opt into the state AFH and on the number of participating local PHAs.

HUD Response: HUD has clarified both the consultation requirement for States under § 91.110(a)(1) and the options for PHA assessment to provide greater clarity on State/PHA interactions. The obligation for States to consult with the applicable PHAs has been clarified and further instruction will be provided when HUD publishes a State entity AFH template for public comment in accordance with the Paperwork Reduction Act.

Comment: Option 3 indicates that PHAs need not assess administration of a PHA's HCV program. Commenters stated that the rule states PHAs choosing Option 3 ''must demonstrate that their development related activities affirmatively further fair housing. . . .'' which implies that these PHAs have no obligation to demonstrate that how they administer their HCV programs, which many have, meets the obligation to affirmatively further fair housing. The commenters stated that HUD should revise the final sentence of § 903.15(a)(3) to include the administration of HCV programs.

HUD Response: HUD disagrees that PHAs need not assess their HCV program, as it is covered by fair housing and civil rights laws and regulations. HCV-only PHAs will be required to participate in cooperation with a State, jurisdiction, or insular area as provided in Option 1, participate with other PHAs as provided in Option 2, or participate alone under Option 3.

d. Additional Options for HUD Consideration

Comment: Allow one or more PHAs to submit a joint AFH. Commenters stated that there should be an additional option available to PHAs explicitly allowing one or more PHAs in a region to work together to develop a joint AFH. The commenters stated that each PHA should maintain its own obligation to affirmatively further fair housing and to set its own PHA-specific goals and report on its progress in meeting these goals. The commenters stated that HUD should modify § 5.154(e)(1), which addresses what happens when a PHA and a Con Plan jurisdiction collaborate on a joint AFH and disagree over some elements. The commenters stated that HUD should reference § 5.154(e)(1) in the parenthetical at the end of § 903.15(a)(1).

HUD Response: HUD agrees that regional partnerships of consolidated plan participants may conduct a regional AFH, and has clarified that PHAs participating under Option 1 in § 903.15 may also be part of a regional collaboration if the unit of general local government or State governmental agency that they are participating with is part of a regional collaboration. In addition, HUD agrees with commenters and has explicitly indicated that PHAs may conduct an AFH under Option 2 in § 903.15. In all cases where a PHA is jointly participating in conducting an AFH, the PHA must incorporate any joint and individual goals developed in the AFH into its PHA Plan, as per the requirements in § 5.154. As HUD has noted earlier in this preamble, whether a PHA or another program participant, all collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

v. Other Comments

Comment: The PHA Plan does not appropriately reference the AFH. Commenters stated that unlike the proposed changes to the Consolidated Plan's public participation provisions, the proposed rule did not insert references to the AFH in the key provisions of the PHA Plan rule, especially those relating to resident and public participation. The commenters stated that the AFH and consideration of its goals with respect to a PHA's programs, policies, and practices should be integrated into the PHA Plan.

HUD Response: HUD disagrees but has clarified § 903.15 to clarify the impact of the AFH on the PHA Plan. HUD has also clarified its regulations in §§ 5.150–5.180 to provide that strategies and actions to effectuate the goals and priorities in the AFH must be reflected in PHAs' and jurisdictions' planning documents.

Comment: Remove the requirement that a PHA notify HUD of selected option 60 days before AFFH certification is due. Commenters stated that the proposed rule would require PHAs to notify HUD 60 days before their PHA Plan AFFH certification is due to HUD of which option they are following. Commenters recommended HUD remove this notification requirement, stating that it serves no apparent purpose. The commenters stated that this time frame seems inconsistent with the requirement that an initial AFH be submitted to HUD at least 270 days before the start of the program year. The commenters stated that if HUD believes that it is important to make sure each PHA has thought about which option it will follow, HUD could require PHAs to include in the Annual PHA Plan submitted after the effective date of the rule its decision about which option it intends to choose for the AFH, which would allow public and resident input into the decision. In that case, the initial AFH should not be due until at least one year later.

HUD Response: HUD agrees with the commenters. The selection should be made earlier, but should not have a required deadline. PHAs must notify HUD of the option they choose.

Comment: Clarify what is meant by ''differentiated sections'' in § 5.154(e)(1). Commenters stated that HUD should clarify the proposed language of § 5.154(e)(1). The commenters stated that it is not clear what ''differentiated sections'' means, and what the consequences are of HUD's decisions on which provisions are approved in the case of a disagreement. Commenters stated that if HUD approves the jurisdiction's AFH despite the PHA's dissent on some portion, the PHA should be bound by the approved provisions from which it had dissented, and that conversely, if HUD agrees with the PHA's alternative, the jurisdiction should be bound by it. The commenters stated that because of the potential consequences for jurisdictions in such a case, HUD should make clear that jurisdictions can include in their submission to HUD their response to a PHA's disagreements.

HUD Response: HUD agrees that differentiated sections of an AFH, due to one or more PHA dissents, is untenable for review. As such, HUD has removed the dissenting opinion from the joint participation option and instead encourages MOUs to govern dispute resolution amongst jointly participating entities.

Rule change. This final rule removes § 5.154(e) and thus all references to ''differentiated sections.''

Comment: Allow a PHA that disagrees with any aspect of a jurisdiction's AFH to propose alternative priorities and strategies. Commenters recommended that HUD require a PHA that disagrees with any aspect of the jurisdiction's AFH to propose an alternative strategy or priority, and explain why the alternative is better designed to achieve the joint goal(s).

HUD Response: As provided in the response to the preceding comment,

HUD has removed the dissenting opinion provision.

Comment: Additional guidance is needed on collaboration on AFHs. Commenters stated that the rule provides no guidance on notice requirements of program participants seeking to collaborate with other program participants in an AFH. The commenters stated that, at minimum, consolidated plan jurisdictions should be required to publicly notice other program participants within their regional boundaries of the AFH process. The commenters stated that § 5.156 should be amended to add a section encouraging program participants that plan to submit a joint AFH to notify consolidated plan jurisdictions and PHAs within their region of their intention to file a regional AFH and who to contact for more information about the regional process.

HUD Response: Additional guidance is forthcoming on such issues.

Comment: A regional approach to AFH does not exempt PHAs from an individual affirmatively furthering fair housing obligation. Commenters stated regionalization must not relieve program participants of individual obligations to affirmatively further fair housing. The commenters stated that the final rule must reflect that each collaborating PHA has an obligation to affirmatively further fair housing, to set local PHA-specific goals, and to report on progress. The commenters recommended that the final rule add language as follows at § 5.156(d) Content of the Regional Assessment: ''Each collaborating member must set its own goals to affirmatively further fair housing, take its own meaningful actions to affirmatively further fair housing and report on its progress to affirmatively further fair housing.'' The commenters stated that an AFH submitted by a PHA independently should not be too narrow in scope that it precludes consideration of regional fair housing issues. The commenters stated that currently a PHA is required to certify that its PHA Plan is consistent with the consolidated plan of overlapping jurisdictions.

HUD Response: HUD agrees that each program participant, including each PHA, has its own duty to affirmatively further fair housing, which is not reduced by participation in a collaborative AFH. HUD disagrees with the commenters as to the specific language suggested and does not incorporate this language into this final rule. However, the rule has been clarified to indicate that all program participants must perform the AFH and that any relevant fair housing issues, contributing factors, and goals for each program participant must be addressed in their joint AFH, and strategies and actions to address the AFH goals and priorities must be included in planning documents.

Comment: 5-Year Plan Should Align with Applicable AFH. Commenters recommended that HUD modify § 903.6 to clarify that the 5-year Plan should align with the applicable AFH. Commenters stated that his change integrates the AFH into already-required planning processes. The commenter stated that HUD should include a provision that requires PHAs to incorporate in their next 5-year Plan after the preparation of the AFH goals and objectives consistent with the AFH, and adopt quantifiable measures for achievement over the 5-year period. The commenter stated that this is consistent with § 903.15(e) which would require PHAs to modify their 5-year PHA Plans if a significant change in the applicable AFH ''necessitates a PHA Plan amendment.''

HUD Response: HUD recommends aligning the 5-year planning cycle, if possible, for purposes of ensuring consistency with the most current AFH. Also, HUD has clarified in 24 CFR part 5 that strategies and actions to address contributing factors and related goals and priorities identified in a PHA's AFH must be included in PHA plan documents.

Comment: Clarify consultation requirement when a PHA is under a voluntary compliance agreement. Commenters cited the proposed rule language that states: ''The State shall consult with any PHA concerning consideration of public housing needs, planned programs and activities for the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing, and proposed actions to affirmatively further fair housing. If a PHA is required to implement remedies under a VCA, the State should consult with the PHA and identify the actions it may take, if any, to assist the PHA in implementing the required remedies.'' The commenters stated that this may be interpreted to force States to assist PHAs financially, potentially in conflict with a state consolidated plan method of distribution of Federal funds. The commenters stated that this language appears to have no legal basis under the QHWRA or the Fair Housing Act, and the language should be removed from the rule.

HUD Response: HUD disagrees with the commenters. The language in the proposed rule provided only that a State jurisdiction may assist, if possible. The language is therefore permissive and not mandated or required.

21. Access to Opportunity

Several commenters expressed opposition to the rule's objective to provide access to opportunity on the basis of statements that included the following: Access to better neighborhoods should depend on hard work and not on government give away programs; adequate mechanisms exist through the free market for access to areas where equal opportunities exist for all persons regardless of any special emphasis status that significantly lag actual conditions; that the preamble to the rule itself acknowledges that improving educational outcomes for disadvantaged children relies upon the family structure and that illegitimacy is the most important factor in children's educational attainment; and that the rule runs the risk of encouraging reformers to pursue policies that will hurt communities because any policy that seeks to make homes in a higher income area accessible to lower income families (disproportionately minority) could do so only by functionally decreasing the value of some homes or providing them some sort of assistance.

Other commenters expressed strong support that the Fair Housing Act should be a tool for creating equal opportunity in our country. The commenters stated that the Fair Housing Act requires that housing and community development programs be administered in a way to help overcome problems associated with racial segregation and expand the housing choices available in America, and that, in the proposed rule, HUD clarifies that this also means expanding access to important community assets and resources that have an impact on the quality of life for residents.

Specific issues raised by commenters on access to opportunity include the following:

Comment: Program participants should not be required to examine data beyond that required under the Fair Housing Act. Commenters stated that while they understand that the availability of certain data is necessary for program participants to examine certain fair housing issues in their community, they do not agree that requiring program participants to examine data surrounding access to education, employment, low-poverty, transportation, and environmental health are required as part of the Fair Housing Act. Commenters stated that these social and physical improvement indices represent HUD's selection of relevant factors, but there are significant

questions as to the viability of those factors in judging the results of efforts to affirmatively further fair housing. Commenters stated that HUD should list these data elements as an option for program participants to use in their AFH, not a requirement.

HUD Response: HUD understands the commenters' concerns surrounding the type of data to be used in the AFH. HUD will provide program participants with data, which will be more fully addressed in the Assessment Tool. The HUD-provided data will need to be supplemented with local data, which is subject to a HUD determination of statistical validity and relevance to the program participant's geographic areas of analysis. As noted earlier in this preamble, the phrase ''subject to a determination of statistical validity by HUD'' clarifies that HUD may decline to accept local data that HUD has determined is not valid but not that HUD intends to apply a rigorous statistical validity test for all local data. This local data should be readily available to the program participant at little or no cost and can be found through a reasonable amount of search.

Analyzing data and incorporating local knowledge on community assets is an important part of a fair housing analysis. As currently proposed, this data will include information on segregation, racially or ethnically concentrated areas of poverty, disproportionate housing needs and disparities in access to opportunity among protected classes. Disparities in access to opportunity—which includes ''substantial and measurable'' differences in access to educational, transportation, economic, and other important opportunities in a community—affects fair housing choice and patterns of segregation and integration. Measuring these differences is vital to understanding fair housing issues and furthering fair housing choice in a community.

Comment: Allow program participants to use the Integrated Disbursement and Information System performance measurement system. Commenters stated that HUD should allow program participants to use the Integrated Disbursement and Information System (IDIS) Performance Measurement System, which allows one to select a Goal, Outcome, Objective, and a Goal Outcome Indicator for each activity, and qualitative performance is then reported in narratives in the CAPER. The commenters stated that this process should continue to be allowed as it is manageable, and that HUD should be careful to not develop unrealistic outcome measures that are based on theory and may not accurately reflect the impact of a particular activity.

HUD Response: HUD appreciates the commenters' suggestion. Consolidated plan participants will continue to use IDIS to report on their performance under the consolidated plan, which includes actions taken to affirmatively further fair housing.

Comment: HUD must validate idiosyncratic measures it has selected ahead of their use on a national basis. Commenters stated that while some measures and indices in HUD's rule are commonly used, other unique measures have been developed by HUD, and in particular, the idiosyncratic measures must be validated ahead of their use on a national basis for such an important task. The commenters asked about the following: (1) For RCAPs and ECAPS, why has HUD chosen the thresholds it describes, because, the commenters stated, they do not seem consistent with other commonly used measures of the concentration of poverty, race or ethnicity, and HUD should justify and validate these thresholds; (2) for the Indices of Dissimilarity and Isolation, the commenters stated that although both are common measure of spatial segregation, it is not clear why program participants should use both, and commenters asked what values HUD used to define low, moderate and high segregation using the dissimilarity index; (3) for Predicted Racial/Ethnic Composition Ratio, the commenters asked why HUD proposed using income brackets in this ratio because they appear to be irrelevant to the measure, and the ratio appears to treat higher than predicted proportions of high income minorities and lower than predicted proportions of low income minorities as a problem. The commenters asked that since the income brackets described are, ''notional,'' how does HUD propose to develop actual brackets, and how are those brackets related to the predicted racial/ethnic composition ratio; (4) for Community Asset Exposure Indices, the commenters stated that the descriptions of these indices and their uses implies that there may be more or different indices used in the future; and (5) for Disproportionate Housing Needs, the commenters asked the basis for the threshold of 10 percent as defining ''disproportionate.''

HUD Response: HUD recognizes that particular thresholds and measurements may not apply equally to all program participants. However, most of the issues raised by these specific comments are better addressed through the Assessment Tool and related guidance and not through direct changes to the regulatory text itself. In terms of the comment on the 10 percent threshold for disproportionate housing needs that was present in the proposed rule text, HUD agrees with the commenter and has changed the definition of the term to delete the threshold from the regulatory text.

Rule Change. As noted earlier in this preamble, the definition of ''disproportionate housing needs'' in § 5.152 of this final rule has been revised to remove the 10 percent threshold. This final rule states that disproportionate housing needs exist where there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups or the total population experiencing that category of housing need in the applicable geographic area.

Commenters: Indicators of effectiveness should be measurable and show progress of improved integration over time. Commenters stated that HUD should identify long-term indicators and short-term performance measures for program participants to meet fair housing goals. The commenters stated that performance measures could include metrics related to the number of jurisdictions in high-opportunity areas that revise zoning codes to reduce fair housing issues; strategic investments made in high-poverty communities that expand multiple aspects of opportunity (besides affordability); and the number of affordable housing units for families with children that are located near schools with high educational opportunity. The commenters stated that long-term indicators could be borrowed from segregation, concentrated poverty, and opportunity data that HUD provides, in addition to some of the housing choice indicators that the Partnership for Sustainable Communities have identified for their grantees—but disaggregated to evaluate housing choice for protected classes.

Other commenters stated that the primary indicators of effectiveness in a jurisdiction and its region are changes over time, in the rates of segregation and percentage of families of color living in high poverty neighborhoods, and the comparative distribution of government assisted housing resources by neighborhood poverty rates and levels of racial concentration.

Commenters stated that indicators must be matched to the program implemented and stated, for example, that if a jurisdiction implements a homeownership program to disperse the minority population into non-minority

areas one measure of effectiveness is the time it takes to market and fill a vacant unit. The commenters stated that this would assist in evaluating the advertising effectiveness as well as the receptivity of minorities willing to relocate their families possibly out of their comfort zone into a non-minority neighborhood.

HUD Response: HUD appreciates the commenters' suggestions and will consider them in developing guidance that will assist program participants in complying with this rule.

Comment: Compare the number of fair housing complaints filed in one year to the prior two years. Commenters stated that one indicator that could be used to determine effectiveness would be to compare the number of fair housing complaints filed within a certain jurisdiction in a year, in comparison to previous years. The commenters stated that it would also be useful to compare the number of units created in higher income areas over a period of time—perhaps 5 years—to see if the state/locally conceived and implemented policies are providing for greater housing choice for lower income households.

HUD Response: HUD appreciates the suggestion and will give consideration as to whether such comparison is helpful in determining the effectiveness of the new AFH approach and in creating guidance for program participants on effective goals and the metrics and milestones that program participants will use to measure and report on their success in meeting goals. HUD notes, however, that individuals decide to file or not file fair housing complaints for a variety of reasons, so a simple comparison of the number of complaints in various years may not be very meaningful when considered in isolation from other factors.

Comment: The job access index is not applicable to rural areas. Commenters stated that one of the key measures provided in the proposed rule is the job access index, which pertains to the accessibility of a given residential neighborhood as a function of its distance to all job locations, with distance to larger employment centers weighted more heavily. The commenters stated that the job access index may not be appropriate for rural areas, where the real distance to the job location is from the house to the barn. The commenters stated that community assets are fewer in rural areas, but that does not mean this situation needs to be corrected. The commenters stated that population density needs to be considered in the application of key measures, and that communities with a population density that would classify the area as ''rural'' should be exempt from this regulation.

HUD Response: HUD acknowledges the unique issues and challenges in applying the rule to rural communities and intends the implementation of the rule to be flexible and adaptable to meet those challenges. The commenter is correct that some of the data on community assets, including access to jobs, transportation, and education may very well appear different when mapped or incorporated into an index to measure those assets. The purpose of the indices is to provide an easy-to-use simple measure, in part to reduce the burden on program participants in developing an AFH. However, where the usefulness of the index itself is limited, either by data limitations or how it is applied in certain areas, including rural areas, those limitations can be acknowledged by the program participant in the AFH by supplementing HUD-provided data with local data and knowledge.

The larger question is what goals, strategies, and actions the program participant can design and adopt to meet the fair housing and equal opportunity needs of its jurisdiction. In many rural areas, for instance where poverty is much more widespread than in an urban or metro area, the strategies will often be different. HUD's rule already acknowledges that place-based strategies can be adopted to address problematic issues identified in the needs analysis portion of the AFH Plan. In the case of rural areas, this is particularly important to acknowledge. For instance, in making decisions about where an affordable housing development or assistance is needed, the fact that poverty is often spread over large geographic portions of rural America will be a key consideration in deciding how to best allocate housing resources.

Valuable research and guidance on the topic of poverty in rural areas and the unique challenges and potential strategies that can be employed to address it is available from a variety of private sources as well as different Federal agencies and offices. Among the Federal sources of information on this issue are: CPD's Rural Housing and Economic Development Gateway Web site; the U.S. Department of Agriculture's Economic Research Service; and the Federal Reserve, which has sponsored and produced studies on rural poverty issues.

Comment: The rule should support a multi-agency approach to access to opportunity.

Commenters stated that ''the proposed rule acknowledges that the prospects for individual or familial success are influenced by a variety of neighborhood features far more extensive than just housing.'' The commenters ask why a multi-agency approach, such as a Federal interagency working group, has not been formulated to address these issues, as has been done in the areas of environmental justice and healthy homes.

HUD Response: HUD agrees with the premise of the question and takes this proposal under advisement. It is consistent with the approach adopted by the current Administration, which has convened Federal interagency working groups on both affordable housing and neighborhood issues.

The Neighborhood Revitalization Initiative included staff from HUD, and the Departments of Education, Justice, HHS, and Treasury. It examined and made recommendations for place-based revitalization initiatives and combining Federal programs with similar goals to do so. Out of these recommendations, these agencies were able to achieve better coordination with respect to HUD's Choice Neighborhoods Initiative, Education's Promise Neighborhoods Grant Program, and DOJ's Byrne Criminal Justice Innovation Grant Program. See also OMB Memorandum M–09–28, Developing Effective Place-Based Policies for the FY 2011 Budget, dated August, 11, 2009, available online at *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-28.pdf.*

A related Rental Policy Working Group convened staff from Federal agencies—HUD, USDA's Rural Housing Service, and Treasury—to reduce and streamline regulatory requirements, and to help preserve the existing affordable rental housing stock. For more information, see: *http://archives.huduser.org/aff_rental/home.html*. HUD's Strong Cities, Strong Communities (*www.huduser.org/portal/sc2/home.html*) provides capacity building resources and technical assistance to local governments and helps coordinate programs and reduce regulatory burden when combining funding from different Federal agencies.

Comment: Access to the community asset of public education is not the same thing as access to high-performing schools. Commenters stated that HUD needs to make clear that access to educational opportunities that should be pursued is access to high-performing schools. Commenters stated that consistent with settled civil rights law in the areas of education and fair housing, the rule must make clear that access to education means access to

stably-integrated or majority white schools with at least average standardized test scores, graduation rates, and college or technical training matriculation rates. Access to educational opportunity cannot involve high poverty, non-white schools with lower than average test scores, higher than average dropout rates, and/or lower than average college or technical training matriculation.

HUD Response: HUD agrees that access to high-performing schools is a critical neighborhood component that should be considered in efforts to affirmatively further fair housing. The neighborhood school proficiency index includes school-level data on the percent of elementary school students who are proficient in reading and math according to state exams, to determine which neighborhoods have high-proficient and low-proficient elementary schools.

Comment: Access to transit alone does not satisfy the duty to affirmatively further fair housing. The commenters stated that performance of schools near segregated central city projects continues at very low levels, while unemployment and crime are higher in these areas than in any other part of the region. The commenters stated that many public health measures are also the worst in the region, but because these areas are near transit, color-blind community developers have persuaded state and local authorities that locating housing in these declining segregated neighborhoods is consistent with their obligation to affirmatively further fair housing.

The commenters stated that transit does a poor job of connecting low-wage workers with available jobs because most new jobs are scattered and beyond the access of even the best transit systems. The commenters stated that many of the most exclusive and wealthiest communities will rank poorly on the transit access index. The commenters stated that using access to and distance from bus or rail transit could have the unintentional effect of undermining regional fair housing goals by reducing the responsibility of some of the highest opportunity communities to promote fair housing and achieve more inclusive communities. The commenters stated that, in too many cases, this was an intentional and common tactic to discourage low-income residents from moving into such communities. The commenters stated that lack of transit should not be allowed to reduce a community's responsibility or steer a region's plan away from communities with strong assets such as schools and jobs and toward higher poverty communities or even diverse communities. The commenters stated that access to transit is not a substitute for good schools and strong diverse neighborhoods and should not be used to encourage more affordable housing in places impacted by poverty while exclusionary communities with less transit are let ''off the hook.''

The commenters stated that the proposed rule must clarify that neighborhoods, which are impoverished and segregated, but proximate to transit cannot be considered areas of opportunity for which access ranks high.

HUD Response: HUD agrees that a racially or ethnically concentrated area of poverty is not an area of opportunity simply because it is served by a public transportation system or any single indicator of opportunity. However, access to public transportation may be one indicator of access to opportunity. The comments address the manner in which HUD will provide data on transportation rather than the language of the regulation itself. This final rule continues to reference transportation as a key community asset that program participants should take into consideration in developing their AFH.

Transportation is a key factor in assessing total housing affordability, and, specifically, access to public transportation options can be critical to providing access to jobs, education, health care, and other amenities and community assets for low-income families, the elderly, and persons with disabilities. Increasingly, planners and policymakers are taking transportation into account for purposes of both new development and prioritizing preservation of existing affordable housing. Reviewing available data can also assist planners in identifying existing communities in need of improved transportation options.

HUD has worked to identify a comprehensive set of data that allow a multisector assessment. Moreover, because research on measuring access to community assets is continually evolving, HUD is committed to reviewing the data on an ongoing basis for potential improvements. As with all data metrics, the measures in each category have strengths as well as limitations, and no criteria should be assessed in isolation from the other measures or required assessments.

The specific measures and data to be used to assess transportation issues as one possible source of disparities in access to opportunity will be determined through guidance, including the Assessment Tool.

Comment: Access to employment alone does not satisfy the duty to affirmatively further fair housing. As with access to transit, access to employment opportunities cannot alone satisfy the duty to affirmatively further fair housing. The rule must make clear that access to employment means access to jobs that could actually be filled by low-income, low-skilled, non-white citizens. As a result, residents have been less likely—not more likely—to be employed and far more likely to become incarcerated. ''Access to employment neighborhoods'' must be defined as areas where new entry-level jobs are increasing and where there is evidence that these jobs will actually be filled by poor, low-skilled, non-white citizens. Throughout the country the growth of jobs—and particularly the growth of jobs for poorly educated, low-skilled, non-white citizens—is at the edge of metropolitan areas. Segregated and unequal education received in segregated neighborhoods prevents workers from accessing existing employment opportunities.

The commenters stated that the final rule must clarify that, when neighborhoods are proximate to clusters of employment but have high rates of unemployment and comparatively low wages, these neighborhoods cannot be considered areas with access to employment opportunity for purposes of the proposed rule.

HUD Response: As stated above, HUD agrees that a racially or ethnically concentrated area of poverty is not an area of opportunity simply because of any single indicator of opportunity. However, HUD declines to include in the final rule the commenters' proposal. Economic factors, including access to jobs, are key considerations in assessing neighborhood opportunity. As with transportation, HUD-provided data will help program participants better assess local needs and frame appropriate strategies, which can encompass both mobility and place-based investment approaches. The specific data sources and indices used to measure access to employment opportunities will be determined through the Assessment Tool and guidance.

Comment: Access to quality food is an important community asset that helps build strong neighborhoods. Commenters stated that areas with restricted access to affordable, healthy food options are heavily concentrated in communities of color and low-income neighborhoods. The commenters stated that lack of access to quality foods increases the prevalence of obesity, diabetes, and other diet-related conditions, and that this is a problem

with racial and economic dimensions. The commenters stated that wealthy neighborhoods have three times the number of supermarkets as their low-income counterparts, and that this disparity becomes even more dramatic when comparing predominantly white neighborhoods with black neighborhoods. The commenters asked that access to quality food be a community asset measure.

HUD Response: While HUD agrees with the commenters about the importance of access to high-quality and affordable food options at the neighborhood level, this final rule does not adopt the suggestion that this topic be added as an additional separate measure of access to community assets in the Code of Federal Regulations. This and other important neighborhood factors will be addressed in guidance and in the data that HUD will provide to program participants. Moreover, lack of access to affordable, high-quality sources of food is the type of information that could be expected to be identified through community participation, which is a required part of the AFH process. Program participants must summarize comments made in the community participation process and explain why any such comments are not addressed in the AFH.

22. Data and Mapping Issues

a. Data and Index Issues

In the preamble to the proposed rule, HUD solicited comments on a number of specific issues. Among the questions posed by HUD were the following two questions (#1 and #9) regarding data that will be used for completing an AFH:

1. The field of geo-coded data is rapidly evolving and, as HUD works to refine data related to access to important community assets, it welcomes suggestions for improvement. Such comments can include the description of cases or situations where the indicators may or may not appropriately portray neighborhood qualities. Are the nationally uniform data that HUD is providing to assist in the assessment of segregation, concentration of poverty, and disparities in access to community assets appropriate? Do these data effectively measure differences in access to community assets for each protected class, such as persons with disabilities? To what extent, if at all, should local data, for example on public safety, food deserts, or PHA-related information, be required to supplement this nationally uniform local and regional data? (See 78 FR 43724.)

9. An analysis of disproportionate housing needs is currently required as part of the consolidated plan, and this proposed rule would make disproportionate housing needs an element of the AFH as well. If a disproportionate housing needs analysis is a part of the AFH, should it remain in the consolidated plan as well? Is this analysis most appropriate in either the AFH or the consolidated plan, or is it appropriate, as the current proposed rule contemplates, to have the analysis in both places, assuming the analysis is the same for both planning exercises?(See 78 FR 43724.)

In response to these requests for public input and to the information on the data methodology posted online, HUD received a large volume of public comments and questions on data issues.

Comments: The public comments received included the views, recommendations, and further questions as follows:

- States and rural areas require a different level of data and analysis as compared to metropolitan areas and urban counties.
- The format in which data are provided—HUD should provide the data as either raw data or tabular datasets.
- HUD should allow groups to upload additional data to the data tool.
- HUD should provide additional datasets, such as HMDA data, foreclosures, fair housing complaint data, testing results, local surveys, and citizen narratives.
- Some specific types of data on access measures may not be effective. The education data may not capture local enrollment policies. In terms of the transportation data, many localities do not have this data reported or publicly available. Job access data does not capture actual commute time.
- Many commenters noted that since the proposed rule did not contain the data tool, or the AFH Assessment Tool, the commenters could not make more specific points on what they will, should, or should not contain.
- HUD should provide data on concentrations of poverty by protected class other than race/ethnicity.
- HUD should preview the tool and make the data tool available to the public, in addition to grantees (this will help in the public's participation in the local AFH process).
- Program participants should be required to post the data they are using on their own Web sites and do so prior to any public hearing.
- The data that HUD is requiring is excessive, and the data may also be duplicated in the consolidated plan and action plans.
- HUD should provide one composite index to assess neighborhood access to community assets and stressors, rather than HUD's approach to provide separate indices represented independently.

HUD Response: In regard to commenters' requests for greater specificity in the regulatory language itself, HUD continues to take the position that it is appropriate that many of these items are better addressed in the Assessment Tool and as guidance and should not be included in the regulatory text itself. This will allow flexibility and further refinements to be made on a timelier basis in response to public input and in response to experience gained through program participants' use of the Assessment Tool in preparing and submitting an AFH.

In response to the numerous comments that the data tool as originally presented for public comment was not effective for all types of program participants, including smaller jurisdictions and States, HUD has made numerous changes and improvements. The public comments in this area were extremely valuable, and HUD expects to make further refinements during the guidance and implementation process.

Program participants and the public have had additional opportunity for providing comments on both the Assessment Tool, as that document went through the Paperwork Reduction Act process and, in the case of the data tool itself, HUD will continue to refine the data tool based on ongoing public input and future research and analysis.

HUD is incorporating nationally available data determined to be statistically valid by HUD after conducting thorough research and analysis, as well as extensive consultation between HUD staff and external research and policy experts. Many comments requested that additional types of data be added to the types to be provided by HUD. The data are not intended to be exhaustive but are intended to provide a baseline for program participants to use and HUD encourage program participants to supplement with local data and knowledge. HUD also expects that as more nationally uniform sources of data become available the types of data provided to program participants for their planning purposes can be added to.

The manner in which the assessment of data should be used to inform local decision making will be provided in the Assessment Tool and through technical assistance and guidance. These will be particularly important for State-level, as well as smaller, nonmetro and rural program participants.

Comment: Definitions are not effective in capturing important racially or ethnically concentrated areas of poverty in a particular community. Commenters stated that the rule should allow

participants to propose an alternative definition, which should be subject to public comment as part of the AFH process and approval by HUD before they can be adopted.

HUD Response: HUD has not adopted this proposal because of the need to provide for some level of consistency in the way program participants conduct an AFH. HUD notes, however, that the rule affords program participants the flexibility to supplement the HUD-provided data with relevant, statistically valid State and local data, qualitative analysis and explanation, and information received during the public participation and outreach process. In addition, program participants have latitude to adjust their goals and strategies in the local decisionmaking process in order to select the most effective ways to address the issues and contributing factors identified by the data and analysis.

Comment: HUD should clarify how it will use and evaluate any supplemental local data. Commenters stated that localities should have the opportunity to explain how the data should be properly interpreted and would welcome a dialogue with HUD regarding this data. Commenters recommended that HUD explicitly offer this level of transparency and suggest this type of exchange. Commenters stated that, at a minimum, the rule should clarify that when localities submit supplemental data that is more accurate or telling, HUD will rely on that local source in place of the standard indices.

HUD Response: HUD will grant considerable weight to any convincing showing from a program participant that adds to the AFH, particularly with additional data sources used to supplement the HUD-provided data, where these are found HUD to be accurate, statistically valid, and relevant. HUD expects to provide additional guidance to assist program participants as they conduct their AFHs.

Comment: The rule should require program participants to survey local opinions about diversity. Several commenters made this recommendation.

HUD Response: Program participants are encouraged to undertake active outreach efforts such as this, but the rule does not require it outside of the public participation requirements in the rule.

Comment: Make local data publicly available. Commenters stated that program participants should make all the data they are using available for public review prior to a hearing and opportunity for comment.

HUD Response: The final rule includes this requirement in the citizen participation section of the regulations. (See §§ 91.105(b)(1)(i) and 91.115(b)(1)(i).)

Comment: Revise § 5.154(d) and (e) to establish different requirements that are appropriate to State governments. Commenters stated that the level of data analysis required of state governments must cover broader areas of geography, but should not require the same level of geographic specificity as local governments.

HUD Response: HUD agrees that the requirements of the rule should be appropriate for different types of HUD program participants, including States, and the definition of ''geographic area'' in the final rule reflects this fact. Also, HUD believes § 5.154 is appropriate as presented in the rule. HUD anticipates that the level of data analysis for different types of program participants is best addressed through the Assessment Tool, the associated data tool, and guidance rather than in the final rule.

b. Data Documentation

Comment: Comments received on the AFFH Data Documentation paper were as follows:

- Where did HUD discover the values it uses to define low, moderate, and high segregation using the dissimilarity index? Are these arbitrary values?
- The definition of RCAPs/ECAPs will be problematic for many regions. The 40 percent threshold is too high in many rural and smaller regions.
- HUD should use an alternative to the 40 percent poverty threshold for RCAPs/ECAPs.
- The proposed rule was vague about the proposed weights to various input categories for accessing fair housing neighborhoods. For example, does ''transportation access'' rate higher, lower, or the same as school proficiency index scores?
- HUD should provide data at the census tract level.

HUD Response: The comments refer not to the rule itself, but to the AFFH Data Documentation paper that was posted online concurrently with the proposed rule. HUD appreciates the very useful feedback that commenters provided on the Data Documentation paper. These comments will be used in developing and refining the Assessment Tool and the related data tool.

While HUD's final rule and the Assessment Tool rely heavily on the use of census tracts in identifying areas of concentration as well as opportunity areas, among researchers there are well known limitations to the use of census tracts. A census tract with relatively high poverty may actually be located within a larger area experiencing significant economic improvement. Moreover, HUD recognizes that while census tracts are often used in the research literature in part due to their value in quantitative analysis and the existence of relevant data, there are known limitations, including the fact that they are not always synonymous with neighborhoods as understood at the local level and their varying relevance in different geographies, for example, between central cities and rural areas.

In interpreting the presence of RCAPs/ECAPs, program participants should take into account the characteristics of adjoining or nearby census tracts, for instance, that may indicate a particular tract is located in a more desirable area or an area that is experiencing improved overall economic conditions or residency patterns. In addition, HUD notes that the definitions of segregation and RCAPs/ECAPs are not new legal thresholds based on a bright line test alone. Further, it is not HUD's intent that the current regulation inadvertently lead to decisions based strictly on an overly strict application of the various definitions and thresholds in the regulations and the Assessment Tool. The program participant's AFH can and should expand on both through qualitative discussion, and the legal definitions themselves are restricted in purpose to the rule (as provided in § 5.152 that has been revised to clarify that the definitions apply only to the AFH planning process in §§ 5.150 through 5.180). On a related note, the regulation, in the definition of ''geographic area,'' allows for the use of census block groups, although HUD notes and recognizes that doing so can often carry even more caveats in terms of possible limitations than do census tracts but nevertheless the rule retains the flexibility for program participants to include the use of block groups, at their discretion.

Comment: Clarify that statistical measurements do not apply to individuals. Commenters asked that the regulatory text clarify that the new statistical measurements are not intended to apply to private persons.

HUD Response: HUD believes the rule is sufficiently clear on this point as is, and, therefore, the change suggested by the comment is not adopted.

Comment: No funding should be denied for disparities revealed by HUD data. Commenters stated that, because of the unreliability of HUD data, no funding should be denied to a program

participant where data or other information in an AFH shows either a failure to meet affirmative obligations or a prima facie case of intentional or disparate impact discrimination. Commenters stated that HUD must further investigate the matter and not act on the basis of its data.

HUD Response: The AFH is an analysis to be used by program participants in setting priorities and goals and informing strategies on how to affirmatively further fair housing. The identification of a fair housing contributing factor or issue in an AFH is meant to aid program participants in fulfilling their duty to affirmatively further fair housing, and is not intended to result in the nonacceptance of an AFH or deny funding. While the data provided in an AFH may assist HUD in understanding some of a program participant's fair housing successes and challenges, HUD's findings of noncompliance with fair housing and other civil rights requirements, and its acceptance or nonacceptance of an AFH, are not based solely on demographic data. HUD findings are the result of investigations that are consistent with statutory and regulatory standards. Furthermore, HUD will not undertake an enforcement action without affording the program participant due process, which could include the program participant's questioning HUD's investigative findings and conclusions.

The AFH is intended primarily as a planning document to assist program participants in planning appropriate strategies to address the challenges that may be present in their jurisdiction or region. The definition of fair housing issues provided in the regulation and any numeric thresholds associated with it that HUD provides in guidance for the AFH document do not create separate new legal thresholds for the purposes of enforcement, establishing prima facie findings of violations of civil rights laws or similar new legal requirements. They are for the purposes of guiding program participants in identifying potential fair housing issues in the State, locality, or region that should be addressed in the AFH itself.

Comment: Deference should be given to local data. Other commenters stated that when a program participant has more recent data, even if it contradicts HUD's data, deference should be given to the participant's data so that HUD is not substituting its judgment for that of the program participants. Commenters stated that the final rule should explicitly allow for deference to each entity's choices of data used to support the AFH.

HUD Response: Program participants are not limited to the use of data provided by HUD but, for consistency purposes, they must include data provided by HUD in their analysis of fair housing issues and contributing factors. Indeed, where relevant local data is available to a program participant, the program participant must consider it in conducting its AFH.

Comment: Establish a process to resolve disputes over data. Commenters stated that a process should be established for settling disputes over the use of certain data or inaccurate data analysis. Commenters stated that HUD data varies in its reliability, citing fair market rents that do not reflect current actual market rents and the lack of data with respect to persons with disabilities, and suggested creating a process for a participant to challenge the HUD data.

HUD Response: The use of local data is subject to HUD review for statistical validity. reliability, and relevance. Any questions HUD may have regarding the use of local data would arise as HUD reviews a program participant's AFH. In the review process, HUD may ask questions about the local data used by a program participant or HUD may decide not to accept an AFH if it determines that the data used are not valid, reliable, or relevant. The rule provides a process for HUD and a program participant to communicate and resolve AFH deficiencies leading to HUD's nonacceptance of an AFH. (See § 5.162.) Disputes over data would be addressed in this process.

Comment: Advise how frequently HUD will update its data. Commenters stated that HUD should advise how frequently it will update the data it provides. Commenters stated that the proposed rule stated that HUD would update the data periodically, but program participants need more specificity as to when the updates will occur. Commenters stated that HUD should update the data annually or biannually. Commenters stated that if jurisdictions are to use the data to track the progress of their policies, they will need to have updates at regular, timely and predictable intervals.

HUD Response: HUD will keep program participants advised as to updates to the data it provides and any other data-related enhancements to the AFH Assessment Tool. HUD declines to specify an interval for periodic updating of data—in part, because it does not always control the source of data and, in part, because enhancements to the data are likely to occur without particular regularity.

Comment: Local data should be an option not a requirement to supplement other data. Commenters stated that local data should not be required to supplement the national uniform local and regional data. It should be used at the program participant's discretion. Commenters stated that supplementing HUD's data with their own data collection efforts will be expensive and time-consuming, undermining one of the agency's goals for the new rule. The commenters stated that they want to be sure that they are addressing their most pressing fair housing needs and issues, but they do not want to be required to participate in a data analysis exercise that will not provide useful guidance about how to proceed.

HUD Response: HUD agrees that obtaining and compiling data could be a resource-intensive pursuit. HUD will only require program participants to obtain data that is readily available at little or no cost, including in terms of staff time. HUD believes that local data should be used to supplement HUD-provided data and is requiring program participants to include such data in their AFH. Where useful local data exists, it can be a valuable means of supplementing the national data and could be quite important to an AFH that applies to a particular area. Therefore, this rule balances these competing values by not requiring data to be compiled or obtained if it does not exist (although doing so is not prohibited), but where useful data exists, is relevant to the program participant's geographic area of analysis, and is readily available at little or no cost, the rule requires that it be considered.

Rule Change. This final rule adds new definitions for the terms, ''local data'' and ''local knowledge'' in § 5.152.

c. Rural Data Issues

Comment: HUD must provide reliable data for rural areas. Commenters expressed concern about the reliability of HUD's available data for rural areas. The commenters stated that their experience has been that assessing social, economic, and housing characteristics is often complicated in rural areas due to sparse populations, limited sampling, undercounts, and exclusion. The commenters stated that there is a clear relationship between the population size of a geographic area and the reliability of data: As the population in rural areas is smaller, the likelihood of reliability within survey data is lower.

The commenters stated that while the ACS provides more timely data than its predecessor, the decennial long-form, it has a somewhat smaller sample and therefore less reliable results for less populated areas, potentially distorting

the actual picture of segregation or isolation. Commenters further stated that the ACS provides only pooled estimates (five years' worth of data) for jurisdictions with 20,000 or fewer people, and that as a result, the figures may not show some important details, especially when things change markedly as they did at the beginning of the recent recession. The commenters stated that data averaged over a period ''masked'' the dramatic change. The commenters stated that the best solution for this problem would be to expand the ACS sample size, or alternatively, calculate and provide a data reliability indicator to accompany the datasets.

HUD Response: HUD appreciates the valuable feedback provided by commenters on these and other issues specific to rural America. As stated above in the response to comments on the community assets section, HUD acknowledges the unique issues and challenges in applying the rule to rural communities and intends the implementation of the rule to be flexible and adaptable to meet those challenges.

While HUD does not believe specific changes are required to the regulatory text, it does plan to take into account specific issues related to data concerns in developing and refining the Assessment Tool over time. In addition, HUD plans to provide guidance and technical assistance recognizing that different strategies will be appropriate in different places. Jurisdictions in nonmetropolitan areas can also work with state grantees which will have a role in developing AFHs. Program participants will also have flexibility in developing their AFH to explain actual local conditions in qualitative terms that may not be reflected by data.

Comment: Rural areas will be required to rely on local data, which will be burdensome and costly and will force rural areas to use inaccurate or incomplete information. Commenters stated that useful data from other Federal sources either is not available for rural jurisdictions or is not recent enough to be reliable. The commenters stated that, for example, it is more difficult to obtain residential building data for sparsely populated counties or smaller geographic units, but this information is readily available in metropolitan areas. The commenters stated that Home Mortgage Disclosure Act information, too, is limited for rural, nonmetropolitan areas because banks operating entirely outside of metropolitan areas are not required to provide lending data, and that out-of-date data sources include HUD's Picture of Subsidized Housing data, currently available only for 2009.

The commenters stated that the net effect of these data issues is that rural jurisdictions preparing AFHs must supplement the data HUD provides with locally sourced information such as tax records, building permits, etc., to ensure as complete a picture as possible, verifying, clarifying, or challenging what the HUD data sets indicate., and that compiling such data will be burdensome and costly. Commenters stated that jurisdictions in rural areas be given additional resources to conduct research and gather local data.

Similarly, commenters stated that because of the concerns with accuracy of data to be provided by HUD for rural areas, HUD should not require rural jurisdictions to use HUD data but be provided the option to use such data or only local data.

Other commenters reiterated the concerns about the accuracy and reliability of HUD-provided data for rural areas, and asked HUD to provide guidance on what additional information should be sought and considered by rural areas. Commenters stated that HUD could aid rural jurisdictions by providing a data guide explaining these issues and suggesting alternative sources, such as the Census Bureau's Small Area Income and Poverty Estimates.

HUD Response: HUD appreciates this valuable feedback and the time and effort made by commenters to present their valid concerns with applying data to different parts of the nation, including rural areas. While HUD does not believe that specific changes in the regulatory text are needed, it does plan to take these and other points into consideration during the development of the Assessment Tool.

23. Transparency

Comment: All AFH and related documents and the availability of such documents for public viewing should be provided to the public through all available means. Commenters stated that the key to making the AFH process work is to maximize public participation and that is achieved by having AFHs and related documents available to the public using all available means, including posting online and having hard copies available at program participants' offices or libraries. Many commenters requested that AFH information be posted on program participants' Web sites. Commenters recommended that a program participant's proposed and final AFHs and all relevant data and other information used in preparing the AFH be made available on an easily identifiable page of the participant's Web site. Commenters recommended that the consolidated plan and all performance reports, including all attachments and supporting data be posted in full length in a searchable format, easily downloadable, on a dedicated page of the participant's Web site. Commenters stated that the availability of AFH documents should be made through social media.

HUD Response: HUD understands the importance of the Internet when communicating with the public and has made rule changes to update the outreach requirements for program participants.

Rule change. HUD has revised § 5.158 to explicitly state that, in order to ensure that the AFH, the consolidated plan, and the PHA Plan are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. This final rule says that such communications may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet—on the program participant's official government Web site—as well as at libraries, government offices, and public places. Further, the rule requires program participants to ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1, Section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8, and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

Rule Change. HUD has revised §§ 91.105(b)(1) and 91.115(b)(1) to provide that a jurisdiction may make the HUD-provided data available to the public by cross-referencing to the data on HUD's Web site.

Comment: Publicly post AFHs. Some commenters also proposed that HUD should post the completed and accepted AFHs on its own Web site as an information clearinghouse. Commenters stated that this could be a valuable resource for best practices, as an aid and guide for other program participants in completing their own AFHs and for practitioners, industry professionals, researchers and advocates in assessing fair housing issues and strategies. Other commenters suggested that HUD should post all submitted AFHs.

HUD Response: HUD thanks the commenters for this proposal and will explore options for posting completed AFHs online, along with additional

guidance that may be helpful to program participants, affordable housing advocates and organizations, fair housing groups, and the general public.

Comment: All relevant documents should be translated by program participants into other languages and be accessible to persons with disabilities. Commenters stated that relevant documents, AFHs, consolidated plans should be translated by program participants into languages other than English for LEP residents, and should be made available in newspapers or other media serving non-English speaking stakeholders or interested members of the community, or that summaries of the documents should be provided through such news outlets. Commenters also stated that outreach for public engagement should be either conducted in other languages or with interpretation services. Other commenters asked that HUD ensure that these documents are available to persons with disabilities.

HUD Response: Federal law pertaining to ensuring that persons with limited English proficiency (LEP) can participate in Federal and Federally-funded programs is well established, and HUD does not need to further address this matter in its rule. Title VI of the Civil Rights Act of 1964 protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive Federal financial assistance. The failure to ensure that persons who are LEP can effectively participate in, or benefit from, Federally-assisted programs may violate Title VI's prohibition against national origin discrimination. Executive Order 13166, signed on August 11, 2000, directs all Federal agencies, including HUD, to work to ensure that programs receiving Federal financial assistance provide meaningful access to LEP persons. All programs and operations of entities that receive Federal financial assistance from the Federal Government, including, but not limited to, state agencies, local agencies, and for-profit and non-profit entities, must comply with the title VI requirements. With respect to persons with disabilities, section 504 of the Rehabilitation Act of 1973 requires HUD recipients to make information accessible to persons with disabilities, and the Americans with Disabilities Act requires State and local governments to provide equal access and effective communication with individuals with disabilities by, inter alia, providing information in accessible formats (*e.g.,* accessible electronic formats, large print, Braille, audio recordings); providing sign language interpreters and computer-assisted real time transcription, as needed, to persons who are deaf or hard of hearing; and holding meetings in venues that are accessible to persons with disabilities, including individuals who use wheelchairs.

Comment: Program participants should report their progress and outcomes from their AFH. Commenters stated that program participants should report their progress and outcomes from the AFH in their various grant reports, just as they do for individual grant activities. Commenters stated that the rule should specify what information program participants are required to provide about the progress they have made, including their use of financial resources and any actions they have taken with respect to their policies, practices, and non-financial resources. Other commenters stated that assessment and compliance reports should be posted promptly on the jurisdiction's Web site.

HUD Response: HUD's consolidated plan regulations already provide for performance reports and the opportunity for the public to comment on performance reports. (See § 91.105(d).)

Comment: HUD should have a Web page devoted to AFHs. Several commenters stated that HUD should have a page on its Web site with information on the AFH submission deadlines and copies of all AFHs. Another commenter stated that for each AFH submission HUD should assign a number that should be used to track the submission status on HUD's Web site.

HUD Response: HUD appreciates these recommendations. While HUD cannot commit at this time to have a Web site that provides this information, HUD will definitely explore this recommendation.

Comment: Make uniform data available to the public. Commenters ask that the nationally uniform local and regional data be made available to the public, including via HUD's Web site to encourage research.

HUD Response: HUD's data will be available on HUD's Web site for all the public to view and access. The data will not be limited to program participants that must prepare an AFH.

24. Technical Assistance

Comment: HUD-provided technical assistance will be critical to the success of the new AFH process. Many commenters stated that HUD-provided technical assistance will be critical as program participants adapt to dramatic changes in regulatory requirements, not to mention reduced HUD funding that has had a significant impact on the ability of local jurisdictions to maintain adequate staffing levels. Commenters stated that, as suggested by the GAO report addressing the duty to affirmatively further fair housing, HUD, and its field offices have not provided sufficient technical assistance or conducted adequate monitoring. Commenters stated that even conscientious, experienced staffs of program participants are challenged by the lack of direction, assistance and oversight from field offices, and that imposing new regulations is not going to solve this problem; rather, it will only serve to exacerbate it.

HUD Response: HUD reiterates the commitment made in the proposed rule to provide technical assistance to program participants as they transition to the new AFH process.

Comment: Types of technical assistance that would be helpful. In the proposed rule, HUD solicited comment on what forms of technical assistance would be most helpful to program participants. In response to this question, commenters suggested regional meetings hosted by HUD, webinars, audio-visual materials, and other online training, face-to-face training, classroom training, and guidance that includes numerous examples of how to undertake the analysis required and complete the Assessment Tool.

HUD Response: HUD appreciates the suggestions and will strive to provide as much and as varied assistance as possible.

25. Administrative Burden

a. Duplication and Redundancy

Comment: Eliminate the duplication between the AFH and Consolidated Plan. Commenters stated that the proposed rule added duplication between the AFH and elements currently required to be included in the consolidated plan. Commenters stated that given the avowed desire of HUD to simplify and shorten these key planning documents with a view toward making them more accessible to affected parties, this duplication of publication seems unnecessary.

Other commenters state that, at the outset, former Secretary Donovan stated that one of his goals was reducing redundancy and conflicting Federal planning requirements and making plans more integrated and effective. Commenters stated that the proposed rule, if adopted, threatens to move further away from the goal of integrated planning and places a significant new burden on localities at time when support and resources from HUD are shrinking.

Commenters stated, as proponents of local comprehensive planning, they understand and support the concept of looking broadly at the multiple factors that affect housing and community development. Commenters stated that it is less clear that the AFH is best suited for this analysis and could create both needlessly duplicative planning processes and uncertainty about enforcement and local control of key policies and regulatory functions. Commenters stated that this uncertainty could, ironically, actually slow the adoption of effective housing policies in many communities.

Other commenters stated that to reduce the redundancy between the AFH and the consolidated plan, the consolidated plan should fully incorporate the AFH. Commenters stated that the AFH community participation process is duplicative of the citizen participation process in the consolidated plan process. Commenters stated that the rule is silent as to whether the community engagement process for the AFH can be combined with the consolidated planning community engagement process. If the process for both plans cannot be consolidated, this poses a potential burden on program participants and could lead to community members growing fatigued with duplicative events.

Commenters stated that to fully integrate all planning processes, the AFH must be part of the consolidated plan process to more directly and effectively incorporate fair housing planning into the comprehensive housing and community development planning that program participants undertake through the consolidated plan. Commenters stated that the incorporation of the AFH into the consolidated plan would allow a single community participation process, and would reduce duplicative analyses. Commenters stated that a single plan would support the goal of closely linking the AFH with funding priorities, and could help avoid delays in funding and implementing fair housing and community investment strategies. Commenters stated that the incorporation of the two plans will save time and resources, and increase efficiency and consistency in the planning process. Commenters stated that the obligation to affirmatively further fair housing will be strengthened by a clearer and more direct inclusion of affirmatively furthering fair housing considerations and the AFH in the consolidated plan and PHA Plan processes for establishing fund allocation priorities.

Commenters stated that the AFH should not separately precede the consolidated plan, but should be developed as part of the consolidated plan. If the AFH is submitted significantly ahead of the consolidated plan, program participants would be in a constant planning and reporting cycle which would drain staff time and resources from effective implementation and monitoring of identified goals and objectives of both the AFH and consolidated plan. Commenters stated that if the AFH is developed separately from the consolidated plan there would be unnecessarily redundant analysis, and public confusion resulting from separate duplicative citizen participation hearings.

Commenters stated that having the fair housing goals right next to the data in the consolidated plan where the issues exist would fully integrate fair housing planning with the consolidated plan without requiring two entirely separate documents and planning periods. Commenters stated that this would also substantially ease the burden on program participants of having to prepare different submissions and would avoid having the fair housing discussion essentially separate from the Plan. Commenters stated that any nonduplicative elements that HUD felt was missing between the AFH and the Plan could be added to the Plan, but the need for separate documents would no longer exist.

HUD Response: HUD appreciates the concerns and recommendations made by the commenters. HUD has previously addressed the importance of having the AFH precede and not be undertaken concurrently with the consolidated plan and PHA Plan. An analysis of barriers to fair housing choice has always been an analysis separate from the consolidated planning or PHA planning processes. The purpose of the separate analysis is to inform the broader scope in planning undertaken for the consolidated plan and PHA Plan. At the start of this new approach to analyzing fair housing issues HUD believes such analysis is more effective as a separate process. As the new AFH process is implemented and HUD has the opportunity to review how the new AFH process has worked among program participants following the first AFH submissions, HUD may consider greater integration in the consolidated planning and PHA planning processes, or other changes based on the experience with the first round of AFH submissions.

b. Placement of Disproportionate Housing Needs

HUD's proposed rule sought comment regarding the inclusion of an analysis of disproportionate housing needs in the AFH and the consolidated plan. Specifically, the proposed rule asked: ''If a disproportionate housing needs analysis is a part of the AFH, should it remain in the consolidated plan as well? Is this analysis most appropriate in either the AFH or the consolidated plan, or is it appropriate, as the current proposed rule contemplates, to have the analysis in both places, assuming the analysis is the same for both planning exercises?''

Comments: Commenters presented the following answers to this question:

No duplication of analysis: Several commenters recommended that an analysis of disproportionate housing needs be included in either the AFH or the consolidated plan, but not in both. Commenters stated that given HUD's desire to simplify and shorten planning documents, the inclusion of a disproportionate housing needs analysis in both the AFH and the consolidated plan seems unnecessary and duplicative. Commenters suggested combining the AFH and the consolidated plan to create one plan. Commenters stated that it would be wasteful to put forth twice the effort in two different planning cycles to reach the same results, and instead recommended the analysis be completed once to avoid redundancy of process and minimize the possibility of unintentional inconsistencies. Commenters recommended that, wherever possible, the requirements should be nonduplicative.

Analysis should be in AFH only. Commenters stated that an analysis of disproportionate housing needs is an essential element of fair housing planning, and should appear in the AFH. Commenters stated that an analysis of disproportionate housing needs is most relevant to the AFH, which can then influence the consolidated plan without being repeated. Commenters stated that understanding housing conditions and housing cost burdens of persons who are members of protected classes under the Fair Housing Act is a principal factor in planning for fair housing and for making decisions regarding the relative level of funds to allocate for activities targeted at populations in specific income categories. Commenters stated that if the AFH is to become a component of the consolidated plan, the analysis of disproportionate housing needs should be covered only once in

the AFH component of the consolidated plan. Commenters stated that if the AFH is to become the major analytical tool for assessing this aspect of housing, then ''serving a warmed over version in the consolidated plan accomplishes little'' and could simply be addressed through a reference in the consolidated plan to the AFH.

Analysis should be in consolidated plan only. Several commenters recommended that an analysis of disproportionate housing needs only be included in the consolidated plan.

Commenters stated that because disproportionate housing needs does not always mean 'fair housing' the disproportionate housing needs analysis should not be a part of the AFH. Other commenters stated that disproportionate housing needs is not covered by the Fair Housing Act. Commenters stated that a disproportionate housing needs analysis is appropriate for inclusion in consolidated plans and PHA Plans, but is inappropriate for inclusion under affirmatively furthering fair housing standards.

Analysis should be in both planning documents. Several commenters recommended including a disproportionate housing needs analysis in both the AFH and the consolidated plan. Commenters stated that the centrality of this data to the decision making process in both the AFH and consolidated planning process means that it belongs in both planning areas, and that inclusion in both will not result in added cost and will help decision makers focus on this piece of essential planning data. Commenters recommended that a disproportionate housing needs analysis should be in both the AFH and the consolidated plan, because the consolidated plan regulation calls for such an analysis to be based on the income categories of extremely low income, low income, moderate income, and middle income, and without that analysis in the consolidated plan, it would be even easier for jurisdictions to set consolidated plan priorities that do not address the critical need for housing programs and policies that serve extremely low income people. Commenters recommended that the analysis of disproportionate housing need appear in both the consolidated plan and the AFH, and recommended incorporating the AFH Assessment Tool and data into the Integrated Disbursement and Information System (IDIS) with the consolidated planning and reporting templates. Another commenter stated that if HUD does not incorporate fair housing directly into the consolidated plan, then the analysis of disproportionate housing needs should be in both the consolidated plan and the AFH.

HUD Response: HUD appreciates the feedback in response to HUD's question about placement of the analysis of disproportionate housing needs. HUD agrees with the commenters that the analysis of disproportionate housing needs should not be in both documents. Since the analysis for disproportionate housing needs in the AFH and the consolidated plan would be almost identical, inclusion in both would be duplicative. The final rule provides for placement of the analysis of disproportionate housing needs in the AFH. HUD also agrees with the commenters who stated that analysis of disproportionate housing needs is an essential element of fair housing planning and that understanding the housing conditions and costs of housing for persons who are members of protected classes under the Fair Housing Act is a principal factor in fair housing planning.

In this final rule, HUD requires program participants to identify disproportionate housing needs for members of racial and ethnic groups in their AFH, and to assess any such needs for fair housing issues.

Under HUD's Consolidated Plan regulations, jurisdictions must include disproportionate housing needs in their consolidated plan. The regulations state that for any of the income categories enumerated in paragraph (b)(1) of the section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. (See § 91.205(b)(2).) The Consolidated Plan regulations also require the jurisdiction to identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms ''area of low-income concentration'' and ''area of minority concentration'' for this purpose. (§ 91.210(a).)

The disproportionate housing needs analysis required in the AFH is a broader analysis than must be done in connection with the consolidated plan since, for AFH purposes, the analysis must include groups with protected characteristics beyond race and ethnicity. HUD has determined that the disproportionate housing needs analysis is necessary to inform the AFH and that it therefore makes sense for the analysis to be performed at the time the program participant is preparing the AFH, rather than waiting until it prepares the consolidated plan. When a consolidated plan jurisdiction has conducted the requisite analysis on disproportionate housing needs of racial and ethnic minorities in an AFH, it will not be required to conduct a new analysis for purposes of the consolidated plan. In addition, HUD makes a similar change to reduce to the PHA Plan regulations. Section 903.7(a) provides that were a housing needs assessment undertaken as part of the AFH, it is not required as part of the analysis conducted for the PHA Plan.

Rule Change. HUD makes conforming changes to the Consolidated Plan regulations to provide that where a disproportionate housing needs assessment is undertaken as part of the AFH it is not required as part of the analysis conducted for the consolidated plan (see §§ 91.205(b)(2), 91.305(b)(2)).

c. Consultants

Comment: Program participants will be forced to hire consultants to comply with the reporting requirements of the rule. Commenters stated that program participants will be forced to hire consultants to comply with the requirements of the rule. Commenters stated that because of the extensive analysis required by the proposed rule, it will be impossible for program participants to avoid hiring consultants, and because consultants will be needed by program participants to prepare their respective AFHs, the cost of hiring a consultant will rise because of increased demand for such services. Commenters stated that the costs associated with the hiring of a consultant will offset much or all of the cost benefit from the HUD-provided data, because such data is not sufficient for compliance. Commenters stated that consultants will also be expensive in rural areas because of the poor quality of HUD data in such rural areas.

HUD Response: In the notice published in the **Federal Register** on September 26, 2014, soliciting public comment on the AFH Assessment Tool (79 FR 57949), HUD stated, ''With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.'' However, HUD appreciates the commenters' concern about the new AFH process and acknowledges that, in some cases, program participants may hire consultants, as they had when conducting the AI. HUD believes that by providing the data in a more systematic and accessible manner, most program participants will not require

consultants. To this end, HUD commits to tailor its AFHs to the program participant in a manner that strives to reduce burden and create an achievable AFH for all involved. HUD intends to provide, in the Assessment Tool, a set of questions in a standard format to clarify and ease the analysis that program participants must undertake. The Assessment Tool, coupled with the data provided by HUD, is designed to provide an easier way to undertake a fair housing assessment. With respect to concerns about data, the final rule invites program participants to supplement HUD's data with local data or with local knowledge.

This final rule adopts new definitions of the terms ''local data'' and ''local knowledge'' to clarify that these terms refer to readily available information that requires little or no cost to obtain.

In addition, HUD has committed to provide technical assistance with preparation of the AFH. These features and the approach of the AFH should result in an effective but not costly or burdensome assessment.

Rule Change. Section 5.152 adds the definition of the terms ''local data'' and ''local knowledge.''

Comment: Program participants can and should hire consultants to provide objective and expert analysis. In contrast to the preceding commenters, other commenters recommended that HUD make clear in the final rule that program participants may, and should, use independent outside consultants when preparing the required assessment. Commenters articulated the following reasons that consultants should be used. First, the commenters stated a self-assessment involves an inherent conflict and an independent assessment is necessary to generate an accurate and disinterested report. Commenters stated, for example, employees of a program participant may fear consequences of calling out a participant's practices that do not affirmatively further fair housing, or that reflect poorly on the local government or the community generally. Second, the commenters stated not every program participant has in-house resources or knowledge to complete an assessment. Commenters stated that program participants may not have sufficient staff to undertake the assessment, and even if they have sufficient staff, such staff may not have the skills or experience needed to conduct the assessment and accurately analyze and evaluate the data. Commenters stated that, in essence, the consultants are the best equipped to prepare the required analysis. Commenters stated that, if utilized, the consultants should be hired through an open and competitive bidding process. Commenters stated that, alternatively, HUD could maintain a registry of qualified consultants.

HUD Response: HUD has designed the AFH process so that an AFH can be completed without the use of consultants. HUD intends to develop an Assessment Tool to bring certainty to the questions and issues that a program participant must explore to achieve a meaningful AFH. Therefore, program participants may, but are not required to, use consultants in preparing their AFHs, though HUD believes that a consultant will not be necessary to complete an AFH.

Regarding the issue of requiring a competitive bidding process to hire consultants, regulating bidding procedures is outside the scope of this rulemaking. There are existing HUD and Federal guidelines concerning acquisition of services by program participants using Federal funds, and the program participant that seeks to obtain consultant services will need to determine whether these Federal guidelines apply and, if so, the applicable procedure for obtaining consultant services. HUD also declines to maintain a registry of consultants qualified to prepare AFHs.

d. Scarcity of Resources

Comment: Additional resources are needed for the rule to succeed. Commenters stated that limited resources, economic conditions, the location of existing affordable housing, competing priorities for resources, and inability of states to impact local government and individual decision making to affect fair housing are just a few reasons that the rule will not succeed. Commenters stated that HUD underestimates the resource investment that will be necessary on the part of program participants. Commenters stated that, contrary to HUD's claim, simply providing data does not mean that the requirements will not be extremely burdensome to program participants. Commenters stated that HUD is presuming that the data will show a clear, consistent, and easily comprehensible picture—a highly unlikely outcome in most communities, and that the more plausible outcome is a muddled picture showing various needs in various locations, which program participants will have to parse and interpret in order to make use of the data.

Other commenters stated that local governments and States are not responsible for individual differences, and should not be blamed for the results of those differences. The commenters stated that they should not be forced into the business of spending limited resources and forcing the private market into building or offering housing, infrastructure and transportation that have questionable benefit, and possibly negative consequences, for targeted groups.

HUD Response: As stated in the proposed rule, HUD's approach to fair housing planning envisions a process that is structurally incorporated into the consolidated planning and PHA planning processes, building upon what is already familiar to HUD program participants—supported by HUD technical assistance, HUD-provided data, and an Assessment Tool. HUD is aware that the provision of data alone will not necessarily reduce burden, but data provided by HUD and utilization of familiar planning processes, in conjunction with use of an Assessment Tool, will make for a more effective and less burdensome fair housing planning process.

The rule itself establishes four broad categories of fair housing-related issues that must be addressed in the AFH and for which HUD will provide relevant data, including maps and tables for the jurisdiction. The four categories, as provided in § 5.154, are: integration and segregation; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. The specific criteria for how to address each of the main categories of needs and potential issues will be provided in greater detail in the Assessment Tool and related guidance. HUD intends to refine and improve the Assessment Tool on an ongoing basis, with the goal of effective implementation while minimizing the burden on HUD program participants.

HUD also agrees that many AFHs will not always present one clear picture with only one obvious available solution. By its very nature, the AFH is a planning document intended to help inform and guide local decisionmaking in addressing complex physical, social, and economic problems, including a greater need for affordable housing, and addressing neighborhood conditions with limited budgets. By providing data and a framework for analysis, however, the AFH is intended to assist program participants in their own prioritization of how best to allocate scarce resources to meet identified local needs and comply with their duty to affirmatively further fair housing. The goal is not to create difficulties for program participants, but to empower participants to fulfill their legal

obligation to affirmatively further fair housing.

A basic tenet of planning and performance management is recognition of ''external factors'' and other barriers to achieving goals, and which are beyond an organization to control (See, *e.g.,* the Federal Government Performance and Results Act). This rule allows grantees to identify such barriers. Included in such considerations is the identification of funding dependencies and contingencies.

Comment: HUD should delay implementation of AFH until there is an improved economic environment. Commenters stated that regardless of how well-meaning this rule may be, it is the worst possible time to impose new regulatory burdens on housing authorities and other program participants. PHA commenters stated that most, if not all of PHA programs, are currently funded at an all-time low level. Commenters stated that public housing operating subsidy is funded at 82 percent, that Section 8/HCV administrative fees are funded at 69 percent, that voucher subsidy is at 94 percent which is resulting in voucher programs serving fewer families nationwide, forcing agencies to terminate families. PHA commenters stated that the capital fund grants to address the $25 billion capital repair backlog is now below $2 billion which HUD admits does not even keep up with annual accrual. Commenters stated that PHAs are struggling to meet payroll and keep their units leased as housing authorities' waiting lists grow, much less meeting the myriad existing regulations on the books. Commenters stated that HUD proposed an approach to the duty to affirmatively further fair housing that will increase workload and regulatory burden at a time program participants cannot handle such increased workload. Commenters stated that former HUD Secretary Donovan himself testified to Congress that HUD was finding it difficult to meet its own obligations due to funding cuts.

HUD Response: HUD understands the constraints of the funding environment. The intent of HUD's rule is to provide for a meaningful AFH, while minimizing burden on PHA staff and acknowledging the diversity of PHAs in terms of capacity. By providing the data to the program participants and creating an Assessment Tool that allows program participants to perform the assessment themselves rather than hire consultants, this rule should ensure that PHAs can complete the AFH within their current funding environment. Also, the AFH may assist program participants in making choices as to the uses of their funding that will affirmatively further fair housing. In addition, as discussed earlier, HUD has decided to implement staggered submission deadlines for different categories of program participants in § 5.160.

Comment: HUD should have taken modest steps to improve fair housing planning. Commenters stated that since 1995, HUD has not been able to oversee and monitor program participants' compliance with or performance related to HUD's existing requirement to affirmatively further fair housing, its requirement to conduct an AI, or determine whether program participants were successful in affirmatively furthering fair housing. Commenters stated that the GAO report and HUD's internal report on the matter included suggestions for improving the HUD's performance of these tasks without a wholesale revision of the affirmatively furthering fair housing process or a radical expansion of the concepts involved in affirmatively furthering fair housing. Commenters stated that those approaches appeared to be well within HUD's reach and could have finally provided a baseline against which HUD could measure the effectiveness of the rule's approach to affirmatively furthering fair housing. The commenters stated that rather than taking those modest steps to improve affirmatively furthering fair housing performance and outcomes, HUD has proposed a dramatic expansion and modification to the rule governing affirmatively furthering fair housing. The commenters stated that HUD's proposal imposes new and burdensome tasks on program participants and on HUD at a time when the resources needed to administer existing programs are inadequate for HUD program participants and for HUD. Commenters stated that they are concerned that this regulatory expansion will have the same impact on affirmatively furthering fair housing and fair housing goals as HUD's 1995 rule and its amendments, which is that program participants and HUD will complete additional analyses, submit additional reports to HUD in prescriptive formats, report on outcomes or the lack thereof, to approximately the same effect. Commenters stated that this is not the time to implement a new rule on affirmatively furthering fair housing—not for HUD and not for the HUD program participants.

HUD Response: HUD previously addressed comments asking why HUD took the direction it did to improve the effectiveness of affirmatively furthering fair housing.

HUD's rule responds not only to the recommendations of the 2010 GAO study, but HUD's own internal 2009 review, which included requiring that the required fair housing analyses AFHs be submitted to HUD for review, and for HUD to accept or not accept them within specific timeframes according to a clear standard of review. HUD's rule also places a duty upon HUD to provide data in a reliable and accessible format to reduce the burden on program participants in completing their AFHs.[16]

Comment: The rule must clearly state that the AFH does not create an obligation to fund a specific project. Commenters stated that the rule must clearly state that the AFH does not create an obligation to fund a specific project, program, need, or geographic area and that the final rule should contain a statement acknowledging that program participants have limited resources and must make choices how to allocate funds in a manner that may not address all needs.

HUD Response: The commenters are correct, the AFH, which is a planning process does not create an obligation to fund a specific project, program, need, or geographic area. The final rule, takes into consideration that a program participant in all likelihood will not be able to address all fair housing issues it may want to tackle and, therefore, prioritization will be necessary. The AFH process established by this rule allows for a flexible approach that permits program participants to consider a variety of available strategies to meet a wide range of local needs and housing market conditions consistent with the duty to affirmatively further fair housing with limited programmatic resources. The AFH is intended to aid rather than supplant local decisionmaking, and the various policy options adopted by program participants will depend fundamentally on the local context and the particular circumstances that prevail when the issues are considered.

Comment: Fair housing planning should be considered a CDBG eligible activity so that it can be properly funded. Commenters stated that there is added stress on declining CDBG budget to do more with less money. Commenters stated that if this rule is put in place there needs to be clear expectations for what smaller communities can do as opposed to larger communities. Commenters stated that this rule creates additional burdens for program participants trying to make

[16] See: ''HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans,'' GAO–10–905 (September 2010), GAO; and ''Analysis of Impediments Study,'' (Washington, DC, 2009) HUD, Policy Development Division, Office of Policy Development and Research, HUD.

a community better with activities when they have only two staff persons able to administer the entire program. Commenters stated that making a difference in a small community can only be done in incremental steps and a community of 50,000 compared with a community of 1.5 million must be considered differently, and that for a small community the tactics to deal with segregation are limited by funding. Commenters stated that for the new AFH process to be successful fair housing planning should be considered a CDBG activity instead of being an eligible expense under the CDBG administrative cap.

Commenters recommended that fair housing be identified as a separate or stand-alone eligible activity, not subject to the 20 percent administrative and 15 percent public service caps, so that more funding may be directed to these activities. The commenters stated that in addition, fair housing programs and planning should automatically be presumed to meet the low- and moderate-income national objective.

Other commenters stated that HUD must be realistic about the cost implications of its proposed rule, especially on small organizations, and ensure that the requirements are consistent with the capacity of agencies to implement them. The commenters stated that this might mean a phase-in of requirements for smaller program participants, or providing technical assistance or funding to program participants to carry out their responsibilities.

HUD Response: HUD recognizes that smaller program participants do not have the same capacity as larger participants and therefore burdens can be greater. HUD has strived in this final rule to reduce costs and burdens involved in implementation of the new AFH as much as possible, especially for smaller program participants. The guidance that HUD intends to provide will further refine the application of the rule's requirements to specific types of program participants, especially smaller PHAs and local government agencies with limited staff and resources. In addition, HUD plans to provide technical assistance to program participants where requested, which will help smaller program participants that may have small staffs to complete the AFH. HUD has provided for later submission deadlines for CDBG entitlement jurisdictions receiving an FY 2015 grant of $500,000 or less and ''qualified PHAs'' in this final rule in an effort to reduce burdens on smaller program participants and jurisdictions in conducting the AFH.

Comment: Paperwork costs will increase under the new AFH process. Commenters stated that costs, not solely paperwork costs, but travel costs, advertising costs, and costs for administrative staff would increase under the new AFH process. Commenters stated that the costs of advertisements alone, to meet the additional public hearing requirements at the State level are significant. Commenters stated that in addition to the requirement to spend resources for more hearings and advertising, program participants will have to: Dedicate huge amount of staff time to prepare an AFH (1,150 hours, or about 29 work weeks for the average State as per the record keeping requirements in the proposed rule); work with 15 local PHAs that are not in entitlement jurisdictions in developing their plans, and attend numerous requested meetings to undertake the require consultations. The commenters stated that the result of such burden is to draw staff away from effectively operating their programs to preparing the AFH instead.

Other commenters stated that the addition of another series of public meetings, time consuming consolidation of documentation, drafting and staffing a report through city channels, and numerous meetings, outside of the consolidated plan cycle is extremely discouraging to a burdened staff with limited resources at their disposal. The commenters stated that the cost burden identified on **Federal Register** page 43728 with 1,637,200 hours for this should be enough to shelve this idea for a long time.

Commenters stated that the process of holding public hearings around a state, especially a large state, would generate transportation, lodging and food costs as well as advertising to try to generate participation. Commenters stated that there also will be changes to internal processes that will result in additional paperwork needed during the eligibility review process to connect each funded activity to the AFH goals, and that there will be additional time and funding needed for various funded activities to support the AFH.

Commenters stated that while they appreciate enhanced public participation requirements and the mandate that that Federal program participants consult with organizations representing members of protected classes as well as public and private fair housing agencies, they are concerned about the capacity of such organizations to have the time to offer meaningful input—especially if plan submission cycles result in multiple simultaneous requests. The commenters stated that it takes repeated effort to build rapport with their communities, and that it takes a significant investment in increasing civic participation among historically under represented community members. The commenters reiterated that this effort, although worthwhile, is very time consuming and requires more than one full-time employee, which for some communities, is more than the entire CDBG staff.

Commenters stated that the proposed rule has the appearance of reducing the time spent by program participants in data collection but it increases the time spent in preparing a written analytical report. Commenters stated that given the volume of data presented combined with what the commenters stated appears to them to be an increase in the analysis expected, the commenters anticipate an increase to the paperwork costs associated with the AFH and stated that any efforts going toward increased paperwork could result in decreased financial resources available to serve tenants.

HUD Response: HUD is cognizant of the additional costs that some aspects of the new process may present, such as the costs of public hearings, travel, and ensuring outreach to members of the community. However, HUD believes that the fact the AFH is submitted every 3 to 5 years, and is not an annual submission, allows for greater planning on the part of the program participant with respect to how and where to conduct public hearings, which hopefully mitigates expenditures. With respect to time spent preparing the analysis, HUD believes that the Assessment Tool reduces such burden. HUD's Assessment Tool aides program participants in their analysis by providing a series of questions about fair housing issues and contributing factors and providing menus for several responses to certain questions, which decreases rather than increases paperwork. HUD also believes that the revised process for conducting an assessment will reduce or eliminate many program participants' view that they must rely on consultants, as many did in creating AIs under prior requirements set out in regulations and the Fair Housing Planning Guide.

V. Findings and Certifications

Regulatory Planning and Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the

order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). HUD submits that the approach to fair housing planning proposed by this rule is consistent with the objectives of Executive Order 13563 to modify regulations that are outmoded and ineffective. HUD completed a Regulatory Impact Analysis for this final rule, which can be found at *www.regulations.gov*, under the docket number 5173–F–03–RIA. This section summarizes the findings of that analysis.

Summary of Analysis

As more fully addressed earlier in this preamble, this rule establishes an integrated assessment and planning process, the Assessment of Fair Housing (AFH) approach, to give HUD program participants a more effective means to affirmatively further the purpose of the Fair Housing Act. The AFH replaces the analysis of impediments (AI) approach long used by HUD to aid its program participants in affirmatively furthering fair housing but ultimately determined not to be as effective as HUD envisioned. The new approach being established by this rule is accompanied by more support from HUD. HUD will provide States, local governments, and PHAs with data on patterns of (1) integration and segregation; (2) racially and ethnically concentrated areas of poverty; (3) access to education, employment, low-poverty neighborhoods, transportation, environmental health, and other assets that comprise areas of opportunity; and (4) disproportionate housing needs of protected classes. HUD will provide such data from nationally standardized datasets to local entities for the planning process. States, local, governments and PHAs will supplement HUD-provided data with local data and local knowledge they have of such fair housing issues. Although HUD is providing more support to its program participants through this new approach, HUD recognizes that the AFH process will be a substantial change from the current AI process.

While the final rule imposes increased costs of data collection and paperwork on participating jurisdictions and PHAs, most of the positive impacts entail changes in equity, human dignity, and fairness. HUD's primary estimate of compliance costs for its program participants is $25 million per year. HUD estimates that it will incur costs of $9 million to review participants' analyses and provide guidance and feedback.

Need for the Rule

Despite genuine progress and a landscape of communities transformed in the more than 40 years since the Fair Housing Act was enacted, the ZIP code in which a child grows up all too often remains a strong predictor of that child's life course. There are communities that remain segregated by classes protected by the Fair Housing Act. Racially-concentrated areas of poverty exist in virtually every metropolitan area. Disparities in access to important community assets prevail in many instances.

Efforts to not only combat ongoing discrimination, but increase housing choice and access to opportunity are at the core of HUD's fair housing efforts. However, HUD's efforts to date to have its grantees engage in fair housing planning, by undertaking an analysis of impediments (AI) to housing choice, have not been as effective as HUD intended. Under the AI planning process, HUD did not specify or provide grantees relevant information, and did not clearly link grantees' AIs to community planning efforts, such as the Consolidated Plan and the PHA Plan. Under the GAO report referenced earlier in this preamble, the GAO's analysis of 30 AIs highlighted the most common impediments to fair housing choice: zoning and site selection, inadequate public services in low- and moderate-income areas, less favorable mortgage terms from private lenders, and lack of access to information about fair housing rights and responsibilities (GAO, 2010).

Barriers that inhibit community improvements are as costly as barriers that prevent people from settling in their preferred community. The assets offered by a neighborhood can influence the number and profile of people and families who want to live in such a neighborhood. These assets include good schools; safe streets; access to good jobs; a good health infrastructure; available services such as childcare, parks and open space; diverse and healthy food choices; and a range of transportation options (including accommodations for disabilities). As an alternative, increasing a neighborhood's appeal to families, families with different income and ethnic profiles, can encourage a more diversified population and reduce isolation, thus advancing fair housing goals.

GAO's report recommended that HUD establish rigorous standards for submission, checking, and verification of AIs, and GAO recommended measuring grantees' progress in addressing fair housing impediments. HUD's new regulations being promulgated by this final rule adopt these recommendations.

The new regulation provides a fair housing planning process that builds upon the Consolidated Plan and the PHA planning process, utilizing planning procedures familiar to HUD's program participants. As noted earlier, the regulations provide for grantees to submit their AFHs to HUD, every 5 years, and for HUD to review and evaluate AFHs to determine whether to accept or not accept. Although HUD will provide nationally available data to program participants, the regulations recognize the value of local data, which may be more relevant and current than HUD-provided data. Accordingly, program participants must describe any local data utilized in development of their AFH. The regulations also impose a separate community participation process for the AFH, but using the procedures already in place for the community participation process required by the Consolidated Plan and PHA Plan.

Benefits

The benefits of this rule can be significant. HUD and its grantees have a statutory duty to affirmatively further fair housing. This is not an administrative requirement that can be waived by HUD. As the preamble to the proposed rule provided and reiterated in the preamble to this final rule, the AI process, utilized to date, has been highly criticized as not an effective AFFH tool. The outcomes that HUD seeks from this rule are those intended by the Fair Housing Act—overcoming historic patterns of segregation, promoting fair housing choice, and fostering inclusive communities that are free from discrimination.

Executive Order 13563 (Improving Regulation and Regulatory Review, issued in January 2011) allows regulatory agencies ''where appropriate and permitted by law'' to ''consider (and discuss qualitatively) values that are

difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' While the final rule imposes increased costs of data collection and paperwork on participating jurisdictions and PHAs most of the positive impacts entail changes in equity, human dignity, and fairness. If the rule prompts communities to promote a more racially and socio-economically equitable allocation of neighborhood services and amenities, residents would enjoy the mere sense of fairness from the new distribution. Elevating communities out of segregation revitalizes the dignity of residents who felt suppressed under previous housing and zoning regimes. Quantifying such factors as fairness and dignity is likely impossible, yet these values are the crux of the final rule. Since the rule primarily results in such unquantifiable impacts, it is appropriate to consider many of its effects in qualitative terms.

The new AFFH regulations are designed and intended to improve the process for carrying out a statutory mandate, potentially improving the lives of protected classes who face barriers to fair housing choice. The best outcome of the rule would be for each program participant to have the capacity and a well-considered strategy to affirmatively further fair housing. The regulations, however, do not prescribe, compel, or enforce concrete actions that must be taken by HUD's program participants. The regulations instead encourage a more engaged and data-driven approach to assessing the state of fair housing and planning actions.

Increasing a neighborhood's appeal to families with different income and ethnic profiles can encourage a more diversified population and reduce isolation, thus advancing fair housing goals. A key challenge in transforming neighborhoods and promoting integrated communities is preserving their affordability and highlighting their appeal without radically changing their character. Transformation, particularly of lower income neighborhoods, can induce gentrification, which can help advance fair housing goals and integration, but it can also change the ethnic mix to the extent that the minorities who originally populated the neighborhood are no longer present, and thus do not accrue the benefit of the initial investments. The rule strives to establish a balanced approach, as discussed earlier in this rule, to avoid such outcomes that could negate the progress strived to be achieved by the new regulations.

Costs

The rule's impacts on program participants are associated with executing the envisioned planning process. Though HUD estimates new costs exceed new cost savings, the final rule makes several key changes that will reduce costs and burden while replacing the AI process with the new AFH process. First, the final rule advises that HUD will provide versions of the Assessment Tools (or Template), the document by which a program participant will document its assessment of fair housing issues in its geographic area, that are tailored to the roles and responsibilities of the various program participants covered by this rule. HUD agreed with commenters that a one size Assessment Tool does not fit all and that Assessment Tools tailored to the roles and responsibilities of the various program participants, whether they are entitlement jurisdictions, States, or public housing agencies (PHAs), will eliminate examination of areas that are outside of a program participant's area of responsibility. Second, HUD recognizes that all program participants do not have the same recourses and capacity and HUD provides additional time for small entities, qualified PHAs (as defined by statute) and jurisdictions that receive a Community Development Block Grant (CDBG) of $500,000 or less, to complete their first AFH. Third, HUD provides a staggered submission deadline for program participants to submit their first AFH. As reflected in the proposed rule, HUD intends to provide all program participants with considerable time to transition from the current AI approach to the new AFH approach. Fourth, the final rule provides that a program participant that undertook a Regional AI in connection with a grant awarded under HUD's Fiscal Year 2010 or 2011 Sustainable Communities Competition is not required to undertake an AFH for the first AFH submission stage.

While these significant changes reduce burden and costs and while the new AFH approach builds upon the existing Consolidated Planning and PHA Planning processes, HUD recognizes that there will be costs. The new AFH will involve additional document preparation. Costs associated with such preparation are not significantly increased because States, local governments, and PHAs are already required to address analyses comparable to those required by the AFH, such as disproportionate housing needs, and undertake activities to offer fair housing choice, and maintain records of the activities and their impact. However, the new AFH involves a separate community participation process, and HUD recognizes that this new participation process entails additional costs. Accordingly, the aggregate compliance cost on local entities is expected to be in the range of $25 million per year after the second year of implementation, $9 million for HUD, for a total of $34 million.

There will also be costs associated with the strategies and actions program participants take to address the goals of the AFH. However, the rule covers program participants subject to a diversity of local conditions and economic and social contexts. Therefore, this analysis is unable to quantify the outcomes of the process to identify (1) barriers to fair housing, (2) program participants' decisions on which barriers to address, (3) the types of policies to address those barriers, and (4) those policies' effects on protected classes. The precise outcomes of the AFFH planning process are uncertain, but the rule will enable each jurisdiction to plan meaningfully.

The net change in burden for specific local entities will depend on the extent to which they have been complying with the planning process already in place. The local entities that have been diligent in completing rigorous AIs may experience a net decrease in administrative burden as a result of the revised process. Many program participants spend considerable time and funds trying in good faith to comply with the existing AI requirements, given the absence of specificity, and for those program participants, the new AFH process, given its specificity should be easier and less costly.

PHAs, which are not required to prepare AIs, may already spend considerable time cooperating with local governments by drawing upon the information and housing needs analysis in the local Consolidated Plan to inform the PHA plan and assessing the potential effectiveness of strategies such as local preferences. Indeed PHAs are currently required to certify that the PHA Plan is consistent with the consolidated plan applicable to the PHA. However, the demands of the new process are expected to result in a net increase of administrative burden for entities that have not regularly conducted an analysis of impediments to barriers to fair housing choice. For these entities, the new AFH process will result in an increase in burden and cost. Similarly, the burden of the rule will vary by data aptitude and resources of the program participant. Entities that have invested in data systems and are

able to access more easily relevant local data would in all likelihood have a reduced burden. A program participant that already collects data and employs analysts who study local trends will be able to respond with little additional effort compared to a program participant that does not have this capacity.

Summary Tables

The primary compliance costs are for the HUD program participants to prepare a more rigorous five year plan. The cost will depend upon on the difficulty of preparation for a participant as well as how different the new fair housing planning process is from current practices. About $3 million annually of these costs are comprised of training and public participation costs. In addition to the burden on HUD program participants, HUD itself will need to hire staff to implement the rule; provide data support; and review submitted AFHs.

TABLE—ANNUAL COMPLIANCE COSTS

Compliance costs in a typical year ($millions)			
Costs to all grantees			
	Primary Estimate	Lower Bound	Upper Bound
Analysis	22	4	39
Training	2.2	0.8	2.2
Participation	1.2	1.2	1.2
Total	25.4	6.0	42.4

* **Note:** Compliance Costs in first two years are less.

TABLE—ANNUAL TOTAL COSTS AND HUD RESOURCE COSTS

	Primary estimate	Lower bound	Upper bound
Annual Costs to HUD			
HUD Costs	9	.....	.....
Annual Total Costs to Grantees and HUD			
Total	34.4	15.0	51.4

HUD judges the merits of this rule by the value it can create for protected classes. Ultimately, that value will be created by new program participant policies that result from the improved planning and analytical process. Section 5 of HUD's Regulatory Impact Analysis assesses several examples of policies that may be pursued by program participants in response to the new AFFH process. While this list is far from exhaustive, it does provide insight into the types of impacts we can expect from this rule. As such, the impacts are summarized in the table below.

TABLE—SUMMARY OF IMPACTS OF NEW GRANTEE POLICY EXAMPLES

Potential rule outcome	Potential benefits and transfers	Potential costs
Inclusionary Zoning Policies	Transfer: Housing units and associated locational amenities that would have otherwise been market-rate are transferred to protected classes.	Costs: Reductions in consumer and producer surplus (deadweight loss) associated with increased prices and reduced quantities.
Removal of Harmful Regulations that act as Barriers to Fair Housing (e.g. minimum lot size requirements).	Benefit: Increased consumer surplus from reduction in prices and increased quantities.	None.
Creation of New Amenities (Transit Stop Example).	Benefit: Reductions in commute times or costs	Costs: Construction, maintenance, and operating costs.
Mobility Policies	Transfer: Units and associated locational amenities that otherwise would have been market-rate, are transferred to protected classes.	Costs: Administrative costs associated with implementing mobility programs (e.g. paperwork costs and outreach to target landlords.)

Summary of Impact

The AFFH regulations being promulgated by this final rule are designed and expected to improve the process for carrying out a statutory mandate, potentially improving the lives of protected classes who face barriers to fair housing choice. As presented above, HUD's Regulatory Impact Analysis estimates compliance costs for its program participants and costs to HUD to implement the rule.

Actions taken by program participants as a result of this rule may result in new local approaches to reducing segregation, eliminating racially concentrated areas of poverty, reducing disparities in access to opportunity, and reducing disproportionate housing needs. HUD believes that some of these new approaches would better achieve the goals of fair housing, meaning that communities would be more integrated, fewer people would live in high-

poverty, segregated neighborhoods, and access to high-quality education, job opportunities, and other community assets would be more equal.

The preceding provides an overview of the analysis that is more fully discussed in HUD's Regulatory Impact Analysis, and which can be found at HUD's docket for this rule at *www.regulations.gov*. HUD's Regulatory Flexibility Analysis below highlights changes made at the final rule stage to minimize burden on small entities.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

HUD anticipates that the final rule will strengthen the way in which HUD and its program participants will take affirmative steps to further fair housing under the Fair Housing Act. Although local governments, States, and PHAs must affirmatively further fair housing independent of any regulatory requirement imposed by HUD, HUD recognizes its statutory responsibility to provide leadership and direction in this area under the Fair Housing Act, while preserving local determination of fair housing needs and strategies.

To help program participants more effectively meet their statutory obligation to affirmatively further fair housing, this rule establishes a fair housing planning process, the AFH process, to assist program participants in identifying barriers to fair housing choice in their areas. The AFH approach replaced the prior AI process, which did not work as effectively as HUD initially envisioned. Although the fair housing planning process established by this rule presents a more comprehensive approach than the prior AI process, HUD designed the approach to minimize burden to the extent feasible. The rule minimizes burden by coordinating the AFH with existing planning processes, the consolidated plans for State and local governments, and PHA Plans for PHAs.

The AFH approach requires program participants to complete a fair housing analysis using factors stated in the rule along with HUD-provided data, which is national in scope, and to supplement the HUD-provided data where relevant and easily obtainable, with local data. This analysis will then be updated every 3 to 5 years through the consolidated plan for States and local governments, and every 5 years through the PHA Plan for PHAs, as a basis for strategies to address identified factors that contribute to or impede fair housing choice and access to opportunity, such as quality schools or improved transportation. Thus, part of the burden minimization presented by this approach is to require such analysis not annually but every 3 to 5 years. HUD believes that given the comprehensive nature of this new approach, the analysis should sustain a multi-year span.

In addition to building upon existing planning processes, this rule further strives to minimize burden by HUD by providing program participants with data on access to opportunity through categories such as education, employment, low poverty exposure, and transportation, as well as patterns of integration and segregation, racially or ethnically concentrated areas of poverty, disproportionate housing needs based on protected class, and data on national trends in housing discrimination. The national data will be provided at the time of the issuance of the Assessment Tool, which is currently undergoing the approval process under the Paperwork Reduction Act. The 60-day notice, required under the Paperwork Reduction Act, can be found at 79 FR 57949 (September 26, 2014).

With HUD-provided data and any additional local data provided by program participants, program participants can better identify, in their areas, patterns of integration and segregation, disparities in access to opportunity by members of protected classes, racially or ethnically concentrated areas of poverty, and disproportionate housing needs based on protected class. With such identification, program participants can focus on areas for improvement, develop strategies to address barriers to fair housing choice, and prioritize where resources will be deployed first. To further ease burden on program participants, through this rule, HUD commits to be available to provide technical assistance to program participants in the development of their AFHs.

The provision of data by HUD, and the agency's active role in assisting program participants with an AFH, will minimize burden for all program participants, large and small, in meeting their statutory obligation to affirmatively further fair housing.

At this final rule stage and in response to public comment, HUD has taken additional steps to reduce burden on entities that are small in size or may, notwithstanding size, have less capacity to perform the assessment of fair housing as provided in the rule. HUD recognizes that small program participants may have extremely limited staff or, as a result of funding shortages, currently struggle to effectively carry out program requirements. This final rule provides that, while all participants will be given significant lead time to complete their first AFH, program participants that are PHAs, entitlement jurisdictions receiving an FY 2015 CDBG grant of $500,000 or less, States (including State PHAs submitting alone), and Insular Areas are all provided with the option to submit their first AFH at a date later than that required for entitlement jurisdictions that receive an FY 2015 CDBG grant of more than $500,000.

This submission structure extends the time that the staff of these program participants have to complete their first AFH, submitted through the Assessment Tool as provided in the rule. The delayed submission date for the first AFH not only extends the time in which staff of these program participants may work with HUD on addressing any issues that arise in completing the Assessment Tool, but they will have the benefit of the experience of those program participants that were the first to submit their AFHs. It is expected that after submission of the first AFH, program participants will have both experience and a system in place, making future submissions an easier task.

HUD also intends to design an Assessment Tool that is tailored for program participants other than entitlement jurisdictions that receive an FY 2015 CDBG grant of more than $500,000, another measure designed to minimize burden. HUD believes that through the measures taken in this rule—HUD-provided data, technical assistance, a delayed submission deadline for the first AFH, and a planned tailored Assessment Tool—HUD has minimized burden associated with the new AFH approach, without, however, minimizing the effectiveness of the new approach. As a result of these measures, this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct

compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order. HUD anticipates that the rule will assist program participants of HUD funds in undertaking their actions and strategies to affirmatively further fair housing. As HUD has noted in the preceding section discussing the Regulatory Flexibility Act and in the Background section of this preamble, the obligation to affirmatively further fair housing is imposed by statute directly on local governments, States, and PHAs, as the agencies charged with administering the Fair Housing Act.

HUD is responsible for overseeing that its programs are administered in a manner that furthers the purposes and policies of fair housing and entities receiving HUD funds fulfill their affirmatively furthering fair housing obligation.

The approach taken by HUD in this rule is to help local governments, States, and PHAs meet this obligation in a way that is meaningful, but without undue burden. As noted throughout this preamble, HUD will provide local and regional data on patterns of integration and segregation and access to community assets in education, neighborhood stability, credit, employment, transportation, health, and other community amenities, as well as national trends in housing discrimination. This approach, in which HUD offers data, clear standards, guidance, and technical assistance, is anticipated to reduce the burden and cost that are involved in current regulatory schemes governing affirmatively furthering fair housing. Since Federal law requires states and local governments to affirmatively further fair housing, there is no preemption, by this rule, of State law.

Paperwork Reduction Act

The information collection requirements of this rule are those largely contained in the Assessment Tool. The Assessment Tool consists of questions to the grantees to solicit information to help grantees in the fair housing planning required by this rule. The Assessment Tool is undergoing the required notice and solicitation of public comment process required by the Paperwork Reduction Act. This process commenced with the first notice published by HUD on September 26, 2014. When this process has been concluded, HUD will submit the information collection requirements to OMB for approval. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends parts 5, 91, 92, 570, 574, 576, and 903 of title 24 of the Code of Federal Regulations as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

■ 2. Add an authority citation for part 5, subpart A, to read as follows:

Authority: 29 U.S.C. 794, 42 U.S.C. 1437a, 1437c, 1437c–1(d), 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936; 42 U.S.C. 3600–3620; 42 U.S.C. 5304(b); 42 U.S.C. 12101 *et seq.;* 42 U.S.C. 12704–12708; E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

■ 3. Subpart A is amended by adding §§ 5.150–5.152, 5.154, 5.156, 5.158, 5.160, 6.162, 5.164, 5.166, 5.168, and 5.169–5.180 under an undesignated center heading to read as follows:

Affirmatively Furthering Fair Housing

Sec.

5.150 Affirmatively Furthering Fair Housing: Purpose.
5.151 Affirmatively Furthering Fair Housing: Implementation.
5.152 Definitions.
5.154 Assessment of Fair Housing (AFH).
5.156 Joint and Regional AFHs.
5.158 Community participation, consultation, and coordination.
5.160 Submission requirements.
5.162 Review of AFH.
5.164 Revising an accepted AFH.
5.166 AFFH certification.
5.168 Recordkeeping.
5.167–5.180 [Reserved]

Affirmatively Furthering Fair Housing

§ 5.150 Affirmatively Furthering Fair Housing: Purpose.

Pursuant to the affirmatively furthering fair housing mandate in

section 808(e)(5) of the Fair Housing Act, and in subsequent legislative enactments, the purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations in §§ 5.150 through 5.180 is to provide program participants with an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The regulations establish specific requirements for the development and submission of an Assessment of Fair Housing (AFH) by program participants (including local governments, States, and public housing agencies (PHAs)), and the incorporation and implementation of that AFH into subsequent consolidated plans and PHA Plans in a manner that connects housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing. A program participant's strategies and actions must affirmatively further fair housing and may include various activities, such as developing affordable housing, and removing barriers to the development of such housing, in areas of high opportunity; strategically enhancing access to opportunity, including through: Targeted investment in neighborhood revitalization or stabilization; preservation or rehabilitation of existing affordable housing; promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and improving community assets such as quality schools, employment, and transportation.

§ 5.151 Affirmatively Furthering Fair Housing: Implementation.

Section 5.160 of the AFH regulations provides the date by which program participants must submit their first AFH. A program participant's AFH submission date is the date by which the program participant must comply with the regulations in §§ 5.150 through 5.180. Until such time, the program participant shall continue to conduct an analysis of impediments, as required of the program participant under one or more of the HUD programs listed in § 5.154, in accordance with requirements in effect prior to August 17, 2015.

§ 5.152 Definitions.

For purposes of §§ 5.150 through 5.180, the terms ''consolidated plan,'' ''consortium,'' ''unit of general local government,'' ''jurisdiction,'' and ''State'' are defined in 24 CFR part 91. For PHAs, ''jurisdiction'' is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.180 and related amendments in 24 CFR parts 91, 92, 570, 574, 576, and 903:

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.

Assessment of Fair Housing (assessment or AFH) means the analysis undertaken pursuant to § 5.154 that includes an analysis of fair housing data, an assessment of fair housing issues and contributing factors, and an identification of fair housing priorities and goals, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH) or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).

Assessment Tool refers collectively to any forms or templates and the accompanying instructions provided by HUD that program participants must use to conduct and submit an AFH pursuant to § 5.154. HUD may provide different Assessment Tools for different types of program participants. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA), the Assessment Tool will be subject to periodic notice and opportunity to comment in order to maintain the approval of the Assessment Tool as granted by the Office of Management and Budget (OMB) under the PRA.

Community participation, as required in § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, a consideration of the views and recommendations received, and a process for incorporating such views and recommendations into decisions and outcomes. For HUD regulations implementing the Housing and Community Development Act of 1974, the statutory term for ''community participation'' is ''citizen participation,'' and, therefore, the regulations in 24 CFR parts 91, 92, 570, 574, and 576 use this term.

Consolidated plan program participant means any entity specified in § 5.154(b)(1).

Contributing factor. See definition of ''fair housing contributing factor'' in this section.

Data. The term ''data'' refers collectively to the sources of data provided in paragraphs (1) and (2) of this definition. When identification of the specific source of data in paragraph (1) or (2) is necessary, the specific source (HUD-provided data or local data) will be stated.

(1) *HUD-provided data.* As more fully addressed in the Assessment Tool, the term ''HUD-provided data'' refers to HUD-provided metrics, statistics, and other quantified information required to be used with the Assessment Tool. HUD-provided data will not only be provided to program participants but will be posted on HUD's Web site for availability to all of the public;

(2) *Local data.* As more fully addressed in the Assessment Tool, the term ''local data'' refers to metrics, statistics, and other quantified information, subject to a determination of statistical validity by HUD, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and are necessary for the completion of the AFH using the Assessment Tool.

Disability. (1) The term ''disability'' means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment.

(2) The term ''disability'' as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008. This definition does not change the definition of ''disability'' or ''disabled person'' adopted pursuant to a HUD program statute for purposes of determining an individual's eligibility

to participate in a housing program that serves a specified population.

Disproportionate housing needs refers to a condition in which there are significant disparities in the proportion of members of a protected class experiencing a category of housing need when compared to the proportion of members of any other relevant groups or the total population experiencing that category of housing need in the applicable geographic area. For purposes of this definition, categories of housing need are based on such factors as cost burden, severe cost burden, overcrowding, and substandard housing conditions, as those terms are applied in the Assessment Tool.

Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. Fair housing choice encompasses:

(1) Actual choice, which means the existence of realistic housing options;

(2) Protected choice, which means housing that can be accessed without discrimination; and

(3) Enabled choice, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual's needs as required under Federal civil rights law, including disability-related services that an individual needs to live in such housing.

Fair housing contributing factor (or contributing factor) means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues, as provided in § 5.154.

Fair housing issue means a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing. Participation in ''housing programs serving specified populations,'' as defined in this section, does not present a fair housing issue of segregation, provided that such programs are administered by program participants so that the programs comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Fair housing enforcement and fair housing outreach capacity means the ability of a jurisdiction, and organizations located in the jurisdiction, to accept complaints of violations of fair housing laws, investigate such complaints, obtain remedies, engage in fair housing testing, and educate community members about fair housing laws and rights. This definition covers any State or local agency that enforces a law substantially equivalent to the Fair Housing Act (see 24 CFR part 115) and any organization participating in the Fair Housing Initiative Programs (see 24 CFR part 125).

Geographic area means a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or another applicable area (*e.g.,* census tract, neighborhood, Zip code, block group, housing development, or portion thereof) relevant to the analysis required to complete the assessment of fair housing, as specified in the Assessment Tool.

Housing programs serving specified populations. Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:

(1) Serve specific identified populations; and

(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Insular area has the same meaning as provided in § 570.405.

Integration means a condition, within the program participant's geographic area of analysis, as guided by the Assessment Tool, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (addressing 28 CFR 35.130 and providing guidance on the American with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

Joint participants refers to two or more program participants conducting and submitting a single AFH (a joint AFH), in accordance with § 5.156 and 24 CFR 903.15(a)(1) and (2), as applicable.

Local knowledge. As more fully addressed in the Assessment Tool, local knowledge means information to be provided by the program participant that relates to the participant's geographic areas of analysis and that is relevant to the program participant's AFH, is known or becomes known to the program participant, and is necessary for the completion of the AFH using the Assessment Tool.

Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

Program participants means any entities specified in § 5.154(b).

Protected characteristics are race, color, religion, sex, familial status, national origin, having a disability, and having a type of disability.

Protected class means a group of persons who have the same protected characteristic; *e.g.,* a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with

disabilities and a member of the protected class of persons with mobility disabilities.

Qualified public housing agency (Qualified PHA). Refers to a PHA*:*

(1) For which the sum of:

(i) The number of public housing dwelling units administered by the PHA; and

(ii) The number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the PHA is 550 or fewer; and

(2) That is not designated under section 6(j)(2) of the United States Housing Act of 1937 as a troubled PHA, and does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.

Racially or ethnically concentrated area of poverty means a geographic area with significant concentrations of poverty and minority populations.

Regionally collaborating participants refers to joint participants, at least two of which are consolidated plan program participants. A PHA may participate in a regional assessment in accordance with PHA Plan participation requirements under 24 CFR 903.15(a)(1). Regionally collaborating participants conduct and submit a single AFH (regional AFH) in accordance with § 5.156.

Segregation means a condition, within the program participant's geographic area of analysis, as guided by the Assessment Tool, in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area. For persons with disabilities, segregation includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (See 28 CFR part 35, appendix B, addressing 25 CFR 35.130.) Participation in ''housing programs serving specified populations'' as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs): The Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Significant disparities in access to opportunity means substantial and measurable differences in access to educational, transportation, economic, and other important opportunities in a community, based on protected class related to housing.

§ 5.154 Assessment of Fair Housing (AFH).

(a) *General.* To develop a successful affirmatively furthering fair housing strategy, it is central to assess the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs. For HUD program participants already required to develop plans for effective uses of HUD funds consistent with the statutory requirements and goals governing such funds, an AFH will be integrated into such plans.

(b) *Requirement to submit an AFH.* In furtherance of the statutory obligation to affirmatively further fair housing, an AFH must be developed following the AFH consultation, content, and submission requirements described in §§ 5.150 through 5.180, and submitted in a manner and form prescribed by HUD by the following entities:

(1) Jurisdictions and Insular Areas that are required to submit consolidated plans for the following programs:

(i) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D and I);

(ii) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(iii) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(iv) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(2) Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C.1437g).

(c) *Fair housing data.* Program participants will use HUD-provided data, as defined within the definition of ''data'' in § 5.152, and supplement the HUD-provided data, as needed, with local data and local knowledge, as guided by the Assessment Tool.

(d) *Content.* Using the Assessment Tool prescribed by HUD, each program participant shall conduct an AFH for the purpose of examining its programs, jurisdiction, and region, and identifying goals to affirmatively further fair housing and to inform fair housing strategies in the consolidated plan, annual action plan, the PHA Plan and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environmental related plans. The AFH's analysis, goals, and priorities will address integration and segregation; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs based on race, color, religion, sex, familial status, national origin, and disability. The AFH will assess the jurisdiction's fair housing enforcement and fair housing outreach capacity. At a minimum, the AFH will include the following elements:

(1) *Summary of fair housing issues and capacity.* The AFH must include a summary of fair housing issues in the jurisdiction, including any findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or other civil rights laws, an assessment of compliance with existing fair housing laws and regulations, and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.

(2) *Analysis of data.* Using HUD-provided data, local data, local knowledge, including information gained through community participation, and the Assessment Tool, the program participant will undertake the analysis required by this section. This analysis will address the following to the extent the data or local knowledge are informative of the following:

(i) Identification of integration and segregation patterns and trends based on race, color, religion, sex, familial status, national origin, and disability within the jurisdiction and region;

(ii) Identification of racially or ethnically concentrated areas of poverty within the jurisdiction and region;

(iii) Identification of significant disparities in access to opportunity for any protected class within the jurisdiction and region; and

(iv) Identification of disproportionate housing needs for any protected class within the jurisdiction and region.

(3) *Assessment of fair housing issues.* Using the Assessment Tool provided by HUD, the AFH will identify the contributing factors for segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs as identified under paragraph (d)(2) of this section.

(4) *Identification of fair housing priorities and goals.* Consistent with the

identification of fair housing issues, and the analysis and assessment conducted under paragraphs (d)(1) through (3) of this section, the AFH must:

(i) Identify and discuss the fair housing issues arising from the assessment; and

(ii) Identify significant contributing factors, prioritize such factors, and justify the prioritization of the contributing factors that will be addressed in the program participant's fair housing goals. In prioritizing contributing factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance; and

(iii) Set goals for overcoming the effects of contributing factors as prioritized in accordance with paragraph (d)(4)(ii) of this section. For each goal, a program participant must identify one or more contributing factors that the goal is designed to address, describe how the goal relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify the metrics and milestones for determining what fair housing results will be achieved. For instance, where segregation in a development or geographic area is determined to be a fair housing issue, with at least one significant contributing factor, HUD would expect the AFH to include one or more goals to reduce the segregation.

(5) *Strategies and actions.* To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' consolidated plans, Annual Action Plans, and PHA Plans (including any plans incorporated therein), and need not be reflected in their AFH. Strategies and actions must affirmatively further fair housing and may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, including HUD-assisted housing.

(6) *Summary of community participation.* The AFH must include a concise summary of the community participation process, public comments, and efforts made to broaden community participation in the development of the AFH; a summary of the comments, views, and recommendations, received in writing, or orally at public hearings, during the community participation process; and a summary of any comments, views, and recommendations not accepted by the program participant and the reasons for nonacceptance.

(7) *Review of progress achieved since submission of prior AFH.* For each AFH submitted after the first AFH submission, the program participant will provide a summary of progress achieved in meeting the goals and associated metrics and milestones of the prior AFH, and identify any barriers that impeded or prevented achievement of goals.

§ 5.156 Joint and Regional AFHs.

(a) *General.* For the purposes of sharing resources and addressing fair housing issues from a broader perspective, program participants are encouraged to collaborate to conduct and submit a single AFH, either a joint AFH or regional AFH (as defined in § 5.152), for the purpose of evaluating fair housing issues and contributing factors.

(1) Collaborating program participants, whether joint participants or regionally collaborating participants, need not be located in contiguous jurisdictions and may cross State boundaries, provided that the collaborating program participants are located within the same Core Based Statistical Area (CBSA), as defined by the United States Office of Management and Budget (OMB) at the time of submission of the joint or regional AFH.

(2) Program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The collaboration may proceed upon approval by HUD.

(3) Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants. When collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. Collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

(4) Program participants that intend to prepare either a joint or regional AFH shall promptly notify HUD of such intention and provide HUD with a copy of their written agreement.

(b) *Coordinating program years and submission deadlines.* (1) To the extent practicable, all collaborating program participants must be on the same program year and fiscal year (as applicable) before submission of the joint AFH or regional AFH. (See § 5.160 and 24 CFR 91.10 and 903.5.) The applicable procedures for changing consolidated plan program participant program year start dates, if necessary, are described in 24 CFR 91.10. The applicable procedures for changing PHA fiscal year beginning dates, if necessary, are described in 24 CFR part 903.

(2) If alignment of a program year or fiscal year is not practicable, the submission deadline for a joint AFH or regional AFH must be based on the designated lead entity's program year start date or fiscal year beginning date (as applicable), as provided in § 5.160(c). Within 12 months after the date of AFH acceptance, each collaborating program participant that has a program year start date, or fiscal year beginning date, earlier than the designated lead entity must make appropriate revisions to its full consolidated plan (as described in § 91.15(b)(2) of this chapter), or PHA Plan and any plan incorporated therein, to incorporate strategies and proposed actions consistent with the fair housing goals, issues, and other elements identified in the joint AFH or regional AFH.

(c) *Procedures for withdrawal from a joint or regional collaboration.* A program participant that, for any reason, decides to withdraw from a previously arranged collaborative AFH must promptly notify HUD of the withdrawal. HUD will work with the withdrawing program participant, as well as the remaining collaborative participants, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date that is as close as feasible to the originally intended submission date and is no later than the original joint or regional submission date unless good cause for an extension is shown.

(d) *Community participation.* Collaborating program participants must have a plan for community participation that complies with the requirements of §§ 5.150 through 5.180. The community participation process must include residents, and other interested members of the public, in the jurisdictions of each collaborating program participant, and

not just those of the lead entity. In addition, the community participation process must be conducted in a manner sufficient for each consolidated plan program participant collaborating in a joint AFH or regional AFH to certify that it is following its applicable citizen participation plan, and for each PHA, collaborating in a joint AFH or regional AFH, to satisfy the notice and comment requirements in 24 CFR part 903. To the extent that public notice and comment periods provided in §§ 5.150 through 5.180 or in the consolidated plan or PHA plan regulations differ, the longer period shall apply. A material change that requires any collaborating program participant to revise its AFH pursuant to § 5.164(a)(1) will trigger a requirement to revise the joint or regional AFH.

(e) *Content of the joint or regional AFH.* A joint or regional AFH must include the elements required under § 5.154(d). A joint or regional AFH does not relieve each collaborating program participant from its obligation to analyze and address local and regional fair housing issues and contributing factors that affect housing choice, and to set priorities and goals for its geographic area to overcome the effects of contributing factors and related fair housing issues.

§ 5.158 Community participation, consultation, and coordination.

(a) *General.* To ensure that the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement in the development of the AFH and in the incorporation of the AFH into the consolidated plan, PHA Plan, and other required planning documents. To ensure that the AFH, the consolidated plan, and the PHA Plan and any plan incorporated therein are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. Such communications may be met, as appropriate, by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the program participant's official government Web site, and as well at libraries, government offices, and public places. Program participants shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable. At a minimum, whether a program participant is preparing an AFH individually or in combination with other program participants, AFH community participation must include the following for consolidated plan program participants and PHAs (as applicable):

(1) *Consolidated plan program participants.* The consolidated plan program participant must follow the policies and procedures described in its applicable citizen participation plan, adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401), in the process of developing the AFH, obtaining community feedback, and addressing complaints. The jurisdiction must consult with the agencies and organizations identified in consultation requirements at 24 CFR part 91 (see 24 CFR 91.100, 91.110, and 91.235).

(2) *PHAs.* PHAs must follow the policies and procedures described in 24 CFR 903.13, 903.15, 903.17, and 903.19 in the process of developing the AFH, obtaining Resident Advisory Board and community feedback, and addressing complaints.

(b) *Coordination.* (1) As described in 903.15, a PHA may fulfill its responsibility to conduct an AFH by:

(i) Participating with a consolidated plan program participant, including State jurisdictions; or

(ii) Participating with one or more PHAs in the planning, and preparation of the AFH; or

(iii) Preparing its own AFH.

(2) When working with other program participants, PHAs are encouraged to enter into Memorandums of Understanding (MOUs) to clearly define the functions, level of member participation, method of dispute resolution, and decisionmaking process of the program participants, in the creation of the AFH.

§ 5.160 Submission requirements.

(a) *First AFH*—(1) *Submission deadline for program participants.* (i) For each program participant listed in this paragraph (a)(1)(i), the first AFH shall be submitted no later than 270 calendar days prior to the start of:

(A) For consolidated plan participants not covered in paragraph (a)(1)(i)(B) or (C) of this section, the program year that begins on or after January 1, 2017 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and

(B) For consolidated plan participants whose fiscal year (FY) 2015 CDBG grant is $500,000 or less, the program year that begins on or after January 1, 2018 for which a new consolidated plan is due, as provided in 24 CFR 91.15(b)(2); and

(C) For consolidated plan participants that are Insular Areas or States, the program that begins on or after January 1, 2018 for which a new consolidated is due, as provided in 24 CFR 91.15(b)(2); and

(D) For PHAs, except for qualified PHAs, the PHA's fiscal year that begins on or after January 1, 2018 for which a new 5-year plan is due, as provided in 24 CFR 903.5; and

(E) For qualified PHAs, the PHA's fiscal year that begins on or after January 1, 2019 for which a new 5-year plan is due, as provided in 24 CFR 903.5; and

(F) For joint or regional program participants, the date provided under this paragraph (a)(1) or under paragraph (a)(2) of this section, dependent upon the program participant that is selected to be the lead entity, as provided in § 5.156(b)(2).

(ii) If the time frame specified in this paragraph (a)(1) would result in a first AFH submission date that is less than 9 months after the date of publication of the Assessment Tool that is applicable to the program participant or lead entity, the participant(s)' submission deadline will be extended as specified in that Assessment Tool publication to a date that will not be less than 9 months from the date of publication of the Assessment Tool.

(2) *Exceptions to the first submission deadline for recently completed Regional Analysis of Impediments (RAI).* An entitlement jurisdiction subject to the submission deadline in paragraph (a)(1) of this section is not required to submit an AFH by the deadline specified in such paragraph if the entitlement jurisdiction has completed a HUD-approved RAI in accordance with a grant awarded under HUD's FY 2010 or 2011 Sustainable Communities Competition and submitted the RAI within 30 months prior to the date when the program participant's AFH is due as provided under this section.

(3) *Compliance with existing requirements until first AFH submission.* Except as provided in paragraph (a)(4) of this section, until such time as program participants are required to submit an AFH, the program participant shall continue to conduct an analysis of impediments, as required of the program participant by one or more of the HUD programs listed in § 5.154, in accordance with requirements in effect prior to August 17, 2015.

(4) *New program participants.* For a new program participant that has not submitted a consolidated plan or PHA

plan as of August 17, 2015, HUD will provide the new program participant with a deadline for submission of its first AFH and the strategies and actions to implement an accepted AFH, which shall be incorporated into the program participant's consolidated plan or PHA plan, as applicable, within 18 months of the start date of its first program year or fiscal year, as applicable.

(b) *Second and subsequent AFHs.* After the first AFH, for all program participants, subsequent AFHs are due 195 calendar days before the start of the first year of the next 3 to 5-year cycle (as applicable), as described in paragraph (a)(1) of this section; that is, the subsequent AFH is to precede the next strategic plan under 24 CFR 91.15(b)(2) or 5-year plan under 24 CFR 903.5.

(c) *Collaborative AFHs.* All collaborative program participants, whether joint participants or regionally collaborating participants, will select a lead entity and submit the AFH according to that entity's schedule.

(d) *Frequency.* All program participants shall submit an AFH no less frequently than once every 5 years, or at such time agreed upon in writing by HUD and the program participant, in order to coordinate the AFH submission with time frames used for consolidated plans, participation in a regional AFH, cooperation agreements, PHA Plans, or other plans. (See 24 CFR 91.15(b)(2) and 903.15.)

(e) *Certification.* Each program participant, including program participants submitting a joint or regional AFH, must certify that it will take meaningful actions to further the goals identified in its AFH conducted in accordance with the requirements in §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable. The certification will be required at the time a program participant submits its first AFH and for each AFH thereafter. If a PHA Plan, consolidated plan, Action Plan, or other submission requiring a civil rights-related certification is due prior to the time of submission of the AFH, the participant will complete a certification, in a form provided by HUD, that it will affirmatively further fair housing, or complete such other certification that HUD may require in accordance with applicable program regulations in effect before August 17, 2015.

§ 5.162 Review of AFH.

(a) *Review and acceptance of AFH*—(1) *General.* HUD's review of an AFH is to determine whether the program participant has met the requirements for providing its analysis, assessment, and goal setting, as set forth in § 5.154(d). The AFH will be deemed accepted after 60 calendar days after the date that HUD receives the AFH, unless on or before that date, HUD has provided notification that HUD does not accept the AFH. In its notification, HUD will inform the program participant in writing of the reasons why HUD has not accepted the AFH and the actions that the program participant may take to resolve the nonacceptance.

(2) *Meaning of ''acceptance''.* HUD's acceptance of an AFH means only that, for purposes of administering HUD program funding, HUD has determined that the program participant has provided an AFH that meets the required elements, as set forth in § 5.154(d). Acceptance does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and regulations.

(b) *Nonacceptance of an AFH.* (1) HUD will not accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete. In connection with a regional or joint AFH, HUD's determination to not accept the AFH with respect to one program participant does not necessarily affect the acceptance of the AFH with respect to another program participant.

(i) The following are examples of an AFH that is inconsistent with fair housing and civil rights requirements:

(A) HUD determines that the analysis of fair housing issues, fair housing contributing factors, goals, or priorities contained in the AFH would result in policies or practices that would operate to discriminate in violation of the Fair Housing Act or other civil rights laws;

(B) The AFH does not identify policies or practices as fair housing contributing factors, even though they result in the exclusion of a protected class from areas of opportunity.

(ii) The following are examples of an AFH that is substantially incomplete:

(A) The AFH was developed without the required community participation or the required consultation;

(B) The AFH fails to satisfy a required element in §§ 5.150 through 5.180. Failure to satisfy a required element includes an assessment in which priorities or goals are materially inconsistent with the data or other evidence available to the program participant or in which priorities or goals are not designed to overcome the effects of contributing factors and related fair housing issues.

(2) HUD will provide written notification to the program participant, including each program participant involved in a collaborative AFH (joint or regional AFH), of HUD's nonacceptance of the AFH and the written notification will specify the reasons why the AFH was not accepted and will provide guidance on how the AFH should be revised in order to be accepted.

(c) *Revisions and resubmission.* HUD will provide a program participant, including each program participant involved in a collaborative AFH, with a time period to revise and resubmit the AFH, which shall be no less than 45 calendar days after the date on which HUD provides written notification that it does not accept the AFH. The revised AFH will be deemed accepted after 30 calendar days of the date by which HUD receives the revised AFH, unless on or before that date HUD has provided notification that HUD does not accept the revised AFH.

(d) *Accepted AFH as requirement for consolidated plan and PHA Plan approval.* If a program participant does not have an accepted AFH, HUD will disapprove a consolidated plan (see 24 CFR 91.500) or a PHA Plan (see 24 CFR 903.23) except where delayed submission is otherwise permitted under § 5.156 or § 5.160.

(1) If a consolidated plan program participant fails to submit an AFH as required by § 5.160, HUD may establish an alternative date for the jurisdiction to submit its consolidated plan, but in no event past the August 16 deadline provided in 24 CFR 91.15. Failure to submit a consolidated plan by August 16 of the Federal fiscal year for which funds are appropriated will automatically result in the loss of the CDBG funds to which the jurisdiction would otherwise be entitled.

(2) If a PHA fails to submit the AFH in accordance with § 5.160, the PHA must have an accepted AFH no later than 75 calendar days before the commencement of the PHA's fiscal year to avoid any potential impacts on funding.

§ 5.164 Revising an accepted AFH.

(a) *General*—(1) *Minimum criteria for revising the AFH.* An AFH previously accepted by HUD must be revised and submitted to HUD for review under the following circumstances:

(i) A material change occurs. A material change is a change in circumstances in the jurisdiction of a program participant that affects the information on which the AFH is based

to the extent that the analysis, the fair housing contributing factors, or the priorities and goals of the AFH no longer reflect actual circumstances. Examples include Presidentially declared disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in the program participant's area that are of such a nature as to significantly impact the steps a program participant may need to take to affirmatively further fair housing; significant demographic changes; new significant contributing factors in the participant's jurisdiction; and civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders; or

(ii) Upon HUD's written notification specifying a material change that requires the revision.

(2) *Criteria for revising the AFH.* The criteria that will be used in determining when revisions to the AFH are appropriate must be specified in the citizen participation plan adopted under the consolidated plan pursuant to 24 CFR part 91, and the public participation procedures and significant amendment process required under 24 CFR part 903. Such criteria must include, at a minimum, the circumstances described in paragraph (a)(1) of this section.

(3) *Revised AFH.* A revision pursuant to paragraph (a)(1) of this section consists of preparing and submitting amended analyses, assessments, priorities, and goals that take into account the material change, including any new fair housing issues and contributing factors that may arise as a result of the material change. A revision may not necessarily require the submission of an entirely new AFH. The revision need only focus on the material change and appropriate adjustments to the analyses, assessments, priorities, or goals.

(b) *Timeframe for revision.* (1) Where a revision is required under paragraph (a)(1)(i) of this section, such revision shall be submitted within 12 months of the onset of the material change, or at such later date as HUD may provide. Where the material change is the result of a Presidentially declared disaster, such time shall be automatically extended to the date that is 2 years after the date upon which the disaster declaration is made, and HUD may extend such deadline, upon request, for good cause shown.

(2)(i) Where a revision is required under paragraph (a)(1)(ii) of this section, HUD will specify a date by which the program participant must submit the revision of the AFH to HUD, taking into account the material change, the program participant's capacity, and the need for a valid AFH to guide planning activities. HUD may extend the due date upon written request by the program participant that describes the reasons the program participant is unable to make the deadline.

(ii) On or before 30 calendar days following the date of HUD's written notification under paragraph (a)(1)(ii) of this section, the program participant may advise HUD in writing of its belief that a revision to the AFH is not required. The program participant must state with specificity the reasons for its belief that a revision is not required. HUD will respond on or before 30 calendar days following the date of the receipt of the program participant's correspondence and will advise the program participant in writing whether HUD agrees or disagrees with the program participant. If HUD disagrees, the program participant must proceed with the revision. HUD may establish a new due date that is later than the date specified in its original notification.

(c) *Community participation.* Revisions to an AFH, as described in this section, are subject to community participation. The jurisdiction must follow the notice and comment process applicable to consolidated plan substantial amendments under the jurisdiction's citizen participation plan adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401). A consortium must follow the participation process applicable to consolidated plan substantial amendments under the consortium's citizen participation plan adopted pursuant to 24 CFR 91.401. Insular areas submitting an abbreviated consolidated plan shall follow the citizen participation requirements of 24 CFR 570.441. The PHA must follow the notice and comment process applicable to significant amendments or modifications pursuant to 24 CFR 903.13, 903.15, 903.17, and 903.21.

(d) *Submission to HUD of the revised AFH.* Upon completion, any revision to the AFH must be made public and submitted to HUD at the time of the revision.

(e) *PHAs.* Upon any revision to the AFH pursuant to §§ 5.150 through 5.180, PHAs must revise their PHA Plan within 12 months, consistent with the AFH revision, and pursuant to 24 CFR 903.15(c).

§ 5.166 AFFH certification.

(a) *Certifications.* Program participants must certify that they will affirmatively further fair housing when required by statutes and regulations governing HUD programs. Such certifications are made in accordance with applicable program regulations. Consolidated plan program participants are subject to the certification requirements in 24 CFR part 91, and PHA Plan program participants are subject to the certification requirements in 24 CFR part 903.

(b) *Procedure for challenging the validity of an AFFH certification.* (1) For consolidated plan program participants, HUD's challenge to the validity of an AFFH certification will be based on procedures and standards specified in 24 CFR part 91.

(2) For PHA Plan program participants, HUD's challenge to the validity of an AFFH certification will be based on procedures and standards specified in 24 CFR part 903.

§ 5.168 Recordkeeping.

(a) *General.* Each program participant must establish and maintain sufficient records to enable HUD to determine whether the program participant has met the requirements of this subpart. A PHA not preparing its own AFH in accordance with 24 CFR 903.15(a)(3) must maintain a copy of the applicable AFH and records reflecting actions to affirmatively further fair housing as described in 24 CFR 903.7(o). All program participants shall make these records available for HUD inspection. At a minimum, the following records are needed for each consolidated plan program participant and each PHA that prepares its own AFH:

(1) Information and records relating to the program participant's AFH and any significant revisions to the AFH, including, but not limited to, statistical data, studies, and other diagnostic tools used by the jurisdiction; and any policies, procedures, or other documents relating to the analysis or preparation of the AFH;

(2) Records demonstrating compliance with the consultation and community participation requirements of §§ 5.150 through 5.180 and applicable program regulations, including the names of organizations involved in the development of the AFH, summaries or transcripts of public meetings or hearings, written public comments, public notices and other correspondence, distribution lists, surveys, or interviews (as applicable);

(3) Records demonstrating the actions the program participant has taken to affirmatively further fair housing, including activities carried out in furtherance of the assessment; the program participant's AFFH goals and strategies set forth in its AFH,

consolidated plan, or PHA Plan, and any plan incorporated therein; and the actions the program participant has carried out to promote or support the goals identified in accordance with § 5.154 during the preceding 5 years;

(4) Where courts or an agency of the United States Government or of a State government has found that the program participant has violated any applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) or any applicable civil rights-related program requirement, documentation related to the underlying judicial or administrative finding and affirmative measures that the program participant has taken in response.

(5) Documentation relating to the program participant's efforts to ensure that housing and community development activities (including those assisted under programs administered by HUD) are in compliance with applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) and applicable civil rights related program requirements;

(6) Records demonstrating that consortium members, units of general local government receiving allocations from a State, or units of general local government participating in an urban county have conducted their own or contributed to the jurisdiction's assessment (as applicable) and documents demonstrating their actions to affirmatively further fair housing; and

(7) Any other evidence relied upon by the program participant to support its affirmatively furthering fair housing certification.

(b) *Retention period.* All records must be retained for such period as may be specified in the applicable program regulations.

§§ 5.167–5.180 [Reserved]

PART 91—CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 4. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 5. In § 91.5, the introductory text is revised to read as follows:

§ 91.5 Definitions.

The terms *Affirmatively Furthering Fair Housing, Assessment of Fair Housing or AFH, elderly person*, and *HUD* are defined in 24 CFR part 5.

* * * * *

■ 6. In § 91.100, paragraphs (a)(1) and (5) and (c) are revised and paragraph (e) is added to read as follows:

§ 91.100 Consultation; local governments.

(a) *General.* (1) When preparing the AFH and the consolidated plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons), community-based and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws.

* * * * *

(5) The jurisdiction also should consult with adjacent units of general local government and local and regional government agencies, including local government agencies with metropolitan-wide planning and transportation responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

* * * * *

(c) *Public housing agencies (PHAs).* (1) The jurisdiction shall consult with local PHAs operating in the jurisdiction regarding consideration of public housing needs, planned programs and activities, the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing in the consolidated plan. (See also 24 CFR 5.158 for coordination when preparing an AFH jointly with a PHA.) This consultation will help provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the local government's description of its strategy for affirmatively furthering fair housing and the manner in which it will address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to a troubled PHA to improve the PHA's operations and remove the designation of troubled, as well as obtaining PHA input on addressing fair housing issues in the Public Housing and Housing Choice Voucher programs.

(2) This consultation will also help ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, those funded under a PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the local jurisdiction should work with or consult with the PHA, as appropriate, to identify actions the jurisdiction may take, if any, to assist the PHA in implementing the required remedies. A local jurisdiction may use CDBG funds for eligible activities or other funds to implement remedies required under a Voluntary Compliance Agreement.

* * * * *

(e) *Affirmatively Furthering Fair Housing.* (1) The jurisdiction shall consult with community-based and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws, such as State or local fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent that such entities operate within its jurisdiction. This consultation will help provide a better basis for the jurisdiction's AFH, its certification to affirmatively further fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing.

(2) This consultation must occur with any organizations that have relevant knowledge or data to inform the AFH and that are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the AFH, the consolidated plan, and their implementation.

(3) Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (e) in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.

■ 7. In § 91.105, paragraphs (a)(1) and (a)(2)(i) through (iii) are revised, paragraph (a)(4) is added, and paragraphs (b), (c), (e)(1), (f), (g), (h), (i), (j) and (l) are revised to read as follow:

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan.* (1) The jurisdiction is required to adopt a citizen participation plan that sets forth

the jurisdiction's policies and procedures for citizen participation. (Where a jurisdiction, before August 17, 2015, adopted a citizen participation plan it, will need to amend the citizen participation plan to comply with provisions of this section.)

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the AFH, any revisions to the AFH, the consolidated plan, any substantial amendment to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those persons living in areas designated by the jurisdiction as a revitalization area or in a slum and blighted area and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction must take appropriate actions to encourage the participation of all its citizens, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) in the process of developing and implementing the AFH and the consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations) in the process of developing and implementing the AFH and the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the PHA about the AFH, AFFH strategy, and consolidated plan activities related to its developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.

* * * * *

(4) The citizen participation plan shall describe the jurisdiction's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the community.

(b) *Development of the AFH and the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the AFH and the consolidated plan:

(1)(i) The citizen participation plan must require that at or as soon as feasible after the start of the public participation process the jurisdiction will make the HUD-provided data and any other supplemental information the jurisdiction plans to incorporate into its AFH available to its residents, public agencies, and other interested parties. The jurisdiction may make the HUD-provided data available to the public by cross-referencing to the data on HUD's Web site.

(ii) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to residents, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.

(iii) The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed AFH and the proposed consolidated plan in a manner that affords its residents, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed AFH and the proposed consolidated plan and give reasonable opportunity to examine each document's content. The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the jurisdiction's official government Web site, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the AFH or the consolidated plan (as applicable), and must include a list of the locations where copies of the entire proposed document may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan or the AFH (as applicable) to residents and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing during the development of the AFH or the consolidated plan (as applicable). See paragraph (e) of this section for public hearing requirements, generally.

(4) The citizen participation plan must provide a period, not less than 30 calendar days, to receive comments from residents of the community on the consolidated plan or the AFH (as applicable).

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at the public hearings, in preparing the final AFH or the final consolidated plan (as applicable). A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the final AFH or the final consolidated plan (as applicable).

(c) *Consolidated plan amendments and AFH revisions*—(1)(i) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria for a substantial amendment, changes in the use of CDBG funds from one eligible activity to another.

(ii) *Criteria for revision to the AFH.* The jurisdiction must specify the criteria the jurisdiction will use for determining when revisions to the AFH will be required. (At a minimum, the specified criteria must include the situations described in 24 CFR 5.164.)

(2) The citizen participation plan must provide community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan and revisions to the AFH. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment or any revision to the AFH before the consolidated plan substantial amendment is implemented or the revised AFH is submitted to HUD for review.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan or significant revision to the AFH (as applicable). A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan or revision to the AFH (as applicable).

* * * * *

(e) *Public hearings*—(1)(i) *Consolidated plan.* The citizen participation plan must provide for at least two public hearings per year to obtain residents' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH, and a review of program performance.

(ii) *Minimum number of hearings.* To obtain the views of residents of the community on housing and community development needs, including priority nonhousing community development needs and affirmatively furthering fair housing, the citizen participation plan must provide that at least one of these hearings is held before the proposed consolidated plan is published for comment.

(iii) *Assessment of Fair Housing.* To obtain the views of the community on AFH-related data and affirmatively furthering fair housing in the jurisdiction's housing and community development programs, the citizen participation plan must provide that at least one public hearing is held before the proposed AFH is published for comment.

* * * * *

(f) *Meetings.* The citizen participation plan must provide residents of the community with reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements, in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

(g) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments, HUD-accepted AFH, revisions to the AFH, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(h) *Access to records.* The citizen participation plan must require the jurisdiction to provide residents of the community, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's AFH, consolidated plan, and use of assistance under the programs covered by this part during the preceding 5 years.

(i) *Technical assistance.* The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in commenting on the AFH and in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) *Complaints.* The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, amendments, AFH, revisions, and the performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).

* * * * *

(l) *Jurisdiction responsibility.* The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its consolidated plan or AFH.

■ 8. In § 91.110, paragraph (a) is revised to read as follows:

§ 91.110 Consultation; States.

(a) When preparing the AFH and the consolidated plan, the State shall consult with public and private agencies that provide assisted housing (including any State housing agency administering public housing), health services, social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and homeless persons), and State-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws during preparation of the consolidated plan.

(1) With respect to public housing or Housing Choice Voucher programs, the State shall consult with any housing agency administering public housing or the section 8 program on a Statewide basis as well as all PHAs that certify consistency with the State's consolidated plan. State consultation with these entities may consider public housing needs, planned programs and activities, the AFH, strategies for affirmatively furthering fair housing, and proposed actions to affirmatively further fair housing. This consultation helps provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the State's description of its strategy for affirmatively furthering fair housing, and the manner in which the State will address the needs of public housing and, where applicable, the manner in which the State may provide financial or other assistance to a troubled PHA to improve its operations and remove such designation, as well as in obtaining PHA input on addressing fair housing issues in public housing and the Housing Choice Voucher programs. This consultation also helps ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a

Voluntary Compliance Agreement, the State should consult with the PHA and identify actions the State may take, if any, to assist the PHA in implementing the required remedies.

(2) The State shall consult with State-based and regionally-based organizations that represent protected class members, and organizations that enforce fair housing laws, such as State fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other nonprofit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within the State. This consultation will help provide a better basis for the State's AFH, its certification to affirmatively further fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing. This consultation should occur with organizations that have the capacity to engage with data informing the AFH and be sufficiently independent and representative to provide meaningful feedback on the AFH, the consolidated plan, and their implementation. Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (a)(2) in the development of both the AFH and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.

* * * * *

■ 9. In § 91.115, paragraphs (a)(1) and (2) are revised, paragraph (a)(4) is added, and paragraphs (b), (c), (f), (g), and (h) are revised to read as follows:

§ 91.115 Citizen participation plan; States.

(a) * * *

(1) *When citizen participation plan must be amended.* The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation. (Where a State, before August 17, 2015, adopted a citizen participation plan, it will need to amend the citizen participation plan to comply with provisions of this section.)

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the AFH, any revision to the AFH, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods. A State must take appropriate actions to encourage the participation of all its residents, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities.

(ii) The State shall encourage the participation of Statewide and regional institutions, Continuums of Care, and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan in the process of developing and implementing the AFH and the consolidated plan.

(iii) The State should also explore alternative public involvement techniques that encourage a shared vision of change for the community and the review of program performance; *e.g.,* use of focus groups and use of the Internet.

* * * * *

(4) *Language assistance for those with limited English proficiency.* The citizen participation plan shall describe the State's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require the State to make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons.

(b) *Development of the AFH and the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the AFH and consolidated plan:

(1)(i) The citizen participation plan must require that at or as soon as feasible after the start of the public participation process the State will make HUD-provided data and any other supplemental information the State intends to incorporate into its AFH available to the public, public agencies, and other interested parties. The State may make the HUD-provided data available to the public by cross-referencing to the data on HUD's Web site.

(ii) The citizen participation plan must require that, before the State adopts an AFH or consolidated plan, the State will make available to its residents, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed AFH and the proposed consolidated plan in a manner that affords residents, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine the document's content and to submit comments. The citizen participation plan must set forth how the State will make publicly available the proposed AFH and the proposed consolidated plan and give reasonable opportunity to examine each document's content. To ensure that the AFH, the consolidated plan, and the PHA plan are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. Such communications may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the Internet, on the grantee's official government Web site, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the AFH or the consolidated plan (as applicable), and must include a list of the locations where copies of the entire proposed document(s) may be examined. In addition, the State must provide a reasonable number of free copies of the plan or the AFH (as applicable) to its residents and groups that request a copy of the plan or the AFH.

(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs and proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH, before the proposed consolidated plan is published for comment. To obtain the public's views on AFH-related data and affirmatively furthering fair housing in the State's housing and community development

programs, the citizen participation plan must provide that at least one public hearing is held before the proposed AFH is published for comment.

(i) The citizen participation plan must state how and when adequate advance notice of the hearing will be given to residents, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, HUD would consider 2 weeks adequate.)

(ii) The citizen participation plan must provide that the hearing be held at a time and accessible location convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(iii) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

(4) The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments from residents and units of general local government on the consolidated plan or the AFH (as applicable).

(5) The citizen participation plan shall require the State to consider any comments or views of its residents and units of general local government received in writing, or orally at the public hearings, in preparing the final AFH and the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final AFH or the final consolidated plan (as applicable).

(c) *Amendments*—(1)(i) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the State will use for determining what changes in the State's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria for a consolidated plan, substantial amendment changes in the method of distribution of such funds.

(ii) *Criteria for revision to the AFH.* The State must specify the criteria it will use for determining when revision to the AFH will be appropriate. (At a minimum, the specified criteria must include the situations described in 24 CFR 5.164.)

(2) The citizen participation plan must provide residents and units of general local government with reasonable notice and an opportunity to comment on consolidated plan substantial amendments and any revision to the AFH. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment or revision to the AFH before the consolidated plan substantial amendment is implemented or the revised AFH is submitted to HUD.

(3) The citizen participation plan shall require the State to consider any comments or views of its residents and units of general local government received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan or revision to the AFH (as applicable). A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan or any revision to the AFH (as applicable).

* * * * *

(f) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments, the HUD-accepted AFH, any revision to the AFH, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(g) *Access to records.* The citizen participation plan must require the State to provide its residents, public agencies, and other interested parties with reasonable and timely access to information and records relating to the State's AFH, consolidated plan and use of assistance under the programs covered by this part during the preceding 5 years.

(h) *Complaints.* The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, consolidated plan amendments, the AFH, any revisions to the AFH, and the performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient).

* * * * *

■ 10. In § 91.205, paragraph (b)(2) is revised to read as follows:

§ 91.205 Housing and homeless needs assessment.

* * * * *

(b) * * *

(2) Until the jurisdiction has submitted an AFH, which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), the following assessment shall continue to be included in the consolidated plan. For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group in a category of need is at least 10 percentage points higher than the percentage of persons in the category as a whole. Once the jurisdiction has submitted an AFH, however, this assessment need not be included in the consolidated plan.

* * * * *

■ 11. In § 91.215, paragraph (a)(5) is added to read as follows:

§ 91.215 Strategic plan.

(a) * * *

(5)(i) Describe how the priorities and specific objectives of the jurisdiction under paragraph (a)(4) of this section will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.150 through 5.180.

(ii) For AFH goals not addressed by these priorities and objectives, identify any additional objectives and priorities for affirmatively furthering fair housing.

* * * * *

■ 12. In § 91.220, paragraph (k) is revised to read as follows:

§ 91.220 Action plan.

* * * * *

(k)(1) *Affirmatively furthering fair housing.* Actions it plans to take during the next year that address fair housing goals identified in the AFH.

(2) *Other actions.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies (see § 91.215(a), (b), (i), (j), (k), and (l)).

* * * * *

■ 13. In § 91.225, paragraph (a)(1) is revised to read as follows:

§ 91.225 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 14. Section 91.230 is revised to read as follows:

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the AFH, and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

■ 15. In § 91.235, paragraphs (c)(1) and (4) are revised to read as follows:

§ 91.235 Special case; abbreviated consolidated plan.

* * * * *

(c) *What is an abbreviated plan?*—(1) *Assessment of needs, resources, and planned activities.* An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD. The plan must describe how the jurisdiction will affirmatively further fair housing by addressing issues identified in an AFH conducted in accordance with 24 CFR 5.150 through 5.180.

* * * * *

(4) *Submissions, certifications, amendments, and performance reports.* An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of 24 CFR 570.440. This includes certification that the grantee will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 16. In § 91.305, paragraph (b)(2) is revised to read as follows:

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b) * * *

(2) Until the jurisdiction has submitted an AFH, which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), the following assessment shall continue to be included in the consolidated plan. For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group in a category of need is at least 10 percentage points higher than the percentage of persons in the category as a whole. Once the jurisdiction has submitted an AFH, however, this assessment need not be included in the consolidated plan.

* * * * *

■ 17. In § 91.315, paragraph (a)(5) is added to read as follows:

§ 91.315 Strategic plan.

(a) * * *

(5)(i) Describe how the priorities and specific objectives of the State under § 91.315(a)(4) will affirmatively further fair housing by setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.150 through 5.180.

(ii) For AFH goals not addressed by these priorities and objectives, identify any additional objectives and priorities for affirmatively furthering fair housing.

* * * * *

■ 18. In § 91.320, paragraph (j) is revised to read as follows:

§ 91.320 Action plan.

* * * * *

(j)(1) *Affirmatively furthering fair housing.* Actions it plans to take during the next year that address fair housing goals identified in the AFH.

(2) *Other actions.* Actions it plans to take during the next year to implement its strategic plan and address obstacles to meeting underserved needs, foster and maintain affordable housing (including allocation plans and policies governing the use of Low-Income Housing Credits under 26 U.S.C. 42, which are more commonly referred to as Low-Income Housing Tax Credits), evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, enhance coordination between public and private housing and social service agencies, address the needs of public housing (including providing financial or other assistance to troubled PHAs), and encourage public housing residents to become more involved in management and participate in homeownership.

* * * * *

■ 19. In § 91.325, paragraph (a)(1) is revised to read as follows:

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 20. Section 91.415 is revised to read as follows:

§ 91.415 Strategic plan.

Strategies and priority needs must be described in the consolidated plan, in accordance with the provisions of § 91.215, for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members

of the consortium. The consortium must set forth its priorities for allocating housing (including CDBG and ESG, where applicable) resources geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), setting forth strategies and actions consistent with the goals and other elements identified in an AFH conducted in accordance with 24 CFR 5.150 through 5.180, describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

■ 21. In § 91.420, paragraph (b) is revised to read as follows:

§ 91.420 Action plan.

* * * * *

(b) *Description of resources and activities.* The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan, including actions the consortium plans to take during the next year that address fair housing issues identified in the AFH. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

* * * * *

■ 22. In § 91.425, paragraph (a)(1)(i) is revised to read as follows:

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 23. In § 91.505, add paragraph (d) to read as follows:

§ 91.505 Amendments to the consolidated plan.

* * * * *

(d) The jurisdiction must ensure that amendments to the plan are consistent with its certification to affirmatively further fair housing and the analysis and strategies of the AFH.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 24. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 25. Revise 92.104 to read as follows:

§ 92.104 Submission of a consolidated plan and Assessment of Fair Housing.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 calendar days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91 and an Assessment of Fair Housing (AFH) in accordance with 24 CFR 5.150 through 5.180.

■ 26. In § 92.508, revise paragraph (a)(7)(i)(C) to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(i) * * *

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing, including documentation related to the participating jurisdiction's Assessment of Fair Housing as described in 24 CFR 5.168.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 27. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

■ 28. In § 570.3, revise the introductory text to read as follows:

§ 570.3 Definitions.

The terms *Affirmatively Furthering Fair Housing, Assessment of Fair Housing or AFH, HUD,* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census or the American Community Survey.

* * * * *

■ 29. In § 570.205, paragraph (a)(4)(vii) is revised to read as follows:

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) * * *

(4) * * *

(vii) Assessment of Fair Housing.

* * * * *

■ 30. In § 570.441, paragraphs (b) introductory text, (b)(1) introductory text, (b)(2), (b)(3), (b)(4), (c), (d), and (e) are revised to read as follows:

§ 570.441 Citizen participation—insular areas.

* * * * *

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the AFH and statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set forth the jurisdiction's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings consistent with accessibility and reasonable accommodation requirements in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8, and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable, as well as information and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

* * * * *

(2) Providing technical assistance to groups that are representative of persons of low- and moderate-income that request assistance in commenting on the AFH and developing proposals. The level and type of assistance to be provided is at the discretion of the jurisdiction. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings for the purpose of obtaining residents' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program year. Together, the hearings must address affirmatively furthering fair housing, community development and housing needs, development of proposed activities, proposed strategies and actions for affirmatively furthering fair housing consistent with the AFH, and a review of program performance. There must be reasonable notice of the hearings, and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations, including materials in accessible formats, for persons with disabilities. The jurisdiction must specify in its citizen participation plan

how it will meet the requirement for hearings at times and accessible locations convenient to potential or actual beneficiaries;

(4) Assessing its language needs, identifying any need for translation of notices and other vital documents and, in the case of public hearings, meeting the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate. At a minimum, the citizen participation plan shall require the jurisdiction to make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons;

* * * * *

(c) *Publication of proposed AFH and proposed statement.* (1) The insular area jurisdiction shall publish a proposed AFH and a proposed statement consisting of the proposed community development activities and community development objectives (as applicable) in order to afford affected residents an opportunity to:

(i) Examine the document's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed document; and

(iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed document in one or more newspapers of general circulation and by making copies of the proposed document available on the Internet, on the grantee's official government Web site, and as well at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed document and must include a list of the locations where copies of the entire proposed document may be examined.

(d) *Preparation of the AFH and final statement.* An insular area jurisdiction must prepare an AFH and a final statement. In the preparation of the AFH and final statement, the jurisdiction shall consider comments and views received relating to the proposed document and may, if appropriate, modify the final document. The final AFH and final statement shall be made available to the public. The final statement shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements and any revision to the AFH, the insular area grantee shall:

(1) Furnish its residents with information concerning the amendment to the consolidated plan or any revision to the AFH (as applicable);

(2) Hold one or more public hearings to obtain the views of residents on the proposed amendment to the consolidated plan or revision to the AFH;

(3) Develop and publish the proposed amendment to the consolidated plan or any revision to the AFH in such a manner as to afford affected residents an opportunity to examine the contents, and to submit comments on the proposed amendment to the consolidated plan or revision to the AFH, as applicable;

(4) Consider any comments and views expressed by residents on the proposed amendment to the consolidated plan or revision to the AFH, and, if the grantee finds it appropriate, make modifications accordingly; and

(5) Make the final amendment to the community development program or revision to the AFH available to the public before its submission to HUD.

* * * * *

■ 31. In § 570.486, paragraphs (a)(2), (4), and (5) are revised to read as follows:

§ 570.486 Local government requirements.

(a) * * *

(2) Ensure that residents will be given reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8, and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable, as well as information and records relating to the unit of local government's proposed and actual use of CDBG funds;

* * * * *

(4) Provide technical assistance to groups that are representative of persons of low- and moderate-income that request assistance in developing proposals (including proposed strategies and actions to affirmatively further fair housing) in accordance with the procedures developed by the State. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining residents' views and responding to proposals and questions. Together the hearings must cover community development and housing needs (including affirmatively furthering fair housing), development of proposed activities, and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the State. There must be reasonable notice of the hearings and they must be held at times and accessible locations convenient to potential or actual beneficiaries, with accommodations for persons with disabilities. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

* * * * *

■ 32. In § 570.487, paragraph (b) is revised to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) *Affirmatively furthering fair housing.* The Act requires the State to certify to the satisfaction of HUD that it will affirmatively further fair housing. The Act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Taking meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR5.150 through 5.180;

(2) Taking no action that is materially inconsistent with its obligation to affirmatively further fair housing; and

(3) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

* * * * *

■ 33. In § 570.490, paragraphs (a)(1) and (b) are revised to read as follows:

§ 570.490 Recordkeeping requirements.

(a) *State records.* (1) The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.493. The content of records maintained by the State shall be as jointly agreed upon by HUD and the States and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include documentation related to the State's AFH, as described in 24 CFR part 5,

subpart A (§ 5.168). The records shall also permit audit of the States in accordance with 24 CFR part 85.

* * * * *

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include documentation related to the State's AFH as described in 24 CFR part 5, subpart A (§ 5.168).

* * * * *

■ 34. In § 570.506, paragraph (g)(1) is revised to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(g) * * *

(1) Documentation related to the recipient's AFH, as described in 24 CFR part 5, subpart A (§ 5.168).

* * * * *

■ 35. In § 570.601, paragraph (a)(2) is revised to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

(a) * * *

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180 and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 36. In § 570.904, paragraph (c) is revised to read as follows:

§ 570.904 Equal opportunity and fair housing review criteria.

* * * * *

(c) *Review for fair housing*—(1) *General.* See the requirements in the Fair Housing Act (42 U.S.C. 3601–20), as well as § 570.601(a).

(2) *Affirmatively furthering fair housing.* HUD will review a recipient's performance to determine if it has administered all programs and activities related to housing and urban development in accordance with § 570.601(a)(2), which sets forth the grantee's responsibility to affirmatively further fair housing.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 37. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 38. Section 574.530 is revised to read as follows:

§ 574.530 Recordkeeping.

Each grantee must ensure that records are maintained for a 4-year period to document compliance with the provisions of this part. Grantees must maintain the following:

(a) Current and accurate data on the race and ethnicity of program participants.

(b) Documentation related to the formula grantee's Assessment of Fair Housing, as described in 24 CFR 5.168.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 39. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

■ 40. In § 576.500, revise paragraph (s)(1) to read as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(s) * * *

(1) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements under § 576.407(a) and the affirmative outreach requirements in § 576.407(b), including:

(i) Data concerning race, ethnicity, disability status, sex, and family characteristics of persons and households who are applicants for, or program participants in, any program or activity funded in whole or in part with ESG funds; and

(ii) Documentation required under 24 CFR 5.168 in regard to the recipient's Assessment of Fair Housing and the certification that the recipient will affirmatively further fair housing.

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 41. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

■ 42. The heading of subpart A is revised to read as follows:

Subpart A—Deconcentration of Poverty

■ 43. The heading of subpart B is revised to read as follows:

Subpart B—PHA Plans and Fair Housing Requirements

■ 44. Section 903.1 is revised to read as follows:

§ 903.1 What is the purpose of this subpart?

The purpose of this subpart is to specify the process which a Public Housing Agency, as part of its annual planning process and development of an admissions policy, must follow in order to develop and apply a policy that provides for deconcentration of poverty and income mixing in certain public housing developments.

■ 45. Section 903.2 is amended by:

■ a. Revising the section heading;

■ b. Removing paragraph (d);

■ c. Redesignating paragraph (e) as paragraph (d); and

■ d. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments?

* * * * *

(d) *Relationship between poverty deconcentration and fair housing.* The requirements for poverty deconcentration in paragraph (c) of this section and for fair housing in 24 CFR 903.15(d) arise under separate statutory authorities.

■ 46. In § 903.7, paragraphs (a) and (o) are revised to read as follows:

§ 903.7 What information must a PHA provide in the Annual Plan?

* * * * *

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families;

(iii) Until the PHA has submitted an Assessment of Fair Housing (AFH), which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting list. Once the PHA has submitted an AFH, however, such households need not be addressed in this statement.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable consolidated plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs and the PHA's reasons for choosing its strategy.

* * * * *

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and other applicable Federal civil right laws, and that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs, in accordance with paragraph (o)(3) of this section.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan, including any plan incorporated therein.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of §§ 903.7(o)(1) and 903.15(d) and:

(i) Examines its programs or proposed programs;

(ii) Identifies any fair housing issues and contributing factors within those programs, in accordance with 24 CFR 5.154;

(iii) Specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in the applicable Assessment of Fair Housing consistent with 24 CFR 5.154, in a reasonable manner in view of the resources available;

(iv) Works with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement;

(v) Operates programs in a manner consistent with any applicable consolidated plan under 24 CFR part 91, and with any order or agreement, to comply with the authorities specified in paragraph (o)(1) of this section;

(vi) Complies with any contribution or consultation requirement with respect to any applicable AFH, in accordance with 24 CFR 5.150 through 5.180;

(vii) Maintains records reflecting these analyses, actions, and the results of these actions; and

(viii) Takes steps acceptable to HUD to remedy known fair housing or civil rights violations.

* * * * *

■ 47. Section 903.15 is revised to read as follows:

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan, the Assessment of Fair Housing, and a PHA's Fair Housing Requirements?

(a) The preparation of an Assessment of Fair Housing (AFH) is required once every 5 years, in accordance with 24 CFR 5.150 through 5.180. PHAs have three options in meeting their AFH requirements. PHAs must notify HUD of the option they choose. The options are:

(1) *Option 1: Assessment of Fair Housing with Units of General Local Government or State Governmental Agencies.* (i) A PHA may work with a unit of general local government or State governmental agency in the preparation of the AFH.

(A) A PHA must choose the unit of general local government or State governmental agency in which the PHA is located, unless the PHA's service area is within two or more jurisdictions.

(B) If the PHA serves residents of two or more jurisdictions, the PHA may choose the jurisdiction that most closely aligns to its planning activities under this part and 24 CFR part 905, unless the PHA has preexisting obligations prescribed in a binding agreement with HUD or the courts, such as a Recovery Agreement, Voluntary Compliance Agreement, or Consent Decree.

(C) If a PHA has a preexisting obligation prescribed in a binding agreement with HUD or the courts, the PHA must work with the general unit of local government named in the Agreement or Decree, when preparing the AFH.

(ii) A PHA working with a unit of general local government or State governmental agency in the preparation of the AFH will have fulfilled the requirements of AFH submission when the general unit of local government or State governmental agency submits an AFH.

(iii) If the unit of general local government or state governmental agency's AFH is accepted, all PHAs working with the unit of general local government or State governmental agency in the preparation of the AFH will be covered by the applicable goals contained in the AFH.

(iv) If a PHA joins with a unit of general local government or State governmental agency in the preparation of an AFH, the PHA must ensure that its PHA Plan is consistent with the general unit of local government's or State governmental agency's applicable consolidated plan and its AFH. (See also 24 CFR 5.158 for coordination when preparing an AFH jointly with a jurisdiction.)

(v) PHAs are encouraged to enter into Memorandums of Understanding (MOU) with units of general local government, State governmental agencies, and other PHAs to clearly define the functions, level of member participation, method of dispute resolution, and decisionmaking process of the program participants in the creation of the AFH.

(2) *Option 2: Assessment of Fair Housing with Public Housing Agencies.* (i) A PHA may jointly participate with one or more PHAs in the planning, participation, and preparation of the AFH consistent with the requirements of 24 CFR 5.150 through 5.180, and with the geographic scope and proposed actions scaled to the PHAs' operations and region, as provided in § 5.154.

(A) PHAs preparing a joint submission of an AFH are encouraged to prepare MOUs or other such cooperative agreements, which clearly define the functions, level of member participation, method of dispute resolution, and decisionmaking process for the jointly participating PHAs. The MOU or cooperative agreement should also clearly indicate a lead agency that will submit on behalf of the joint participants.

(B) An accepted AFH submitted on behalf of jointly participating PHAs will fulfill the submission requirements for all entities.

(C) If jointly participating PHAs' AFH is accepted, all PHAs participating in the creation of the AFH will be covered by the applicable goals contained in the AFH.

(ii) If a PHA joins with other PHAs in the submission of an AFH, the PHA must ensure that its 5-year PHA Plan is consistent with the AFH and its obligation to affirmatively further fair housing.

(iii) A PHA that is jointly participating with other PHAs in the creation of an AFH must certify consistency with the consolidated plan of the unit of general local government or State governmental agency in which the PHA is located, unless the PHA's service area is within two or more jurisdictions. If a PHA's service area is within two or more jurisdictions then:

(A) The PHA may choose to certify consistency with the jurisdiction that most closely aligns to its planning activities under this part and 24 CFR part 905, unless the PHA has pre-existing obligations prescribed in a binding agreement with HUD or the courts, such as a Recovery Agreement, Voluntary Compliance Agreement, or Consent Decree.

(B) If a PHA has a preexisting obligation prescribed in a binding agreement with HUD or the courts, the PHA must certify consistency with the general unit of local government named in the Voluntary Compliance Agreement or Consent Decree, when preparing the AFH.

(iv) In the event that HUD accepts an AFH under this option, and such AFH conflicts with the accepted AFH conducted by the unit of general local government or State governmental agency, a PHA's certification of consistency with the consolidated plan shall be accepted as a certification of consistency with the consolidated plan for all actions that do not directly conflict with the PHA's AFH that has been accepted by HUD.

(3) *Option 3: Independent PHA Assessment of Fair Housing.* (i) A PHA may conduct its own AFH with geographic scope and proposed actions scaled to the PHA's operations and region, in accordance with 24 CFR 5.154(d). An accepted AFH submitted by a PHA performing an independent AFH will fulfill the submission requirements for that PHA and the PHA shall be covered by the goals contained in the AFH.

(ii) A PHA that is performing its own AFH must certify consistency with the consolidated plan of the unit of general local government or State governmental agency in which the PHA is located, unless the PHA's service area is within two or more jurisdictions. If a PHA's service area is in two or more jurisdictions then:

(A) The PHA may choose to certify consistency with the jurisdiction that most closely aligns to its planning activities under this part and 24 CFR part 905, unless the PHA has pre-existing obligations prescribed in a binding agreement with HUD or the courts, such as a Recovery Agreement, Voluntary Compliance Agreement, or Consent Decree.

(B) If a PHA has a preexisting obligation prescribed in a binding agreement with HUD or the courts, the PHA must certify consistency with the general unit of local government named in the Voluntary Compliance Agreement or Consent Decree, when preparing the AFH.

(iii) In the event that HUD accepts an AFH under this option, and such AFH conflicts with the AFH conducted by the unit of general local government or State governmental agency, the PHA's certification of consistency with the consolidated plan shall be accepted as a certification of consistency with the consolidated plan for all actions that do not directly conflict with the PHA's AFH that has been accepted by HUD.

(b) PHAs may but are not required to request a change in their fiscal years to better coordinate their planning cycle with the planning performed under each of the options listed in paragraph (a) of this section.

(c) If a material change in circumstances occurs in the jurisdiction of a PHA that requires a revision to the AFH, as specified in 24 CFR 5.164, the PHA will have up to 12 months to incorporate any goals from the revised AFH into its 5-Year PHA Plan, in accordance with the provisions of 24 CFR 903.21.

(d) *Fair housing requirements.* A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act. A PHA may not assign housing to persons in a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status, or national origin for purposes of segregating populations.

(2) *Affirmatively Furthering Fair Housing.* A PHA's policies should be designed to reduce the concentration of tenants and other assisted persons by race, national origin, and disability in conformity with any applicable Assessment of Fair Housing as defined at 24 CFR 5.150 through 5.180 and the PHA's assessment of its fair housing needs. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs must take steps to affirmatively further fair housing. PHA policies should include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation of persons because of their race, national origin, disability, or other protected class.

(ii) Such affirmative steps may include, but are not limited to, marketing efforts, use of nondiscriminatory tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community), and engagement in ongoing coordination with state and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and to connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

(3) *Validity of certification.* (i) A PHA's certification under § 903.7(o) will be subject to challenge by HUD where it appears that a PHA:

(A) Fails to meet the affirmatively furthering fair housing requirements at 24 CFR 5.150 through 5.180, including failure to take meaningful actions to further the goals identified in the AFH; or

(B) Takes action that is materially inconsistent with its obligation to affirmatively further fair housing; or

(C) Fails to meet the fair housing, civil rights, and affirmatively furthering fair housing requirements in 24 CFR 903.7(o).

(ii) If HUD challenges the validity of a PHA's certification, HUD will do so in writing specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations, or has remedied violations of fair housing and civil rights laws and regulations, and has adopted policies and undertaken actions to affirmatively further fair housing, including, but not limited to, providing a full range of housing opportunities to applicants and tenants and taking affirmative steps as described in paragraph (d)(2) of this section in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances relevant to the specified deficiencies, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA, including those designed to affirmatively further fair housing.

■ 48. In § 903.23, paragraph (f) is added to read as follows:

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

* * * * *

(f) *Recordkeeping.* PHAs must maintain a copy of the Assessment of Fair Housing as described in 24 CFR part 5, subpart A (§§ 5.150 through 5.180) and records reflecting actions to affirmatively further fair housing, as described in § 903.7(o).

Dated: June 30, 2015.

Julián Castro,

Secretary.

[FR Doc. 2015–17032 Filed 7–15–15; 8:45 am]

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