AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 80 Thursday,
No. 214 November 5, 2015

Pages 68421–68742

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 80 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 80, No. 214

Thursday, November 5, 2015

Agricultural Marketing Service
RULES
Exemption Requirements:
Tart Cherries Grown in the States of Michigan, et al., 68424–68427
Relaxation of Handling Requirements
Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes, 68421–68424
PROPOSED RULES
Increased Assessment Rates:
Kiwifruit Grown in California, 68473–68475

Agricultural Research Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68492–68493
Intent to Grant Exclusive License, 68492

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2017 New York City Housing and Vacancy Survey, 68499

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68540–68545

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid Programs:
CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements, 68624–68719

Coast Guard
RULES
Drawbridge Operations:
Cerritos Channel, Long Beach, CA, 68444–68445
Oakland Inner Harbor Tidal Canal, Alameda, CA, 68444
Safety Zones:
Shell Arctic Drilling/Exploration Vessels, Puget Sound, WA, 68445–68447

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
RULES
Public Information, Freedom of Information Act and Privacy Act Regulations, 68442–68444
NOTICES
Privacy Act; Systems of Records, 68500–68503

Defense Department
See Navy Department
NOTICES
Privacy Act; Systems of Records, 68517–68519

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 68520

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Louisiana; Major Source Permitting State Implementation Plan, 68451–68453
North Carolina Infrastructure Requirements for the 2008 8-hour Ozone National Ambient Air Quality Standards, 68453–68458
Ohio; Test Methods; Error Correction, 68458–68465
Tennessee; Knox County Emissions Statements, 68448–68451
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
California, San Joaquin Valley; Unified Air Pollution Control District and South Coast Air Quality Management District, 68484–68486
Louisiana, 68481–68484
Nevada;, Clark County, 68486–68490
Tennessee; Knox County Emissions Statements, 68484
Hazardous Waste Generator Improvements, 68490–68491
Management Standards for Hazardous Waste Pharmaceuticals, 68491
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Greenhouse Gas Reporting Program, 68534–68536
National Wetland Condition Assessment 2011 Draft Report, 68536–68537

Farm Credit Administration
RULES
Organization and Functions; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Organization of the Farm Credit Administration, 68427–68429

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 68429–68432, 68434–68437
Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes, 68432–68434
The Boeing Company Airplanes, 68437–68440
Amendment of Class D and Class E Airspace:
Van Nuys, CA, 68440–68442

Amendment of Class E Airspace:
Chillicothe, MO; Cuba, MO; Farmington, MO; Lamar, MO; Mountain View, MO; Nevada, MO; and Poplar Bluff, MO; Correction, 68442
PROPOSED RULES
Airworthiness Directives:
Quest Aircraft Design, LLC Airplanes, 68477–68479
Turbomeca S.A. Turboshaft Engines, 68475–68477
NOTICES
New Task Assignments:
Aviation Rulemaking Advisory Committee, 68599–68602

Federal Communications Commission
RULES
Radio Frequency Devices, FCC Form 740 Temporary Suspension, 68471–68472
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68537–68538
Meetings:
Technological Advisory Council, 68538

Federal Deposit Insurance Corporation
NOTICES
Terminations of Receiverships:
First Bank of Kansas City, Kansas City, MO, 68539
Polk County Bank, Johnston, IA, 68538

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 68539

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68532–68534
Applications:
Watervliet, NY, 68523–68524
Combined Filings, 68520–68521, 68524–68529, 68531–68532
Complaints:
Osceola, AR v. Entergy Arkansas, Inc. and Entergy Services, Inc., 68527
Environmental Assessments; Availability, etc.:
Dominion Carolina Gas Transmission, LLC; Transco to Charleston Project, 68521–68523
Meetings:
Clean River Power MR–3, LLC, et al.; Teleconference, 68526
Newburgh Hydro, LLC; Technical Conference, 68534
PJM Interconnection, LLC, et al.; Technical Conference Supplement, 68529–68531
Restricted Service Lists:
Beverly Lock and Dam Water Power, et al., 68525–68526

Federal Maritime Commission
RULES
Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties, 68722–68742
NOTICES
Agreements Filed, 68539

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 68539–68540
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 68540

Fish and Wildlife Service
NOTICES
Endangered Species Permit Applications, 68554–68555
Permit Applications:
Safe Harbor Agreement for the Reestablishment of the California Red-Legged Frog in the Santa Monica Mountains, CA, 68555–68557

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68496–68497
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Special Supplemental Nutrition Program for Women, Infants, and Children Infant and Toddler Feeding Practices Study-2 Age 5 Extension Study, 68493–68496

Foreign-Trade Zones Board
NOTICES
Production Authority Applications:
Coleman Co., Inc., (Textile–Based Personal Flotation Devices), Subzone 119I, 68504

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Grand Mesa, Uncompahgre, and Gunnison National Forests; Gunnison County; Colorado; Crested Butte Mountain Resort Ski Area Projects, 68497–68498
Meetings:
Yavapai Resource Advisory Committee, 68498

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68557

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68545
Meetings:
Minutes of Institutional Review Board Guidance for Institutions and Institutional Review Boards, 68545–68547

Homeland Security Department
See Coast Guard
See Transportation Security Administration
See U.S. Immigration and Customs Enforcement

Industry and Security Bureau
NOTICES
Meetings:
Materials Technical Advisory Committee, 68504
Transportation and Related Equipment Technical Advisory Committee, 68504

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau

RULES
Disposition of Unclaimed Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, 68465–68471

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Barium Chloride from the People's Republic of China, 68511–68512
Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan, 68504–68508
Large Residential Washers from Mexico, 68510–68511
Large Residential Washers from the Republic of Korea, 68508–68509

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Blood Cholesterol Test Strips and Associated Systems Containing Same, 68563
Polyethylene Terephthalate Resin from Canada, China, India, and Oman, 68563–68565

Justice Department
NOTICES
Proposed Consent Decrees under the Clean Air Act, 68565

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Bank Collective Investment Funds, Prohibited Transaction Class Exemption, 68565–68566
Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption, 68566–68567
Unemployment Insurance Trust Fund Activity, 68567–68568

Land Management Bureau
NOTICES
Proposed Supplementary Rules for Public Lands in New Mexico, 68557–68562

National Aeronautics and Space Administration
NOTICES
Charter Renewals:
NASA Advisory Council, 68568
Privacy Act; Systems of Records, 68568–68572

National Highway Traffic Safety Administration
NOTICES
Importation Eligibility; Petitions:
Nonconforming Model Year 2009 Ford F–150 Trucks, 68603–68604
New Car Assessment Program, 68604–68618
Petitions for Inconsequential Noncompliance; Approvals:
BMW of North America, Inc., 68602–68603

National Institutes of Health
NOTICES
Exclusive Licenses:
Development of Therapeutics to Treat Brain Injury and Neurodegenerative Disease, 68547
Meetings:
Center for Scientific Review, 68548–68550
National Cancer Institute, 68547–68548
National Institute of Allergy and Infectious Diseases, 68551
National Institute on Aging, 68547, 68550
National Institute on Minority Health and Health Disparities, 68551
National Library of Medicine, 68548–68551

National Oceanic and Atmospheric Administration
NOTICES
Atlantic Highly Migratory Species:
Atlantic Shark Management Measures; 2016 Research Fishery, 68513–68515
Requests for Nominations:
Atlantic Highly Migratory Species Advisory Panel, 68515–68517
Taking and Importing of Marine Mammals:
Southwest Fisheries Science Center Fisheries Research, 68512–68513

National Science Foundation
NOTICES
Antarctic Conservation Act Permit Applications, 68572–68573

Natural Resources Conservation Service
NOTICES
Changes to Section I of the Illinois Field Office Technical Guide, 68498–68499

Navy Department
NOTICES
Meetings:
U.S. Naval Academy Board of Visitors, 68519–68520

Nuclear Regulatory Commission
NOTICES
Applications:
Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Withdrawal by Applicant, 68579–68580
Combined License Applications:
AmerenUE; Callaway Plant, Unit 2 Nuclear Power Plant; Withdrawal, 68578–68579
License Amendments; Applications:
Exelon Generation Co., LLC; Dresden Nuclear Power Station, Units 2 and 3, 68573–68578
Meetings; Sunshine Act, 68579

Postal Regulatory Commission
PROPOSED RULES
Periodic Reporting, 68480–68481

Privacy and Civil Liberties Oversight Board
NOTICES
Meetings, 68580

Science and Technology Policy Office
NOTICES
Requests for Information:
Identifying Sources of Agricultural Innovation, 68580–68581

Securities and Exchange Commission
NOTICES
Applications for Deregistration under the Investment Company Act, 68584–68585

Orders:
Exemption of Certain Large Traders from the Self-Identification Requirements under the Securities Exchange Act, 68590–68595
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 68581–68583
EDGX Exchange, Inc., 68583–68584
NASDAQ OMX BX, Inc., 68586–68590
NASDAQ Stock Market LLC, 68595–68599
New York Stock Exchange LLC, 68585–68586

Surface Transportation Board
NOTICES
Corporate Family Transaction Exemptions:
Hainesport Industrial Railroad, LLC; Correction, 68618

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Meetings:
Aviation Security Advisory Committee, 68552–68554

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68552

Veterans Affairs Department
RULES
Exempting Mental Health Peer Support Services from Copayments, 68447
PROPOSED RULES
Exempting Mental Health Peer Support Services from Copayments; Withdrawal, 68479
NOTICES
Privacy Act; Systems of Records, 68618–68621

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 68624–68719

Part III
Federal Maritime Commission, 68722–68742

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
925 68421
930 68424
944 68421

Proposed Rules:
920 68473

12 CFR
600 68427
606 68427

14 CFR
39 (4 documents) 68429, 68432, 68434, 68437
71 (2 documents) 68440, 68442

Proposed Rules:
39 (2 documents) 68475, 68477

15 CFR
4 68442

33 CFR
117 (2 documents) 68444
165 68445

38 CFR
17 68447

Proposed Rules:
17 68479

39 CFR

Proposed Rules:
3050 68480

40 CFR
52 (4 documents) 68448, 68451, 68453, 68458

Proposed Rules:
52 (4 documents) 68481, 68484, 68486
260 68490
261 (2 documents) 68490, 68491
262 (2 documents) 68490, 68491
263 68490
264 68490
265 68490
266 68491
268 (2 documents) 68490, 68491
270 (2 documents) 68490
273 (2 documents) 68490, 68491
279 68490

42 CFR
409 68624
424 68624
484 68624

43 CFR
10 68465

46 CFR
515 68722

47 CFR
2 68471

Rules and Regulations

Federal Register

Vol. 80, No. 214

Thursday, November 5, 2015

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–14–0031; FV14–925–2 FR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Desert Grape Administrative Committee (Committee) to partially relax the handling requirements currently prescribed under the California table grape marketing order (order) and the table grape import regulation. The Committee locally administers the order and regulates the handling of table grapes grown in a designated area of southeastern California. The import regulation is authorized under section 8e of the Agricultural Marketing Agreement Act of 1937 and regulates the importation of table grapes into the United States. This final rule relaxes the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for U.S. No. 1 Table grade grapes packed in consumer packages known as clamshells weighing five pounds or less. Up to 20 percent of the weight of such containers may consist of single grape clusters weighing less than one-quarter pound, but consisting of at least five berries each. This action provides California desert grape handlers and importers with the flexibility to respond to ongoing marketing opportunities to meet consumer needs.

DATES: Effective April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule partially relaxes the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for all U.S. No. 1 Table grade grapes packed in clamshell consumer packages weighing five pounds or less. Under the revision, up to 20 percent of the weight of such containers could consist of single grape clusters weighing less than one-quarter pound, but consisting of at least five berries each. This final rule provides California desert grape handlers and importers with the flexibility to respond to an ongoing marketing opportunity. The Committee met on November 5, 2013, and conducted an electronic vote on April 8, 2014, in which voters unanimously recommended the partial relaxation for California desert grapes. The change in the import regulation is required under section 8e of the Act.

Section 925.52(a)(1) of the order provides authority to regulate the handling of any grade, size, quality, maturity, or pack of any and all varieties of grapes during the season. Section 925.53 provides authority for the Committee to recommend to USDA changes to regulations issued pursuant to § 925.52. Section 925.55 specifies that when grapes are regulated pursuant to § 925.52, such grapes must be inspected by the Federal or Federal-State Inspection Service (FSIS) to ensure they meet applicable requirements.

Section 925.304(a) of the order's rules and regulations requires grapes to meet the minimum grade and size requirements of U.S. No. 1 Table; or to meet all the requirements of U.S. No. 1 Institutional, except that a tolerance of 33 percent is provided for off-size bunches. The requirements for the U.S. No. 1 Table and U.S. No. 1 Institutional grades are set forth in the United States Standards for Grades of Table Grapes

(European or Vinifera Type) (7 CFR 51.880 through 51.914) (Standards). To meet the requirements of U.S. No. 1 Table grade, grapes must have a bunch size of at least one-quarter pound.

In 2010, the order's regulations were relaxed with respect to the bunch size requirement specified in the Standards (See, 75 FR 17031, affirmed at 75 FR 34343). This change permitted the use of bunch sizes smaller than one-quarter pound, but with at least five berries each, in packing consumer clamshell containers containing two pounds net weight or less. Not more than 20 percent of the weight of such containers could consist of these smaller bunches. This relaxation was made to allow handlers to take advantage of a new marketing opportunity for grapes packed in small clamshell containers. Prior to the relaxation, handlers were experiencing difficulty filling these containers properly with bunches weighing one-quarter pound or more; smaller bunches were needed to fill the corners of the square container configuration to achieve the desired weight.

Since the order's regulations were amended in 2010, customers nationwide have been increasingly requesting grapes in larger clamshell containers. Handlers experience difficulty properly filling the corners of these larger containers to the desired weights with bunches weighing one-quarter pound or more, similar to the problem they experienced with the smaller 2-pound clamshell containers. Therefore, the Committee recommended that the bunch size requirement in the order's regulations pertaining to U.S. No. 1 Table grade grapes be partially relaxed with respect to clamshell containers weighing 5 pounds or less. Under this action, up to 20 percent of the weight of such containers may consist of single grape clusters weighing less than one-quarter pound, but with at least five berries each. This action allows handlers to continue to respond to increased marketing opportunities. Section 925.304(a) is revised accordingly.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation). This relaxation in the California Desert Grape Regulation 6 minimum bunch size requirement requires a corresponding relaxation to the minimum bunch size requirement for imported table grapes. Similar to the domestic industry, this action allows importers the flexibility to respond to an ongoing marketing opportunity to meet consumer needs. Section 944.503(a)(1) is revised accordingly.

Final Regulatory Flexibility Analysis

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

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

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the marketing order and about 41 grape producers in the production area. In addition, there are about 102 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201). Ten of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000, according to USDA Market News Service and Committee data. Based on information from the Committee and USDA's Market News Service, it is estimated that at least 10 of the 41 producers have annual receipts of less than $750,000. Thus, it may be concluded that a majority of grape handlers regulated under the order and about ten of the producers could be classified as small entities under the SBA definitions.

Mexico, Chile, and Peru are the major countries that export table grapes to the United States. According to 2014 data from USDA's Foreign Agricultural Service (FAS), shipments of table grapes imported into the United States from Mexico totaled 17,042,386 18-pound lugs, from Chile totaled 38,466,540 18-pound lugs, and from Peru totaled 5,065,653 18-pound lugs. According to FAS data, the total value of table grapes imported into the United States in 2014 was $1,189,848,000. It is estimated that the average importer received $11.7 million in revenue from the sale of table grapes in 2014. Based on this information, it may be concluded that the average table grape importer is not classified as a small entity.

This final rule revises § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This final rule partially relaxes the one-quarter pound minimum bunch size requirement in the order's regulations and the import regulation for U.S. No. 1 Table grade grapes packed in consumer clamshell packages weighing five pounds or less. Under the relaxation, up to 20 percent of the weight of each package may consist of single grape clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape rules and regulations is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e of the Act.

There is general agreement in the industry for the need to expand the revised minimum bunch size requirement for grapes packed in these consumer clamshell packages to allow for more packaging options.

Regarding the impact of this final rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to continue to respond to an ongoing marketing opportunity to meet consumer needs. This marketing opportunity initially existed in the 2009 season, and the minimum bunch size regulations were revised for certain packages weighing two pounds or less on a test basis. In 2010, the regulation was revised permanently for consumer clamshell packages weighing two pounds or less due to the positive market response. This rule expands the revised requirements to include larger consumer clamshell packages weighing 5 pounds or less. Customers have been requesting larger sized clamshell packages, and this action enables handlers and importers to take advantage of increased market opportunities, which may result in increased shipments of consumer grape packages. This is expected to have a positive impact on producers, handlers, and importers.

No additional alternatives were considered because the 2010 revision produced the desired results. The Committee believes the partial relaxation of the bunch size requirement for grapes packed in larger consumer clamshell packages is appropriate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No

changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the Southeastern California grape industry, and all interested persons in the production area were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 5, 2013, meeting was a public meeting; and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 3, 2015 (80 FR 11346). Copies of the rule were mailed or sent via facsimile to all Committee members and table grape handlers in the production area. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period, ending on April 2, 2015, was provided to allow interested persons to respond to the proposal.

Twelve comments were received during the comment period in response to the proposal. Nine strongly supported the partial relaxation of the handling requirements and three comments were opposed.

One commenter who opposed the partial relaxation specifically for 5-pound clamshells or smaller stated that all consumer packages should be regulated similarly. This commenter also stated that if one clamshell container exceeds the 20 percent tolerance for small bunches, the entire lot is out of grade. The commenter indicated this has caused a problem for him in the past with 2-pound clamshell containers. The commenter also expressed concern that different grape quality standards are in effect at the same time. Finally, this commenter stated that he had not received notification of the November 5, 2013, meeting.

In response to these comments, it is noted that the relaxed bunch size requirements do not apply to all consumer packages. As indicated in the proposed rule, the Committee's recommendation was specific to clamshell containers because smaller clusters of grapes are needed to fill the corners of these square containers. This aspect of the rule and its rationale is identical to the previous regulation that applied to 2-pound containers. Similar issues regarding other consumer containers were not reported or discussed by the Committee when it recommended this change. However, since this rule was initially recommended, the Committee has indicated that additional options may be considered and recommended in the future if appropriate rationale and justification are presented and evaluated.

Regarding the comment concerning the bunch size tolerance, it is acknowledged that one failing container may cause the entire lot to be out of grade. However, it should be noted that the tolerance allows 20 percent of the weight of the container to contain bunches of grapes smaller than one-quarter pound, but consisting of at least five berries. This is an allowance, not a requirement. Handlers are not required to use any clusters smaller than one-quarter pound to fill the containers. The relaxed tolerance merely provides handlers with the option and flexibility to utilize the smaller clusters to fill out the clamshell corners. Handlers choosing to utilize this practice should be able to fill the container's corners and fall within the 20 percent tolerance.

Regarding the comment concerning different standards for grapes in the market at the same time, the marketing order only regulates grapes grown in Southeastern California. Thus, the order's regulations have no control over grapes from other areas. This rule is not intended to affect the overall quality of grapes in the marketplace. There is only one marketing order for table grapes. It is intended to allow Southeastern California grape handlers to meet the needs of their customers. Furthermore, industry experience following the previous revision for 2-pound clamshell containers, which is similar to this change, has been positive.

In response to the comment that notification of the November 5, 2013, meeting had not been received, it should be noted that the Committee routinely announces all upcoming meetings at least 3 days before they occur. These announcements are issued to all growers and handlers in the production area. Further, the commenter acknowledged awareness of the open comment period as published in the March 3, 2015, **Federal Register** notice, and his comment was received in a timely manner and is being addressed herein.

Another commenter who opposed the rule believes that this partial relaxation will allow inferior grapes to be packed and is a visual misrepresentation to both the retailer and the consumer.

This action was recommended by the Committee in response to customer complaints about the empty corners of the larger clamshells. While the tolerance for bunch size will be increased for grapes packed in clamshells containers weighing five pounds or less, all other requirements of U.S. No. 1 Table, as set forth in the U.S. Standards for Grades of Table Grapes, will still apply. Thus, the increased tolerance is not expected to affect the overall quality of the grapes in the marketplace. The change is intended to provide the industry with increased flexibility to meet customers' needs.

The last commenter suggested that the math in calculating the acceptable tolerance of the one-quarter pound bunch minimum requirement for 5-pound clamshell containers is incorrect and offered various other weight combinations to meet the 5-pound weight requirement of an individual container. He also asserted that the current minimum bunch size requirement for U.S. No. 1 Table Grade grapes is 1.25 pounds. Finally, this commenter claimed that quality will be sacrificed by allowing 20 percent of the 5-pound containers to consist of loose grapes. These assertions are incorrect. The rationale for this rule is not based on a mathematical calculation of grape bunch sizes that could be used to fill containers. The rationale is to allow use of bunches smaller than one-quarter pound but consisting of at least five berries to properly fill the corners of the square containers. Furthermore, the assertion that the bunch size requirement for U.S. No. 1 Table Grade grapes is 1.25 pounds is not accurate. The bunch size requirement for U.S. No. 1 Table Grade grapes is one-quarter pound. This rule provides for up to 20 percent of the weight of clamshell containers to contain grape clusters weighing less than one-quarter pound, but the clusters must consist of at least five berries each.

Finally, this rule does not allow 20 percent of the 5-pound container to consist of loose grapes. Loose grapes are not permitted by this relaxation. The 20 percent tolerance is given to limit the number of bunches weighing less than one-quarter pound and each must still contain at least five attached berries. As previously stated, this change is not expected to affect the overall quality of grapes in the marketplace as all of the other requirements of U.S. No. 1 Table grade, as set forth in the U.S. Standards for Grades of Table Grapes, will still apply.

A similar requirement has been in place under the marketing order since 2010 for clamshell containers weighing two pounds or less, and the industry has received positive responses from customers. Since that time, the popularity of clamshell containers has increased, and larger sized clamshell containers are now being used for packaging grapes due to customer's demands.

This action simply applies the same requirements to larger clamshell containers, as desired by customers.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act. In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting, and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 925.304 by revising paragraph (a) introductory text, re-designating paragraphs (a)(1) and (2) as paragraphs (a)(3) and (4) and adding new paragraphs (a)(1) and (2) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) *Grade, size, and maturity.* Except as provided in paragraphs (a)(3) and (4) of this section, such grapes shall meet the minimum grade and size requirements established in paragraphs (a)(1) or (2) of this section.

(1) U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type 7 CFR 51.880 through 51.914), with the exception of the tolerance percentage for bunch size when packed in individual consumer clamshell packages weighing 5 pounds or less: Provided that not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each; or

(2) U.S. No. 1 Institutional, with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked ''DGAC No. 1 Institutional'' but shall not be marked ''Institutional Pack.''

* * * * *

PART 944—FRUITS; IMPORT REQUIREMENTS

■ 3. Amend § 944.503 by revising paragraph (a)(1) introductory text, redesignating paragraphs (a)(1)(i) and (ii) as paragraphs (a)(1)(iii) and (iv) and adding new paragraphs (a)(1)(i) and (ii) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, and except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements established in paragraphs (a)(1)(i) or (ii) of this section.

(i) U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type 7 CFR 51.880 through 51.914), with the exception of the tolerance percentage for bunch size when packed in individual consumer clamshell packages weighing 5 pounds or less: not more than 20 percent of the weight of such containers may consist of single clusters weighing less than one-quarter pound, but with at least five berries each; or

(ii) U.S. No. 1 Institutional, with the exception of the tolerance percentage for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements may be marked ''DGAC No. 1 Institutional'' but shall not be marked ''Institutional Pack.''

* * * * *

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–28136 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–15–0046; FV15–930–1 IR]

Tart Cherries Grown in the States of Michigan, et al.; Revision of Exemption Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to revise the exemption provisions under the marketing order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the order and is comprised of growers and handlers operating within the production area. This rule changes the number of years that new market development and market expansion projects are eligible for handler diversion credit from one year to three years. This rule also revises the composition of the subcommittee which

reviews exemption requests. These changes are intended to encourage handlers to participate in new market and market expansion activities to facilitate sales and help ensure impartiality during the review process.

DATES: Effective November 6, 2015; comments received by January 4, 2016 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3775, Fax: (863) 291–8614, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule revises the exemption provisions prescribed under the order. This rule expands the availability of diversion credits for new market development and market expansion activities from one year to three years. This rule also revises the composition of the subcommittee which reviews exemption requests. These changes are intended to encourage the use of new market developments and market expansion activities to facilitate sales and to help ensure impartiality during the review process. These changes were unanimously recommended by the Board at its meeting on June 25, 2015.

Section 930.59 of the order authorizes handler diversion. When volume regulation is in effect, handlers may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve.

Section 930.159 of the order's administrative rules specifies methods of handler diversion, including using cherries or cherry products for exempt purposes prescribed under § 930.162. Section 930.162 establishes the terms and conditions of exemption that must be satisfied for handlers to receive diversion certificates for exempt uses. Section 930.162(b) defines the activities which qualify for exemptions under new market development and market expansion and the period for which they are eligible for diversion credit. New market development and market expansion activities include, but are not limited to, sales of cherries into markets that are not yet commercially established, product line extensions, or segmentation of markets along geographic or other definable characteristics.

Section 930.162(d) establishes a Board-appointed subcommittee to review the applications for exemption or renewal of exemption and to either approve or deny the exemption. This section currently specifies that the subcommittee consist of three members, including the Board manager, or a Board member acting in the manager's stead, the public member, and one industry person who is not on the Board.

The order provides for the use of volume regulation to stabilize prices and improve grower returns during periods of oversupply. At the beginning of each season, the Board examines production and sales data to determine whether a volume regulation is necessary and if so, announces free and restricted percentages to limit the volume of tart cherries on the market. Free percentage cherries can be used to supply any available market, including domestic markets for pie filling, water packed, and frozen tart cherries. Restricted percentage cherries can be placed in reserve, or be used to earn diversion credits as prescribed in §§ 930.159 and 930.162 of the order's administrative rules. These activities include, in part, the development of new products, new market development and market expansion, the development of export markets, and charitable contributions.

In 2012, the Board made a series of changes to the volume control provisions to facilitate the marketing of tart cherries and to help lower restrictions during seasons when volume control is implemented. One of these changes was to decrease the number of years that new market development and market expansion projects are eligible for handler diversion credit from three years to one year. The Board thought this decrease would continue to encourage new market development and market expansion projects, while reducing the impact these credits had on volume restriction calculations. At that time, these sales were not included in the average sales figure used to determine optimum supply for volume regulation. The Board anticipated the change would shift more volume to sales helping to reduce the calculated surplus and lower the restricted percentage.

In revisiting this change, the Board recognized that the underlying rationale for having reduced the duration of

diversion credit for new market development and market expansion was no longer an issue. Since that change, the method for calculating average sales for the purpose of volume regulation has been adjusted so that only export sales are excluded from the average sales calculation. Consequently, all sales from market development and market expansion activities are now included as sales when calculating a restriction. Therefore, increasing the number of years new market development and market expansion projects are eligible to receive diversion credit from one year to three years will not significantly impact the calculations for free and restricted percentages.

Further, since making this change, participation in new market development and market expansion activities has dropped dramatically. In years prior to changing from three years to one year, applications for new market activities numbered around 20 to 25 a season. For the 2014–15 season, the first season with volume regulation since the change, applications dropped to eight. Handlers stated that it was not worth the time and effort to develop one of these projects if the benefit was only for a single year. It was reported that the shortened time frame did not allow handlers to recoup the resources needed to establish one of these projects.

The Board affirmed its support for new market development and market expansion diversion credit programs. Accordingly, the Board voted unanimously to change the exemption provisions applicable to handler diversion activities by increasing the number of years that new market development and market expansion activities are eligible for diversion credit back to three years. The Board also noted that projects approved for the 2014–15 season would be allowed to continue and be subject to the new three-year cycle.

This action also revises the composition of the subcommittee appointed to review exemption applications. The subcommittee was formed to assist Board staff members in reviewing and granting exemptions. The subcommittee reviews applications to use restricted cherries for activities related to new product development, new market development and market expansion, the development of export markets, and for experimental purposes. Current rule provisions (§ 930.162(d))state that the subcommittee consists of the manager of the Board or a Board member acting in their stead, the public member, and one industry member who is not on the Board. The Board recommended changing the composition of the subcommittee to help ensure impartiality so that no one affiliated with a handler was part of the review process.

Consequently, the Board recommended revising the subcommittee to consist of three members all of whom are not affiliated with a handler, but have industry knowledge. One of these members shall be the public member or the alternate public member, if available to serve. The subcommittee will also include a similarly qualified alternate should one of the other members be unable to serve.

The Board made several other recommendations for changes to the regulations under the order at its June 25, 2015 meeting. However, these changes will be considered under a separate action.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000 and small agricultural service firms have been defined as those having annual receipts of less than $7,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Board data, the average annual grower price for tart cherries during the 2013–14 season was $0.35 per pound, and total shipments were around 289 million pounds. Therefore, average receipts for tart cherry producers were around $168,600, well below the SBA threshold for small producers. In 2014, The Food Institute estimated an f.o.b. price of $0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $6.9 million, which is also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This rule revises § 930.162 of the regulations regarding exemptions by changing the number of years that new market development and market expansion projects are eligible for handler diversion credit from one year to three years. This rule also revises the composition of the subcommittee which reviews exemption requests. These changes are intended to encourage the use of new market development and market expansion activities to facilitate sales and to help ensure impartiality during the review process. The authority for these actions is provided in § 930.59 of the order. These changes were unanimously recommended by the Board at its meeting on June 25, 2015.

It is not anticipated that this action will impose additional costs on handlers or growers, regardless of size. Rather, this should help handlers receive better returns on their new market development and market expansion projects by providing additional time for the handlers to receive diversion credit for those activities. This should provide more opportunity for them to recoup the time and resources required to establish these projects. In addition, changing the number of years that these projects are eligible for diversion credits may provide additional incentive for handlers to develop these programs, and may facilitate additional sales which could improve returns for growers and handlers. Further, the Board does not believe that this change significantly impacts the calculations for free and restricted percentages.

The change in composition of the subcommittee is administrative in nature, and not expected to result in any additional costs.

This rule is expected to benefit the industry. The effects of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Board discussed alternatives to these changes, including not changing the number of years that new market development and market expansion projects were eligible for diversion credit. The Board agreed that increasing the number of years that new market development and market expansion projects were eligible for diversion credit from one year to three years provides handlers with more incentive

to utilize these programs, while not impacting the calculations for free and restricted percentages. Another alternative considered was maintaining the current composition of the subcommittee responsible for reviewing exemption requests. However, the Board wanted to specify that the subcommittee be composed of members who are not affiliated with any handler. Therefore, for the reasons mentioned above, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

Accordingly, this rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the June 25, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutney at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the exemption requirements currently prescribed under the order. Any comments received will be considered prior to the finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Board would like this in in place as soon as possible should volume regulation be recommended for this season so handlers can consider these changes when making plans; (2) the Board unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.162 is amended by revising the last sentence of paragraph (b)(2) and revising paragraph (d) to read as follows:

§ 930.162 Exemptions.

* * * * *

(b) * * *

(2) * * * In addition, shipments of tart cherries or tart cherry products in new market development and market expansion outlets are eligible for handler diversion credit for a period of three years from the handler's first date of shipment into such outlets.

* * * * *

(d) *Review of applications.* A Board appointed subcommittee shall review applications for exemption or renewal of exemption and either approve or deny the exemption. The subcommittee shall consist of three members and one alternate, each having no handler affiliation but knowledge of the tart cherry industry, one of whom shall be the public member or the alternate public member if available to serve. Any denial of an application for exemption or renewal of an existing exemption shall be served on the applicant by certified mail and shall state the reasons for the denial. Within 10 days after the receipt of a denial, the applicant may file an appeal, in writing, with the Deputy Administrator, Specialty Crops Program, supported by any arguments and evidence the applicant may wish to offer as to why the application for exemption or renewal of exemption should have been approved. The Deputy Administrator, upon consideration of such appeal, will take such action as deemed appropriate with respect to the application for exemption or renewal of exemption.

* * * * *

Dated: October 30, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–28141 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600 and 606

RIN 3052–AD08

Organization and Functions; Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Organization of the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, our or Agency) issues a final rule amending our regulations in order to reflect internal organization changes. Another amendment updates a statutory citation for the Farm Credit Act.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish

notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056,
or
Jane Virga, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4071, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to reflect changes to the FCA's organization and identification of those FCA employees responsible for various functions. The Freedom of Information Act, 5 U.S.C. 552, requires, in part, that each Federal agency publish in the **Federal Register** for the guidance of the public a description of its organization structure. Another amendment updates the statutory citation for the Farm Credit Act of 1971, as amended (Act).

We revise the regulations by:

(1) In § 600.1, adding a citation for the Food, Conservation, and Energy Act of 2008, Public Law 110–246, June 18, 2008, (section 5401–5407), which revised the statutory citation for the Act.

(2) In § 600.4:

(a) Including the Office of the Chief Operating Officer, Office of Information Technology, Designated Agency Ethics Official, and Equal Employment Opportunity and Inclusion in FCA's organizational structure and a description of their functions; and

(b) Amending the responsibilities of the Office of Management Services to remove the function of administering FCA's information resources management program;

(3) In § 606.670, removing from paragraph (i) the words ''Director, Equal Employment Opportunity'' and adding in their place the words ''Equal Employment Opportunity and Inclusion Director''.

II. Certain Finding

We have determined that the amendments involve Agency management and personnel and other minor technical changes.

Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553(a)(2). Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to Agency management and personnel and a minor technical change only and have no direct impact on the public and, therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(A) and (B) of the APA, an agency may publish regulations in final form when they involve matters of agency organization or where the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. As discussed above, this amendment results from recent office reorganizations. Because the amendments will provide accurate and current information on the organization of the FCA and update the citation to the Act, it would be contrary to the public interest to delay amending the regulations.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System (System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 600

Organization and functions (Government agencies).

12 CFR Part 606

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

As stated in the preamble, parts 600 and 606 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 5.7, 5.8, 5.9, 5.10, 5.11, 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2241, 2242, 2243, 2244, 2245, 2252, 2279aa–11).

■ 2. Revise § 600.1 to read as follows:

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Public Law 92–181 recodified and replaced the prior laws under which the Farm Credit Administration (FCA) and the institutions of the Farm Credit System (System or FCS) were organized and operated. The prior laws, which were repealed and superseded by the Act, are identified in section 5.40(a) of the Act. Subsequent amendments to the Act and enactment dates are as follows: Public Law 94–184, December 31, 1975; Public Law 95–443, October 10, 1978; Public Law 96–592, December 24, 1980; Public Law 99–190, December 19, 1985; Public Law 99–198, December 23, 1985; Public Law 99–205, December 23, 1985; Public Law 99–509, October 21, 1986; Public Law 100–233, January 6, 1988; Public Law 100–399, August 17, 1988; Public Law 100–460, October 1, 1988; Public Law 101–73, August 9, 1989; Public Law 101–220, December 12, 1989; Public Law 101–624, November 28, 1990; Public Law 102–237, December 13, 1991; Public Law 102–552, October 28, 1992; Public Law 103–376, October 19, 1994; Public Law 104–105, February 10, 1996; Public Law 104–316, October 19, 1996; Public Law 107–171, May 13, 2002; Public Law 110–246, June 18, 2008. The law is codified at 12 U.S.C. 2000, *et seq.*

■ 3. Revise § 600.4 to read as follows:

§ 600.4 Organization of the Farm Credit Administration.

(a) *Offices and functions.* The primary offices of the FCA are:

(1) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs performs Congressional liaison duties and coordinates and disseminates Agency communications.

(2) *Office of Examination.* The Office of Examination evaluates the safety and soundness of FCS institutions and their compliance with law and regulations and manages FCA's enforcement and supervision functions.

(3) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the FCA Chairman, the FCA Board, and Agency staff.

(4) *Office of Inspector General.* The Office of Inspector General conducts independent audits, inspections, and investigations of Agency programs and operations and reviews proposed legislation and regulations.

(5) *Office of Regulatory Policy.* The Office of Regulatory Policy develops policies and regulations for the FCA Board's consideration; evaluates regulatory and statutory prior approvals;

manages the Agency's chartering activities; and analyzes policy and strategic risks to the System.

(6) *Office of Management Services.* The Office of Management Services provides financial management services. It administers the Agency's human resources management program, contracts, procurement, mail services, and payroll.

(7) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight regulates and examines the Federal Agricultural Mortgage Corporation for safety and soundness and compliance with law and regulations.

(8) *Secretary to the Board.* The Secretary to the Board serves as the parliamentarian for the Board and keeps permanent and complete records and minutes of the acts and proceedings of the Board.

(9) *Office of the Chief Operating Officer.* The Chief Operating Officer has broad responsibility for planning, directing, and controlling the operations of the Offices of Management Services, Information Technology, Examination, Regulatory Policy, and General Counsel in accordance with the operating philosophy and policies of the FCA Board.

(10) *Designated Agency Ethics Official.* The Designated Agency Ethics Official is designated by the FCA Chairman to administer the provisions of title I of the Ethics in Government Act of 1978, as amended, to coordinate and manage FCA's ethics program, and to provide liaison to the Office of Government Ethics with regard to all aspects of FCA's ethics program.

(11) *Office of Information Technology.* The Office of Information Technology manages information resources management program and delivers the Agency's information technology, data analysis infrastructure, and the security supporting Agency technology resources.

(12) *Equal Employment Opportunity and Inclusion.* The Office of Equal Employment Opportunity and Inclusion manages and directs the Agency-wide Diversity, Inclusion, and Equal Employment Opportunity Program for FCA and FCSIC. The office serves as the chief liaison with the Equal Employment Opportunity Commission and the Office of Personnel Management on all Equal Employment Opportunity, diversity, and inclusion issues. The office provides counsel and leadership to Agency management to carry out its continuing policy and program of nondiscrimination, affirmative action, and diversity.

(b) *Additional Information.* You may obtain more information on the FCA's organization by visiting our Web site at *http://www.fca.gov.* You may also contact the Office of Congressional and Public Affairs:

(1) In writing at FCA, 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By email at *info-line@fca.gov;* or

(3) By telephone at (703) 883–4056.

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

■ 4. The authority citation for part 606 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 606.670 [Amended]

■ 5. Amend § 606.670 by removing the words ''Director, Equal Employment Opportunity'' and adding in their place, the words ''Equal Employment Opportunity and Inclusion Director'' in paragraph (i).

Dated: October 30, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–28244 Filed 11–4–15; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4211; Directorate Identifier 2015–NM–150–AD; Amendment 39–18311; AD 2015–22–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of spoiler and elevator computer (SEC) latent failures; an undetected loss of a SEC in flight will result in loss in redundancy for elevator control. This AD requires revising the After Start Normal Procedures section of the airplane flight manual (AFM) to provide procedures that will address this loss of redundancy. We are issuing this AD to ensure that the flightcrew has procedures to address loss of redundancy of SEC 1 and SEC 2. A SEC failure, in conjunction with a loss of trimmable horizontal stabilizer (THS) electrical control due to jamming or rupture, could result in failure of an elevator and aileron computer, and consequent loss of elevator control and reduced control of the airplane.

DATES: This AD becomes effective November 20, 2015.

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

We must receive comments on this AD by December 21, 2015.

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

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

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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. 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–2015–4211.

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–2015–4211; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0191, dated September 22, 2015 (correction September 25, 2015) (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> With the introduction of new Spoiler and Elevator Computer (SEC) hardware C Part Number (P/N) B372CAM0100 with software standards 122, 124 and 125 (identified by P/N B372CAM0101, P/N B372CAM0102 and P/N B372CAM0103, respectively), some airlines have reported receiving maintenance messages, *e.g.* ''SEC OR WIRING FROM L or R ELEV POS MON XDCR'' and/or ''SEC OR WIRING FROM G or Y ELEV POS XDCR'', which are associated with servo control or elevator transducer monitoring. Such messages are triggered by a short data inconsistency due to power transients, when the engines are started.
>
> This condition, if not corrected, could lead to an undetected loss of redundancy during flight if an affected SEC cannot control the related elevator servo control(s), possibly resulting in reduced control of the aeroplane.
>
> It was determined that, to recover full redundancy, a reset of SEC 1 and SEC 2 must be done after engines start and Airbus have developed an Airplane Flight Manual (AFM) Temporary Revision (TR), published as TR 572 Issue 1.1, to provide the necessary flight crew procedure.

Required actions include revising the After Start Normal Procedures section of the AFM to provide procedures that will address this loss of redundancy. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4211.

Related Service Information Under 1 CFR Part 51

Airbus has issued A318/A319/A320/A321 Temporary Revision TR572, Issue 1.0, dated August 13, 2015, to the Airbus A318/A319/A320/A321 Airplane Flight Manual. The service information describes the reset of SEC 1 and SEC 2 that must be done after engines start. 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.

FAA's Determination and Requirements of This AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a SEC failure in conjunction with a loss of THS electrical control due to jamming or rupture, could result in failure of an elevator and aileron computer, and consequent loss of elevator control and reduced control of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–4211; Directorate Identifier 2015–NM–150–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

We estimate that this AD affects 959 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $81,515, or $85 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.

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):

2015–22–06 Airbus: Amendment 39–18311. Docket No. FAA–2015–4211; Directorate Identifier 2015–NM–150–AD.

(a) Effective Date

This AD becomes effective November 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by reports of spoiler and elevator computer (SEC) latent failures; an undetected loss of a SEC in flight will result in loss in redundancy for elevator control. This AD requires revising the After Start Normal Procedures section of the airplane fight manual (AFM) to provide procedures that will address this loss of redundancy. We are issuing this AD to ensure that the flightcrew has procedures to address loss of redundancy of SEC 1 and SEC 2. A SEC failure, in conjunction with a loss of trimmable horizontal stabilizer (THS) electrical control due to jamming or rupture, could result in failure of an elevator and aileron computer, and consequent loss of elevator control and reduced control of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual Revision

For airplanes equipped with SEC hardware C part number (P/N) B372CAM0100 with software standard 122 (P/N B372CAM0101), 124 (P/N B372CAM0102), or 125 (P/N B372CAM0103), on SEC position 1 or 2, or both: Within 30 days after the effective date of this AD, revise the After Start Normal Procedures section of the AFM to include the statement specified in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD, or Airbus A318/A319/A320/A321 Temporary Revision TR572, Issue 1.0, dated August 13, 2015, to the Airbus A318/A319/A320/A321 Airplane Flight Manual, into the applicable AFM.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—AFM TEMPORARY REVISION

AFTER START NORMAL PROCEDURE
After both engines start:
Turn OFF then ON SEC 1 and SEC 2 one after another.

Note 1 to paragraph (g) of this AD: When a statement identical to that in figure 1 to paragraph (g) of this AD has been included in the After Start Normal Procedures section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD or Airbus A318/A319/A320/A321 Temporary Revision TR572, Issue 1.0, dated August 13, 2015, may be removed from the AFM.

Note 2 to paragraph (g) of this AD: Airbus Operations Engineering Bulletin OEB–50 provides additional information on the subject addressed by this AD.

(h) Optional Modification

Modification of an airplane by installation of SEC hardware C with software standard 126 (P/N B372CAM0104) (Airbus Modification 161208) allows removal of the AFM revision required by paragraph (g) of this AD for that airplane.

(i) Parts Installation Limitation

For all airplanes: As of the effective date of this AD, do not install SEC hardware C P/N B372CAM0100 with software standard 122 (P/N B372CAM0101), 124 (P/N B372CAM0102), or 125 (P/N B372CAM0103), on SEC position 1 or 2, or both, on any airplane, unless the AFM of the airplane is revised concurrently with that installation, as required by paragraph (g) of this AD.

(j) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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.

(k) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0191, dated September 22, 2015 (corrected September 25, 2015), for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4211.

(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 this AD specifies otherwise.

(i) Airbus A318/A319/A320/A321 Temporary Revision TR572, Issue 1.0, dated August 13, 2015, to the Airbus A318/A319/A320/A321 Airplane Flight Manual.

(ii) Reserved.

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

(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 October 22, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27688 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1425; Directorate Identifier 2014–NM–185–AD; Amendment 39–18312; AD 2015–22–07]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the circumferential fuselage splice at fuselage-station (FS) 695 is subject to widespread fatigue damage (WFD). This AD requires an inspection for corrosion and previous repairs, severed stringers, cracking, and loose or distressed fasteners of the forward and aft ends of the stringer splices of certain stringers, inspection for cracking and modification of certain fastener holes common to the stringer and splice member at the forward and aft ends of the splice, and related investigative and corrective actions if necessary. We are issuing this AD to prevent loss of residual strength of the circumferential fuselage splice at FS 695, which could lead to rapid decompression of the cabin and potential loss of the airplane.

DATES: This AD is effective December 10, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 2015.

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, GA 30063; phone: 770–494–5444; fax: 770–494–5445; email: *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* 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–2015–1425.

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–2015–1425; 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: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5605; email: *carl.w.gray@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 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188 series airplanes. The NPRM published in the **Federal Register** on May 28, 2015 (80 FR 30391). The NPRM was prompted by an evaluation by the DAH indicating that a certain circumferential fuselage splice is subject to WFD. The NPRM proposed to require an inspection for corrosion and previous repairs, severed stringers, cracking, and loose or distressed fasteners of the forward and aft ends of the stringer splices of certain stringers, inspection for cracking and modification of certain fastener holes common to the stringer and splice member at the forward and aft ends of the splice, and related investigative and corrective actions if necessary. We are issuing this AD to prevent loss of residual strength of a certain circumferential fuselage splice, which could lead to rapid decompression of the cabin and potential loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 30391, May 28, 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 30391, May 28, 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 30391, May 28, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Lockheed Martin Electra Service Bulletin 88/SB–722, dated April 30, 2014. This service bulletin describes procedures for doing the following actions:

- A general visual inspection (GVI) for corrosion and previous repairs, severed stringers, cracking, and loose or distressed fasteners of the forward and aft ends of the stringer splices of stringers 1–7 and 66–72, and corrective actions if necessary.
- At stringers 1–7 and 66–72, removing the four rivets common to the stringer and splice member at the forward and aft ends of the splice and doing a bolt hole eddy current (BHEC) inspection or an equivalent inspection procedure for cracking in each of the fastener holes, and corrective actions if necessary.
- Corrective actions for cracked holes include reaming to the maximum permissible hole diameter of the next larger size rivet. If a crack indication remains after reaming, this service information specifies repairing the cracked stringer.
- If a severed stringer is found during the GVI, doing related investigative actions of an eddy current surface scan inspection for cracking of the fuselage skin at the skin-to-stringer attachments immediately forward and aft of the stringer break and confirming skin cracks with a dye penetrant inspection. Corrective actions include repairing the severed stringer or skin cracks.

• For holes without crack indications, other specified actions include modifying the fastener holes by reaming to a certain maximum permissible hole diameter of the same size rivet and installing replacement fasteners; or if the original hole is larger than the maximum permissible diameter, installing the next rivet size and type.

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 4 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
Inspections and Modification	18 work-hours × $85 per hour = $1,530	$5,000	$6,530	$26,120

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

Authority for This Rulemaking

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

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

Regulatory Findings

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):

2015–22–07 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–18312 ; Docket No. FAA–2015–1425; Directorate Identifier 2014–NM–185–AD.

(a) Effective Date

This AD is effective December 10, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188A and 188C airplanes, certificated in any category, serial numbers 1001 and subsequent.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the circumferential fuselage splice at fuselage-station (FS) 695 is subject to widespread fatigue damage (WFD). We are issuing this AD to prevent loss of residual strength of the circumferential fuselage splice at FS 695, which could lead to rapid decompression of the cabin and potential loss of the airplane.

(f) Compliance

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

(g) Inspections, Modification, Related Investigative Actions, and Corrective Actions

Before the accumulation of 38,200 total flight hours or within 30 days after the effective date of this AD, whichever occurs later: Do a general visual inspection for corrosion and previous repairs, severed stringers, cracking, and loose or distressed fasteners of the forward and aft ends of the stringer splices of stringers 1–7 and 66–72; remove the four rivets common to the stringer and splice member at the forward and aft ends of the splice and do a bolt hole eddy current inspection or an equivalent inspection procedure for cracking in each of the fastener holes; modify the fastener holes; and do all applicable related investigative and corrective actions and other specified actions; in accordance with the Accomplishment Instructions of Lockheed Martin Electra Service Bulletin 88/SB–722, dated April 30, 2014, except as specified in paragraph (h) of this AD. Do all applicable related investigative and corrective actions and other specified actions before further flight. If any repairs exceed the repair limits specified in Lockheed Martin Electra Service Bulletin 88/SB–722, dated April 30, 2014, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Corrective Action

(1) If, during any inspection required by paragraph (g) of this AD, any corrosion or previous repair is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) If, during any inspection required by paragraph (g) of this AD, any loose or distressed fastener is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Exception

Although Lockheed Martin Electra Service Bulletin 88/SB–722, dated April 30, 2014,

specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (k) of this AD.

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

(k) Related Information

For more information about this AD, Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5605; email: *carl.w.gray@faa.gov.*

(l) 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) Lockheed Martin Electra Service Bulletin 88/SB–722, dated April 30, 2014.

(ii) Reserved.

(3) For Lockheed service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, GA 30063; phone: 770–494–5444; fax: 770–494–5445; email: *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(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 October 22, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27919 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0244; Directorate Identifier 2014–NM–127–AD; Amendment 39–18313; AD 2015–22–08]

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 A318, A319, and A320 series airplanes. This AD was prompted by a cracked upper cardan in the main landing gear (MLG). This AD requires revising the maintenance or inspection program, as applicable, to reduce the life limits for the MLG upper cardan for certain installations. We are issuing this AD to prevent failure of the upper cardan in the MLG, which could result in MLG collapse and subsequent damage to the airplane and injury to occupants.

DATES: This AD becomes effective December 10, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0244;* 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, Airworthiness Office—EIAS, 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. 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–2015–0244.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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 A318, A319, and A320 series airplanes. The NPRM published in the **Federal Register** on March 5, 2015 (80 FR 11964).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0141, dated June 4, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, and A320 series airplanes. The MCAI states:

> During an A320–200 77T main landing gear (MLG) fatigue test by Messier Bugatti-Dowty (MBD), an upper cardan was found with a crack, emanating from the grease hole/main lug intersection. The affected upper cardan, Part Number (P/N) 201163620, is listed in the applicable Airworthiness Limitations Section (ALS) Part 1 with a demonstrated fatigue life of 60,000 landings.
>
> This condition, if not corrected, could lead to MLG upper cardan failure, possibly resulting in MLG collapse and subsequent damage to the aeroplane and injury to occupants.
>
> Prompted by these findings and further to analysis, it has been decided to reduce the life limit for certain installations of the P/N 201163620 MLG upper cardan.
>
> For the reasons described above, this AD requires implementation of the new life limits, as applicable, and replacement of any affected MLG upper cardan units that have already exceeded the reduced limit.
>
> The reduced life limits for the affected MLG upper cardan are expected to be incorporated in a next revision of the Airbus A318/A319/A320/A321 ALS Part 1.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0244-0003.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 11964, March 5, 2015) and the FAA's response to each comment.

Request To Extend the Compliance Time

Delta Airlines (DAL) requested that paragraph (g) of the proposed AD (80 FR

11964, March 5, 2015) be revised so the initial compliance time for replacing the MLG upper cardan is extended and corresponds to that of European Aviation Safety Agency (EASA) AD 2014–0141, dated June 4, 2014. EASA AD 2014–0141 specifies an initial compliance time of ''within 3 months'' after the effective date of that EASA AD and the proposed AD specified an initial compliance time of prior to the applicable life limit specified in paragraphs (g)(1) through (g)(5), or within 30 days after the effective date of the AD, whichever occurs later.

We agree with the commenter's request. In consideration of the average utilization rate of affected U.S. operators, the practical aspects of an orderly modification of the U.S. fleet during regular maintenance periods, and the availability of required modification parts, we have determined that a 3 month initial compliance time is appropriate for replacing the MLG upper cardan. We have changed paragraph (g) of this AD accordingly.

Request To Reference Next Higher Part Number Assembly

Lufthansa Technik requested that the part number for the next higher assembly of MLG cardan part number (P/N) 201163620 be referenced in the NPRM (80 FR 11964, March 5, 2015). The commenter stated that the NPRM and corresponding EASA AD 2014–0141, dated June 4, 2014, reference P/N 201163620, but that part number is not identified in the aircraft illustrated parts catalog (AIPC). The commenter is concerned that if operators only look in the AIPC to see if P/N 201163620 is identified, and it is not there, they may falsely think that their airplanes would not be affected by the NPRM.

We do not agree with the commenter's request. Although MLG cardan P/N 201163620 is not included in the AIPC, it is identified in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, which is part of the approved type design for these airplanes. Therefore, we have not changed this AD in this regard.

Clarification of Parts Installation Limitation

In paragraph (j) of the proposed AD (NPRM (80 FR 11964, March 5, 2015), we referred to applicable life limits in paragraphs (g)(1) through (g)(5) of the proposed AD. For airplanes other than those identified paragraphs (g)(1) through (g)(5) of the proposed AD, the life limit is in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation, Revision 02, dated May 13, 2011, as specified in paragraph (h)(5) of this AD. In addition, if a part is transferred between airplanes, operators must adjust the life limit using the method specified in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation, Revision 02, dated May 13, 2011, as specified in paragraph (h)(3) of this AD. We have clarified paragraph (j) of this AD by also referring to paragraphs (h)(3) and (h)(5) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 11964, March 5, 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 11964, March 5, 2015).

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

Airbus has issued A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011. This document provides revised instructions and life limits for airworthiness limitations items. 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 851 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour 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 $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $72,335, or $85 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-2015-0244;* 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):

2015–22–08 Airbus: Amendment 39–18313. Docket No. FAA–2015–0244; Directorate Identifier 2014–NM–127–AD.

(a) Effective Date

This AD becomes effective December 10, 2015.

(b) Affected ADs

For airplanes with configurations specified in paragraphs (g)(1) through (g)(5) of this AD: Paragraph (g) of this AD terminates the life limit specified in paragraph (n)(1) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), for airplanes having a main landing gear (MLG) upper cardan part number (P/N) 201163620.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a cracked upper cardan in the main landing gear (MLG). We are issuing this AD to prevent failure of the upper cardan in the MLG, which could result in MLG collapse and subsequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Revision to Maintenance or Inspection Program

For airplanes having a MLG upper cardan part number (P/N) 201163620: Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the applicable life limits for the MLG upper cardan P/N 201163620 specified in paragraphs (g)(1) through (g)(5) of this AD and the life limit clarifications specified in paragraph (h) of this AD. The initial compliance time for replacing the MLG upper cardan is prior to the applicable life limit specified in paragraphs (g)(1) through (g)(5) of this AD, or within 3 months after the effective date of this AD, whichever occurs later. Accomplishing this revision terminates the life limit required by paragraph (n)(1) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015), for the MLG upper cardan P/N 201163620 for that airplane only.

(1) For Airbus Model A319 series airplanes, pre-Airbus Modification 26644, excluding corporate jets post-Airbus Modification 28238, 28162, and 28342: The life limit is 50,590 total flight cycles.

(2) For Airbus Model A319 series airplanes, post-Airbus Modification 26644, excluding corporate jets post-Airbus Modification 28238, 28162, and 28342: The life limit is 56,480 total flight cycles.

(3) For Airbus Model A320 series airplanes pre-Airbus Modification 26644 having weight variant (WV) WV011, WV012, WV016, or WV018: The life limit is 50,590 total flight cycles.

(4) For Airbus Model A320 series airplanes post-Airbus Modification 26644, having WV011, WV012, WV016, or WV018: The life limit is 56,480 total flight cycles.

(5) For Airbus Model A320 series airplanes post-Airbus Modification 26644, having WV015 or WV017: The life limit is 42,140 total flight cycles.

(h) Additional Life Limit Clarifications

(1) The life limits specified in paragraphs (g)(1) through (g)(5) of this AD are total flight cycles accumulated by the MLG since first installation on an airplane.

(2) The life limits specified in paragraphs (g)(1) through (g)(5) of this AD are applicable only for the airplane model, configuration and WV specified in those paragraphs.

(3) If a part is transferred between airplanes having a different life limit for the MLG unit, adjust the life limit using the method specified in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011.

Note 1 to paragraphs (h)(3) and (h)(5) of this AD: Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011, is already required by paragraph (n) of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015).

(4) A MLG unit on which Airbus Modification 26644 is installed is also known as ''enhanced'' landing gear and is identified as P/N 201582xxx Leg and Dressing Series. A MLG unit that does not have Airbus Modification 26644 installed is identified as P/N 201375xxx Leg and Dressing Series. (The xxx designation is a placeholder for numbers).

(5) For airplanes with configurations not specified in paragraphs (g)(1) through (g)(5) of this AD, the life limit for the MLG unit is specified in Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011.

(i) No Alternative Actions and Intervals

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Parts Installation Limitation

As of the effective date of this AD, a MLG upper cardan having P/N 201163620 may be installed on an airplane, provided the part life has not exceeded the applicable life limit specified in paragraphs (g)(1) through (g)(5) of this AD, paragraph (h)(3) of this AD, and paragraph (h)(5) of this AD, and is replaced with a serviceable part prior to exceeding the applicable life limit specified in paragraphs (g)(1) through (g)(5) of this AD, paragraph (h)(3) of this AD, and paragraph (h)(5) of this AD.

(k) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0141, dated June 4, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0244.*

(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 this AD specifies otherwise.

(i) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items,

Revision 02, dated May 13, 2011. The revision level of this document is identified on only the title page and in the Record of Revisions. The revision date is not identified on the title page of this document.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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 October 22, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27925 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0649; Directorate Identifier 2014–NM–132–AD; Amendment 39–18314; AD 2015–22–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by reports of missing plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the lower lobe cargo compartments. This AD requires drilling a hole and installing and bonding plugs in certain stringers of the lower lobe cargo compartments. We are issuing this AD to detect and correct missing or misaligned plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

DATES: This AD is effective December 10, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 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–2014–0649.

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–2014–0649; 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: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@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 September 23, 2014 (79 FR 56682). The NPRM was prompted by reports of missing plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the lower lobe cargo compartments. The NPRM proposed to require drilling a hole and installing and bonding plugs in certain stringers of the lower lobe cargo compartments. We are issuing this AD to detect and correct missing or misaligned plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 56682, September 23, 2014) and the FAA's response to each comment.

Supportive Comment

United Airlines stated that it concurs with the NPRM (79 FR 56682, September 23, 2014), and agrees that the detection and correction of the missing or misaligned plugs will maintain a higher level of safety.

Request To Delay Issuance of the NPRM (79 FR 56682, September 23, 2014)

All Nippon Airways (ANA) asked that we delay issuance of the NPRM (79 FR 56682, September 23, 2014) until Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014 (referred to as the appropriate source of service information for accomplishing the specified actions), can be revised. ANA noted that the service information specifies using a stringer plug removal/installation tool, having tool number (T/N) MIT140Z4372–3; however, this tool does not work well for doing the actions. ANA provided the following reasons to substantiate its request:

- For the instructions specified in Task 1 of this service information, the connecting tube on the tool (T/N 140Z4372–8/–15) interferes with the fasteners at the section 41/43 joint; therefore, the tool cannot be inserted into the stringers. The connecting tube needs to be shortened in length and trimmed to taper.
- For the instructions specified in Task 3 of the service information, the tool (T/N 140Z4372–3) cannot be inserted at stringers 30R through 35R, adjacent to the cargo door, because it won't bend at the location adjacent to the stringer end and frame.
- For the instructions specified in Task 3 of the service information, the tool (T/N 140Z4372–3) is inserted into the stringer from station (STA) 1593 to

STA 1209, and the stringer length is 384 inches. This tool has five extension rods that are 300 inches, and six extension rods that are 350 inches, respectively; therefore, additional rods are necessary.

• The tool (T/N 140Z4372–3) has a head piece (T/N 140Z4372–4/–5) and a push rod (T/N 140Z4372–6/–14) with a retaining pin hole. However, the retaining pin is not centered on the push rod and head piece, so the head piece detaches from the push rod during the plug removal/installation, and it takes an extraordinary amount of time to remove the head piece from the stringer. The retaining pin should be centered on the push rod and head piece in order to alleviate these issues.

Boeing has issued Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. This service information provides clarification to the instructions, which addresses the commenter's concerns. In addition, the stringer plug removal/installation tool, having T/N MIT140Z4372–3, has been redesigned and retains the same part number. We have revised paragraphs (c) and (g) of this AD to refer to Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. We have also added new paragraph (h) to this AD to give credit for actions performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014.

Request To Add Use of Fabricated Tool in Service Information Instructions

ANA asked that we allow using an alternate stringer plug removal/installation tool, fabricated by ANA, and include the tool in the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014, when the service information is revised. ANA added that, due to the issues previously identified, it has been using this alternate stringer plug removal/installation tool to remove existing plugs and install new plugs, with concurrence from Boeing.

We acknowledge the commenter's request to allow its fabricated tool to be included in the service information instructions. However, as noted previously, Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015, has been issued; and the stringer plug removal/installation tool, having T/N MIT140Z4372–3, has been redesigned and retains the same part number. We have not changed this AD in this regard.

Request To Add Instructions to Service Information for Clarification

ANA asked that we add certain instructions to the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014. ANA provided the following reasons to substantiate its request:

• For the instructions specified in Task 1, steps 2 and 3, of the service information, it specifies drilling a hole on stringers S–34L and S–35L. Removal of the environmental control system (ECS) cargo air insulated riser duct is necessary to ensure workspace for drilling at S–34L and S–35L. ANA asked that these removal and installation instructions be added when the service information is revised.

• For the instructions specified in Task 2, step 3, of the service information, it specifies bonding new plugs in the stringers; however, the stringer and duct installed at the aft face of STA 825 frame web are adjacent to the stringer, so it is not possible to apply a resin through the moisture vent hole. Additionally, the tie-up for supporting the duct should be cut and removed. ANA asked that instructions be added to cut the tie-up and move the duct if the access conditions identified in the service information are insufficient.

Boeing has issued Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. This service information provides clarification to the instructions identified, which addresses the commenter's concerns. We have not changed this AD in this regard.

ANA also stated that each task in the service information necessitates confirmation that using a Sharpie marker, or similar, to mark the centerline of the top surface of the new plug to help locate the plug at the position of a stringer vent hole is permitted. However, ANA found that the plug had rotated to 90 degrees; but the centerline of the top surface of the new plug was at the position of a stringer vent hole. ANA asked that instructions be added to the service information specifying that after plug installation operators should verify the new plug location is correct with a mirror or borescope.

We acknowledge the commenter's concerns. Boeing has incorporated instructions into Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015, which allow the use of a mirror or borescope to check the proper positioning of a plug before applying the bond. We have not changed this AD in this regard.

ANA also stated that the instructions specified in Task 1, Note 9, of the service information, specify using a 3-step drill process. The first step is to drill a new pilot hole of 1/8 inch; the second step is to drill a new pilot hole of 3/16 inch; and the third step is to ream to a final diameter of 0.235 to 0.265 inch. Step 2.3 is required for compliance (RC), so no deviation of the procedure is permitted. ANA added that to maintain the 3-step drill process, a special reamer is needed. ANA noted that the primary objective should be preparing the final diameter hole, not the number of drilling steps, and asked that the 3-step drill process be removed, and more steps to the drill process be allowed.

We agree that alternative methods may be allowed for drilling the hole specified in Task 1, Note 9, because the intent of the 3-step drill process is to effectively ream each hole to its final diameter. Boeing has incorporated instructions allowing additional drill steps outside of the 3-step drill process in Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. We have not changed this AD in this regard.

Request To Clarify Certain Language in the SUMMARY and Discussion Sections of the NPRM (79 FR 56682, September 23, 2014) and Paragraph (e) of the Proposed AD

Boeing asked that we clarify the reason for the unsafe condition identified in the **SUMMARY** and Discussion sections of the NPRM (79 FR 56682, September 23, 2014), and paragraph (e) of the proposed AD. Boeing stated that the language ''reports of missing bonded plugs'' should be ''reports of missing plugs.'' Boeing noted that bonding the plugs into the stringers is the solution, not the issue. Boeing also stated that the language ''certain stringers of the forward electrical equipment (EE) bay of the lower lobe cargo compartments'' should be ''certain stringers of the lower lobe cargo compartments.'' Boeing noted that the issue occurred in both the forward and aft cargo bilge areas, not just the forward compartment, and added that referencing the forward EE bay is not relevant to the issue.

Boeing also asked that we clarify the description of the unsafe condition identified in the **SUMMARY** and Discussion sections of the NPRM (79 FR 56682, September 23, 2014), and paragraph (e) of the proposed AD. Boeing stated that the language ''reports of misaligned bonded plugs'' should be ''misaligned plugs.'' Boeing noted that

bonding the plugs into the stringers is the solution, not the issue.

In addition, Boeing asked that we delete ''the cause was determined to be miscalculated pressure exposures during design'' and ''could result in missing or misaligned bonded plugs which'' from the Discussion section of the NPRM (79 FR 56682, September 23, 2014). Boeing stated that there is no data showing the cause of the plugs to disengage was miscalculated pressure exposures.

We acknowledge the commenter's concerns and provide the following. We agree that the word ''bonded'' should be removed from the language in the **SUMMARY** section of this final rule, and in paragraph (e) of this AD, for clarification; we also agree that the language ''the forward EE bay'' should be removed throughout this AD, for the reasons provided by the commenter; we have changed all applicable sections accordingly.

In addition, we acknowledge the commenter's request that the cause of disengagement of the plugs is incorrect and should be removed from the Discussion section of the NPRM (79 FR 56682, September 23, 2014). We agree that there is no data showing the cause of the plugs to disengage was miscalculated pressure exposures; this issue stems from high pressure exposures associated with flight testing pressure profiles through pressurization checks during production. However, the Discussion section of the of the NPRM is not restated in this final rule; therefore, we have not changed this final rule in regard to the language in that section.

Request To Include Detailed Rework Instructions

Boeing asked that we include detailed rework instructions in the actions required by paragraph (g) of the proposed AD (79 FR 56682, September 23, 2014). Boeing noted that the following language should be added before the first sentence: ''Ensure all 80 stringer plugs are installed, and apply adhesive to them to ensure they cannot become dislodged or misaligned. At 2 locations, this will require rework beyond a nominal application of adhesive to the stringer plug. The rework at the unique locations will involve the following. . . .''

We acknowledge the commenter's concern; however, the rework instructions are described in detail in the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. Since this AD requires accomplishing the actions in accordance with this service information, there is no need to describe those instructions in detail in paragraph (g) of this AD. We have not changed this AD in this regard.

Request To Extend the Compliance Time

Boeing asked that we extend the compliance time for the bonded plug installation from 12 to 24 months. Boeing stated that a conservative recalculation of the Boeing risk analysis due to the condition being resolved in production, and based on a static fleet size of 88 airplanes, resulted in a control program time of 66 months. Boeing added that a service bulletin compliance time of 24 months will allow sufficient time for operator planning, scheduling, and accomplishment of the retrofit within the risk-based control program time.

We do not agree to extend the compliance time to 24 months. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts, and the practical aspect of doing the bonded plug installation within an interval of time that corresponds to the typical scheduled maintenance for the majority of affected operators. Under the provisions of paragraph (i) of this AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD 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 56682, September 23, 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 56682, September 23, 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

We reviewed Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015. The service information describes procedures for drilling a hole and installing and bonding plugs in certain stringers of the lower lobe cargo compartments. 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 3 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
Bonded plug installations	100 work-hours × $85 per hour = $8,500	$3,466	$11,966	Up to $35,898

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):

2015–22–09 The Boeing Company: Amendment 39–18314; Docket No. FAA–2014–0649; Directorate Identifier 2014–NM–132–AD.

(a) Effective Date

This AD is effective December 10, 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–SB530024–00, Issue 002, dated June 5, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of missing plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the lower lobe cargo compartments. We are issuing this AD to detect and correct missing or misaligned plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

(f) Compliance

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

(g) Bonded Plug Installation

Within 12 months after the effective date of this AD: Drill a hole in stringers S–34L and S–35L, remove the plugs, and install and bond new plugs in the lower lobe cargo compartments, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014, which is not incorporated by reference in this AD.

(i) 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 (i) 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) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(3)(i) and (i)(3)(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.

(j) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 002, dated June 5, 2015.

(ii) Reserved.

(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.*

(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 October 22, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27954 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–1138; Airspace Docket No. 15–AWP–3]

Amendment of Class D and Class E Airspace; Van Nuys, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E surface area airspace at Van Nuys Airport, Van Nuys, CA, to accommodate standard instrument approach procedures for the airport. The geographic coordinates of the satellite airports also would be adjusted for Class D airspace and Class E surface area airspace as well as noting a name change for Burbank-Glendale-Pasadena Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, February 4, 2016. 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 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 29591; telephone: 202–267–8783. 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 CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4500.

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 controlled airspace at Van Nuys Airport, Van Nuys, CA.

History

On August 19, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D airspace and Class E surface area airspace at Van Nuys Airport, Van Nuys, CA (80 FR 50235). 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 D and Class E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designation 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D airspace and Class E surface area airspace at Van Nuys Airport, Van Nuys, CA. A review of the airspace revealed additional Class D airspace and Class E surface area airspace necessary to support instrument arrival procedures at the airport. Class D airspace extends upward from the surface to but not including 3,000 feet within a 4.3-mile radius of Van Nuys Airport excluding that airspace within the Bob Hope Airport, Burbank, CA, formerly Burbank-Glendale-Pasadena Airport, CA, Class C airspace area, and excluding that airspace within a 1.8-mile radius of Whiteman Airport, Los Angeles, CA. Class E surface area airspace extends upward from the surface within a 4.3-mile radius of Van Nuys Airport excluding that airspace within the Bob Hope Airport, Burbank, CA, formerly Burbank-Glendale-Pasadena Airport, CA, Class C airspace area, and excluding that airspace within a 1.8-mile radius of Whiteman Airport, Los Angeles, CA. The geographic coordinates for Bob Hope Airport and Whiteman Airport are adjusted to be in concert with the FAA's aeronautical data base.

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. 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 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 1050.1F, ''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 7400.9Z, Airspace Designations and Reporting

Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Van Nuys, CA [Modified]

Van Nuys, Van Nuys Airport, CA
(Lat. 34°12′35″ N., long. 118°29′24″ W.)
Burbank, Bob Hope Airport, CA
(Lat. 34°12′03″ N., long. 118°21′31″ W.)
Los Angeles, Whiteman Airport, CA
(Lat. 34°15′34″ N., long. 118°24′48″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.3-mile radius of Van Nuys Airport, excluding that airspace within the Bob Hope Airport, CA, Class C airspace area, and excluding that airspace within a 1.8-mile radius of Whiteman Airport, CA. This Class D airspace area 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.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA E2 Van Nuys, CA [Modified]

Van Nuys, Van Nuys Airport, CA
(Lat. 34°12′35″ N., long. 118°29′24″ W.)
Burbank, Bob Hope Airport, CA
(Lat. 34°12′03″ N., long. 118°21′31″ W.)
Los Angeles, Whiteman Airport, CA
(Lat. 34°15′34″ N., long. 118°24′48″ W.)

That airspace extending upward from the surface within a 4.3-mile radius of Van Nuys Airport, excluding that airspace within the Bob Hope Airport, CA, Class C airspace area, and excluding that airspace within a 1.8-mile radius of Whiteman Airport, CA.

Issued in Seattle, Washington, on October 27, 2015.

Tracey Johnson,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–28124 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2015–0842; Airspace Docket No. 15–ACE–2

Amendment of Class E Airspace for the Following Missouri Towns: Chillicothe, MO; Cuba, MO; Farmington, MO; Lamar, MO; Mountain View, MO; Nevada, MO; and Poplar Bluff, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects an error in a final rule published in the **Federal Register** of October 19, 2015, by amending the magnetic bearing to a true bearing in the Class E surface area airspace description for Farmington Regional Airport, Farmington, MO.

DATES: Effective 0901 UTC, December 10, 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.

FOR FURTHER INFORMATION CONTACT: Jim Pharmakis, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5855.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** amending Class E surface area airspace at multiple airports in Missouri, including Farmington Regional Airport, Farmington, MO (80 FR 63085 October 19, 2015). Subsequent to publication the FAA identified that a magnetic bearing was used to describe parameters of the Class E surface area airspace for Farmington Regional Airport, Farmington, MO. This action replaces the magnetic bearing with a true bearing.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of October 19, 2015 (80 FR 63085) FR Doc. 2015–26273, the bearing in the regulatory text on page 63086, column 3, line 9, is corrected as follows:

§ 71.1 [Amended]

ACE MO E2 Farmington, MO (Corrected)

■ Remove ''202° bearing'' and add in its place ''204° bearing''

Issued in Fort Worth, Texas, on October 26, 2015.

Walter Tweedy,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–28122 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 150324296–5964–03]

RIN 0605–AA38

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Commerce's (Department) Privacy Act regulations under the Privacy Act. The revisions add a new Privacy Act System of Records, entitled ''COMMERCE/DEPT–25, Access Control and Identity Management System,'' to the General and Specific exemptions sections of the Department's Privacy Act regulations. The Privacy Act requires agencies to identify records exempted from a provision of the General and/or Specific exemptions sections of the Act. This document helps the Department comply with this requirement.

DATES: These amendments are effective December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Michael J. Toland, Department Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave.NW., Room 52010, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background Information

On May 8, 2015, the Department of Commerce published a proposed rule revising its existing regulations at 15 CFR part 4 under the FOIA and Privacy Act, 5 U.S.C. 552a. *See* 80 FR 26499. This rule proposed revisions to the Department's regulations under the Privacy Act. In particular, the action would amend the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments to the proposed rule during the 30-day open comment period. On June 29, 2015, the

Department reopened the comment period for an additional 30 days because not all interested parties may have been given appropriate notification about this proposed new system of records, as well as time to respond with comments prior to the closing date of the original public comment period of June 8, 2015. *See* 80 FR 36397.

Public Comments

The Department received one public submission in response to the proposed rulemaking, which was similar or identical in some cases to the ones submitted by the commenter for the new Privacy Act System of Records: ''COMMERCE/DEPT–25, Access Control and Identity Management System.'' In particular, the commenter suggested that the ''proposed changes [to this rule] are expressly intended to exempt the Department's proposed new system of records entitled 'COMMERCE/DEPARTMENT–25, Access Control and Identity Management System,' set forth in 80 FR 26534, published May 8, 2015, from most provisions of the Privacy Act.'' The commenter also indicated that the Department provided insufficient business justification for this system of records. The commenter further submitted the view that the routine uses listed in this notice may result in matching programs as described in 5 U.S.C. 552a(a)(8), adding that if the Department engages in any matching program, it must follow matching program requirements outlined in 5 U.S.C. 552a(o).

The Department would like to thank the commenter for submitting comments in response to the proposed rulemaking. While due consideration has been given to the comments received, since they were similar or identical to those received for the proposed Privacy Act System of Records notice entitled: ''COMMERCE/DEPT–25, Access Control and Identity Management System,'' and the comments did not address any substantive changes to this proposed rule, the Department will not address the comments in this notice. Instead, responses to the commenter's comments can be found under the Public Comments and Responses section of the final notice for COMMERCE/DEPT–25.

With this action, the Department's Privacy Act regulations are revised regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. Specifically, the revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Classification

It has been determined that this notice is not significant for purposes of E.O. 12866. *Regulatory Flexibility Act:* The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This final rule amends the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. These amendments are administrative in nature and will not impose a financial impact on anyone, does not change the way any acts or the way anyone is treated. Further, the applicable exemptions apply to information collected to establish identity, accountability, and audit control of electronic or other digital certificates of assigned personnel who require access to Department of Commerce electronic and physical assets. The information collected is provided on a voluntary basis, with no cost incurred by individuals. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act: This document does not contain a collection-ofinformation requirement subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

List of Subjects in 15 CFR Part 4

Freedom of information, Privacy.

Dated: October 29, 2015.

Catrina D. Purvis,

Department of Commerce, Chief Privacy Officer and Director for Open Government.

For reasons stated in the preamble, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

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

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3717; 41 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

■ 2. Amend § 4.33 by adding paragraph (b)(4) to read as follows:

§ 4.33 General exemptions.

* * * * *

(b) * * *

(4) *Access Control and Identity Management System*—COMMERCE/DEPT–25. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel.

■ 3. Amend § 4.34 by revising paragraphs (a)(1), (b) introductory text, (b)(1), (b)(2)(i) introductory text, (b)(2)(i)(C), (b)(2)(i)(F), and (b)(4)(i) to read as follows:

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are: COMMERCE/BIS–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–11, COMMERCE–PAT–TM–4, COMMERCE/DEPT–12, COMMERCE/DEPT–13, COMMERCE/DEPT–14, and COMMERCE/DEPT–25.

* * * * *

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/BIS–1, COMMERCE/NOAA–5, and COMMERCE/DEPT–25 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

* * * * *

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–5, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

* * * * *

(F) Access Control and Identity Management System—COMMERCE/DEPT–25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

* * * * *

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–1;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–3;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3;

(H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT–13;

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14; and

(K) Access Control and Identity Management System—COMMERCE/DEPT–25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid.

* * * * *

[FR Doc. 2015–28063 Filed 11–3–15; 11:15 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0962]

Drawbridge Operation Regulation; Oakland Inner Harbor Tidal Canal, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the High Street Drawbridge across the Oakland Inner Harbor Tidal Canal, mile 6.0, at Alameda, CA. The deviation is necessary to allow the bridge owner to replace the center span lock. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective without actual notice from November 5, 2015 through 6:30 p.m. on November 25, 2015. For the purpose of enforcement, actual notice will be used from 2:30 p.m. on October 21, 2015 until November 5, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0962] is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION: Alameda County Public Works Agency has requested a temporary change to the operation of the High Street Drawbridge, mile 6.0, over Oakland Inner Harbor Tidal Canal, at Alameda, CA. The bridge provides a vertical clearance of 16 feet above Mean High Water in the closed-to-navigation position. The bridge currently operates under 33 CFR 117.181. Navigation on the waterway is commercial and recreational.

The bridge will be secured in the closed-to-navigation position, October 26, 2015 through November 25, 2015, Monday through Friday, 9:30 a.m. to 6:30 p.m., due to replacement of the center span lock. During nights and weekends, the bridge will be able to open upon 2 hours advance notice with single leaf openings. During working hours a 15-foot wide scaffold at mid-channel will reduced vertical clearance by 9 feet. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is an alternate route for shallow draft vessels through San Leandro Bay. The Coast Guard will also inform the users of the waterway by our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so they can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 21, 2015.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2015–28292 Filed 11–4–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0963]

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Commodore Schuyler F. Heim highway drawbridge across the Cerritos Channel, mile 4.9, at Long Beach, CA. During the deviation electrical power will be disconnected from the bridge to allow removal of the bridge from the waterway. This deviation allows the bridge to remain in the closed-to-navigation position during its removal.

DATES: This deviation is effective without actual notice from November 5, 2015 through 6 p.m. on November 25,

2015. For the purposes of enforcement, actual notice will be used from 6 a.m. on October 12, 2015 until November 5, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0963] is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION: California Department of Transportation has requested a temporary change to the operation of the Commodore Schuyler F. Heim highway drawbridge, mile 4.9, over Cerritos Channel, at Long Beach, CA. The bridge will provide a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position until October 26, 2015. After October 26, 2015, the bridge and falsework will provide a vertical clearance of 5 feet above Mean High Water until the bridge and falsework are removed completely from the waterway. The bridge currently operates as required by 33 CFR 117.147(a). Navigation on the waterway is commercial and recreational.

The bridge will be secured in the closed-to-navigation position from 6 a.m. on October 12 to 6 p.m. on November 25, 2015 while the bridge is removed from the waterway. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and Los Angeles Harbor can be used as an alternate route for vessels. The Coast Guard will also inform the users of the waterway by our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so they can arrange their transits to minimize any impact caused by the temporary deviation.

The bridge will be removed from the waterway and 33 CFR 117.147(a) will be revised accordingly. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 12, 2015.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2015–28293 Filed 11–4–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0295]

RIN 1625–AA00

Safety Zones; Shell Arctic Drilling/ Exploration Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones around the POLAR PIONEER and NOBLE DISCOVERER, two vessels associated with Royal Dutch Shell's (Shell) Arctic oil drilling and exploration operations, as well as any vessel actively engaged in towing or escorting those vessels, while they are located in the U.S. Territorial and Internal Waters of the Sector Puget Sound Captain of the Port Zone. The safety zones created by this rule are necessary to ensure the mutual safety of all waterways users including the specified vessels and those individuals that may desire to exercise their First Amendment rights relating to Shell's Arctic oil drilling and exploration operations.

DATES: This rule is effective without actual notice from November 5, 2015 through December 31, 2015. For the purposes of enforcement, actual notice will be used from the date the rule was signed, October 23, 2015, through November 5, 2015.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–0295 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Kate Haseley, Waterways Management Division, U.S. Coast Guard Sector Puget Sound; telephone (206) 217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
U.S.C. United States Code

II. Background Information and Regulatory History

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 publishing an NPRM would be impracticable as the vessels at issue will be arriving in late October and a safety zone is needed at that time to help ensure the safety of all waterway users.

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**. For reasons identical to those described above, delaying the effective date until 30 days after publication would be impracticable since the regulation is immediately necessary to help ensure the safety of all waterway users.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish limited access areas is: 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. POLAR PIONEER and NOBLE DISCOVERER are Shell contracted vessels that are returning to the Puget Sound region as a part of demobilizing from oil drilling and exploration operations in the Arctic over the spring and summer of 2015. In the spring of 2015 a significant amount of First Amendment activity related to Shell's arctic activities took place in both Washington and Oregon and such activity may occur again when the vessels are in the Puget Sound. The previous First Amendment activity included the unauthorized boarding of a Shell contracted vessel on the high seas by Greenpeace members, the formation of a ''kayak flotilla'' in the Puget Sound to advocate against Shell's operations in the region including an attempt to block POLAR PIONEER from leaving Seattle, Washington, and the use of a ''kayak flotilla'' as well as Greenpeace members hanging from a bridge in Portland, Oregon to prevent another Shell contracted vessel from departing. Draft

restrictions, vessel maneuvering characteristics, and geographic/environmental conditions may constrain the ability of large commercial vessels, like the POLAR PIONEER and NOBLE DISCOVERER, to maneuver in close quarters with other vessels, particularly small craft piloted by recreational operators. Intentional close-in interaction of these vessels will create an increased risk of collision, grounding, or personal injury for all parties. This safety risk to all parties and the port itself is best addressed by mandating a minimum zone of separation. For these reasons, the Coast Guard believes that safety zones around the POLAR PIONEER and NOBLE DISCOVERER, as well as any vessel actively engaged in towing or escorting those vessels, are necessary to ensure the safety of all waterways users.

IV. Discussion of the Rule

In this rule, the Coast Guard is establishing safety zones around the Shell contracted vessels POLAR PIONEER and NOBLE DISCOVERER, as well as any vessel actively engaged in towing or escorting those vessels. The safety zones are established in subsection (a) of this temporary regulation. Per subsection (a)(1), while transiting, the safety zone around each of the vessels will encompass all waters within 500 yards of the vessels in all directions from those vessels and any other vessel actively engaged in towing or escorting those vessels. Persons and/or vessels that desire to enter these safety zones must request permission to do so from the Captain of the Port, Puget Sound by contacting the Joint Harbor Operations Center at 206–217–6001, or the on-scene Law Enforcement patrol craft, if any, via VHF–FM CH 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is not a significant regulatory action as the safety zones are limited in both size and duration and any person and/or vessel needing to transit through the safety zones may be allowed to do so with the permission of the Captain of the Port, Puget Sound.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 may be small entities: The owners or operators of vessels intending to transit the affected waterways when the safety zones are in effect. The safety zones will not have a significant economic impact on a substantial number of small entities, however, because the safety zones are limited in both size and duration and any person and/or vessel needing to transit through the safety zones may be allowed to do so with the permission of the Captain of the Port, Puget Sound.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security 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 temporary safety zones to deal with an emergency situation that

is one week or longer in duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of all individuals and supports the ability to congregate and exercise First Amendment free speech rights safely and without interfering with other maritime traffic. Of particular note, large vessels operating in restricted waters cannot maneuver freely, nor can they stop immediately. As such, any First Amendment activity taking place in immediate proximity to such vessels can quickly result in extremis. Individuals that desire to exercise their First Amendment rights are asked to do so with full regard to vessel traffic conditions and are requested to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate their activities so that their message can be heard, without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 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.T13–302 to read as follows:

§ 165.T13–302 Safety Zones; Shell Arctic Drilling/Exploration Vessels, Puget Sound, WA.

(a) *Safety Zones*—(1) *Location.* The following areas are designated as safety zones: All waters within 500 yards of the following vessels while transiting within the U.S. Territorial or Internal Waters of the Sector Puget Sound Captain of the Port Zone as defined in 33 CFR 3.65–10: NOBLE DISCOVERER, POLAR PIONEER, and any other vessel actively engaged in towing or escorting those vessels.

(2) *Regulations.* In accordance with the general regulations in subpart C of this section, no persons or vessels may enter these safety zones unless authorized by the Captain of the Port, Puget Sound or his designated representative. To request permission to enter one of these safety zones contact the Joint Harbor Operations Center at 206–217–6001, or the on-scene Law Enforcement patrol craft, if any, via VHF–FM CH 16. If permission for entry into one of these safety zones is granted, vessels must proceed at a minimum speed for safe navigation and in accordance with any directions given by the Captain of the Port, Puget Sound or his designated representative.

(b) *Dates.* This rule will be enforced from October 23, 2015 through December 31, 2015.

Dated: October 23, 2015.

M.W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2015–28291 Filed 11–4–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP11

Exempting Mental Health Peer Support Services From Copayments

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published a direct final rule amending its regulation that governs VA services that are not subject to copayment requirements for inpatient hospital care or outpatient medical care. Specifically, the regulation is amended to exempt mental health peer support services from having any required copayment. VA received no adverse comments concerning the direct final rule or its companion substantially identical proposed rule published in the **Federal Register** on the same date. This document confirms that the direct final rule became effective on January 27, 2015. In a companion document in this issue of the **Federal Register**, we are withdrawing as unnecessary the proposed rule.

DATES: *Effective Date:* The effective date of January 27, 2015, for the direct final rule published November 28, 2014, 79 FR 70938, is confirmed.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a direct final rule published in the **Federal Register** on November 28, 2014, 79 FR 70938, VA amended 38 CFR 17.108 to eliminate copayments for mental health peer support services. VA published a companion substantially identical proposed rule at 79 FR 70941, on the same date to serve as a proposal for the revisions in the direct final rule in case adverse comments were received. The direct final rule and proposed rule each provided a 60-day comment period that ended on January 27, 2015. No adverse comments were received. Six comments that supported the rulemaking were received from the general public. One commenter also urged VA to exempt evidence-based, cost-effective primary care services from having a required copayment. This comment is outside the scope of this rulemaking, and therefore, VA is not making any changes to this rulemaking based on this comment.

Under the direct final rule procedures that were described in 79 FR 70938 and 79 FR 70941, the direct final rule became effective on January 27, 2015, because no adverse comments were received within the comment period. In a companion document in this issue of the **Federal Register**, VA is withdrawing the proposed rulemaking, RIN 2900–AP10, published at 79 FR 70941, as unnecessary.

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 October 26, 2015, for publication.

Dated: November 2, 2015.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–28259 Filed 11–4–15; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0456; FRL–9936–57–Region 4]

Air Plan Approval; TN; Knox County Emissions Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the Tennessee state implementation plan (SIP) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Knox County Department of Air Quality Management (County Department), on March 14, 2014, and May 14, 2015, that require certain sources in Knox County, Tennessee, to report actual emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) to the County Department annually. These changes amend the Knox County Air Quality Management Regulations in the Knox County portion of the Tennessee SIP to reflect the State of Tennessee's SIP-approved emissions statement requirements for Knox County. This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: This direct final rule is effective January 4, 2016 without further notice, unless EPA receives adverse comment by December 7, 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 No. EPA–R04–OAR–2015–0456 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–2015–0456'', Air Regulatory Management Section (formerly Regulatory Development 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.
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–2015–0456''. 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 may not be 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: Tiereny Bell, 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. Bell can be reached at (404) 562–9088 or via email at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated revised 8-hour ozone national ambient air quality standards (NAAQS) of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. EPA designated Blount and Knox Counties in Tennessee as a nonattainment area (hereinafter referred to as the ''Knoxville Area'' or ''Area'') for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the Knoxville Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. On March 6, 2015, EPA finalized a rule entitled ''Implementation of the 2008 National Ambient Air Quality Standards for

Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS.[1] *See* 80 FR 12264. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA, including an attainment date three years after the July 20, 2012, effective date, for areas classified as marginal for the 2008 8-hour ozone NAAQS. Therefore, the attainment date for the Knoxville Area is July 20, 2015.[2] On July 13, 2015, EPA determined that the Area had attained the 2008 8-hour ozone NAAQS and redesignated the Area to attainment. *See* 80 FR 39970.

Ground level ozone is not emitted directly into the air, but is created by chemical reactions between NO_X and VOC in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC. Section 182(a)(3)(B) of the CAA requires each state with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO_X or VOC stationary source[3] located within a nonattainment area showing the actual emissions of NO_X and VOC from that source. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter. The State of Tennessee satisfied the obligation to develop a nonattainment SIP revision for the Knoxville Area addressing section 182(a)(3)(B). EPA approved the State's SIP revision addressing emissions statement requirements for the 2008 8-hour ozone standard on March 5, 2015. *See* 80 FR 11974.

The Knox County Air Pollution Control Board (County Board) adopted a new regulation, Knox County Air Quality Management Regulation Section 26.5.C—*Emissions Statement,* on October 16, 2013, requiring certain sources to report actual emissions of VOC and NO_X to the County Department annually and amended that regulation on January 21, 2015, to more closely reflect the Tennessee emissions statements requirements for the 2008 8-hour ozone standard in Tennessee Air Pollution Control Regulation 1200–3–18ndash;.02—*General Provisions and Applicability.* EPA is approving the portion of the March 14, 2014, SIP submittal containing the version of Section 26.5.C adopted by the County Board on October 16, 2013, and the May 14, 2015, SIP submittal containing the revisions to Section 26.5.C adopted by the County Board on January 21, 2015. More information on EPA's analysis of the SIP revisions is provided below.

II. Analysis of State's Submittal

The March 14, 2014, and May 14, 2015, submittals seek to add Knox County Air Quality Management Regulation Section 26.5.C to the Knox County portion of the Tennessee SIP. EPA initially approved Knox County Air Quality Management Regulation Section 26.5—*Monitoring, Recording, and Reporting of Source Emissions,* into the Tennessee SIP in 1972. *See* 37 FR 10842 (May 31, 1972). Knox County is amending Section 26.5 to include Section 26.5.C—*Emissions Statement* that reflects the State of Tennessee's SIP-approved emissions statement requirements in Tennessee Air Pollution Control Regulation 1200–3–18-.02. Section 26.5.C requires owners and operators of sources with actual emissions of 25 tons per year or more of VOC or NO_X to submit annual reports of actual emissions to the County Department. Tennessee's May 14, 2015, SIP submittal contains the County Board's January 21, 2015, revisions to Section 26.5.C. that modify the submission deadline and include more detailed certification requirements. The revisions set a June 15 deadline to submit emissions statements to the County Department for 2015 and a March 31 deadline for 2016 and beyond. The revisions also require that an official of the company sign the report, certifying that the information and data contained in the report is accurate to the best knowledge of the individual certifying the report. EPA has determined that these SIP submissions meet the requirements of the CAA.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Knox County Air Quality Management Regulation Section 26.0 entitled ''*Monitoring, Recording, and Reporting'',* effective January 21, 2015, addressing annual emissions statements for certain VOC and NO_X sources in Knox County. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 4 office (see the **ADDRESSES** section of this preamble for more information).

IV. Final Action

EPA is approving the portion of the March 14, 2014, SIP submittal containing the version of Section 26.5.C adopted by the County Board on October 16, 2013, and the May 14, 2015, SIP submittal containing the revisions to Section 26.5.C adopted by the County Board on January 21, 2015. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 4, 2016 without further notice unless the Agency receives adverse comments by December 7, 2015.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 4, 2016 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[2] On August 27, 2015, EPA proposed to determine that the Area attained the standard by the attainment date. 80 FR 51992.

[3] A state may waive the emissions statements requirement for any class or category of stationary sources which emit less than 25 tons per year of VOCs or NO_X if the state meets the requirements of section 182(a)(3)(B)(ii).

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) 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2016. 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. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 20, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

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 RR—Tennessee

■ 2. Section 52.2220(c), is amended under Table 3—EPA Approved Knox County, Regulations by revising the entry for ''Section 26.0'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

State section	Title/Subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
26.0	Monitoring, Recording, and Reporting	1/21/2015	11/5/2015 [Insert citation of **Federal Register**].	
*	*	*	*	*

* * * * *

[FR Doc. 2015–28105 Filed 11–4–15; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0131; FRL–9936–45–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Major Source Permitting State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality. These revisions are updates to the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) permit programs.

DATES: This rule is effective on December 7, 2015.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–R06–OAR–2006–0131. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information 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 *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, 214–665–7520, *skordzi@gmail.com.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The background for this action is discussed in detail in our August 19, 2015, proposal (80 FR 50240). In that document, we proposed to approve portions of SIP submittals for the State of Louisiana. These amendments provide clarity to the SIP-approved rules and correct contradictory language. Specific proposed revisions address the assessment and validation of a facility's emissions inventory values. Further, the amendments revise the SIP rules to conform to the latest changes to Louisiana laws including making changes to the Louisiana NNSR and PSD permitting programs reflecting the requirements found in the federal NSR Reform Program SIP rules. The changes also define, for NNSR purposes, the parishes that have been designated as non-attainment for ozone. Finally, this action addresses eight rule changes for baseline actual emissions and projected actual emissions definitions. This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposal.

II. Final Action

We are approving portions of SIP submittals for the State of Louisiana submitted on July 25, 1997, June 22, 1998, February 2, 2000, January 27, 2003, June 15, 2005, December 20, 2005, May 5, 2006, July 20, 2007, November 9, 2007, August 14, 2009, May 16, 2011, and February 27, 2013, to address air permit procedure revisions, ERC banking revisions, Baton Rouge Severe Area rule update revisions, NSR reform revisions, rescission of the alternative emission reduction plan for Union Carbide Corporation Taft Plant, revisions for Particulate Matter 2.5 ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), and an update of $PM_{2.5}$ increments. We approve the portions of the SIP submittals that meet CAA requirements. Specifically, we are approving the following revisions to the Louisiana SIP:

- Revisions to LAC 33:III.501 as submitted on July 25, 1997;
- Revisions to LAC 33:III.504 as submitted on June 15, 2005; December 20, 2005; May 5, 2006; November 9, 2007; August 14, 2009; and May 16, 2011;
- Revisions to LAC 33:III.509 as submitted on July 25, 1997; June 22, 1998; January 27, 2003; February 2, 2000; December 20, 2005; May 5, 2006; November 9, 2007; May 16, 2011; and February 27, 2013;
- Revisions to LAC 33:III.603 as submitted on February 2, 2000; and August 14, 2009;
- Revisions to LAC 33:III.605 as submitted on August 14, 2009;
- Revisions to LAC 33:III.607 as submitted on November 9, 2007 and August 14, 2009;
- Revisions to LAC 33:III.613 as submitted on January 27, 2003 and May 5, 2006;
- Revisions to LAC 33:III.615 as submitted on January 27, 2003 and August 14, 2009; and
- The removal of the Union Carbide Bubble Permit in Hahnville, Louisiana, as submitted on July 20, 2007, at 40 CFR 52.970(d) to reflect the rescission of the permit by LDEQ.

The EPA is finding that the May 16, 2011, revisions to the Louisiana NNSR program at LAC 33:III.504 address all required NNSR elements for the implementation of the 1997 and 2006 $PM_{2.5}$ NAAQS. We note that the Louisiana NNSR program does not include regulation of volatile organic compounds and ammonia as $PM_{2.5}$ precursors. However, as section 189(e) of the Act requires regulation of $PM_{2.5}$ precursors that significantly contribute to $PM_{2.5}$ levels ''which exceed the standard in the area'' and Louisiana does not have a designated $PM_{2.5}$ nonattainment area; the revisions addressing only sulfur dioxide and nitrogen oxides are not inconsistent with the requirements of the CAA. In the event that an area is designated nonattainment for the 2012 $PM_{2.5}$ NAAQS or any other future $PM_{2.5}$ NAAQS, Louisiana will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of $PM_{2.5}$ precursors.

This action is being taken under section 110 of the Act.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Louisiana regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

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

additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed 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, and Volatile organic compounds.

Dated: October 23, 2015.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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 T—Louisiana

■ 2. In § 52.970:

■ a. In paragraph (c), the table titled ''EPA-Approved Louisiana Regulations in the Louisiana SIP'' is amended by revising the entries for Sections 501, 504, 509, 603, 605, 607, 613, and 615; and

■ b. Paragraph (d) is amended by removing the entry for ''Union Carbide Facility in Hahnville, Louisiana''.

The revisions read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA Approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
* *	*	*	*	* *
Chapter 5—Permit Procedures				
Section 501	Scope and Applicability	5/20/1996	11/5/2015 [Insert **Federal Register** citation].	
* *	*	*	*	* *
Section 504	Nonattainment New Source Review (NNSR) Procedures.	2/20/2011	11/5/2015 [Insert **Federal Register** citation].	The SIP does not include LAC 33:III.504.M.

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP—Continued

State citation	Title/subject	State approval date	EPA Approval date	Comments
* *	*	*	*	* *
Section 509	Prevention of Significant Deterioration.	12/20/2012	11/5/2015 [Insert **Federal Register** citation].	SIP does not include provisions for permitting of GHGs as effective on 04/20/2011 at LAC 33:III.509(B) definition of "carbon dioxide equivalent emissions", "greenhouse gases", "major stationary source", and "significant". SIP does not include the $PM_{2.5}$ SMC at LAC 33:III.509(I)(5)(a) from the 12/20/2012 adoption. LAC 33:III.509(I)(5)(a) is SIP-approved as of 10/20/2007 adoption.
Chapter 6—Regulations on Control of Emissions Reduction Credits Banking				
* *	*	*	*	* *
Section 603	Applicability	10/20/2007	11/5/2015 [Insert **Federal Register** citation].	
Section 605	Definitions	10/20/2007	11/5/2015 [Insert **Federal Register** citation].	
Section 607	Determination of Creditable Emission Reductions.	10/20/2007	11/5/2015 [Insert **Federal Register** citation].	
Section 613	ERC Balance Sheet	10/20/2007	11/5/2015 [Insert **Federal Register** citation].	
Section 615	Schedule for Submitting Applications.	10/20/2007	11/5/2015 [Insert **Federal Register** citation].	
* *	*	*	*	* *

* * * * *

[FR Doc. 2015–28097 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0795; FRL–9936–60–Region 4]

Approval and Promulgation of Implementation Plans; North Carolina Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of the November 2, 2012, State Implementation Plan (SIP) submission, provided by the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (NCDAQ) for inclusion into the North Carolina SIP. This final action pertains to the Clean Air Act (CAA or the Act) infrastructure requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. NCDAQ certified that the North Carolina SIP contains provisions that ensure the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina. With the exception of provisions pertaining to prevention of significant deterioration (PSD) permitting, interstate transport requirements, and state boards requirements, EPA is taking final action to approve North Carolina's infrastructure SIP submission provided to EPA on November 2, 2012, as satisfying the required infrastructure elements for the 2008 8-hour ozone NAAQS.

DATES: This rule is effective December 7, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0795. 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, i.e., Confidential Business Information 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 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: Nacosta C. Ward, 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. Ward can be reached via telephone at (404) 562–9140 or via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. Section 110(a) of the CAA generally requires states to make a SIP submission to meet applicable requirements in order to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. For additional information on the infrastructure SIP requirements, see the proposed rulemaking published on March 13, 2015. (80 FR 13312)

On March 13, 2015, EPA proposed to approve portions of North Carolina's November 2, 2012, 2008 8-hour ozone NAAQS infrastructure SIP submission with the exception of the PSD permitting requirements for major sources of section 110(a)(2)(C) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of 110(E)(ii). *See* 80 FR 13312.

II. Response to Comments

EPA received one set of comments on the March 13, 2015, proposed rulemaking to approve portions of North Carolina's infrastructure SIP submission intended to meet the CAA requirements for the 2008 8-hour ozone NAAQS. A summary of the comments and EPA's responses are provided below.

As an initial matter, the Commenter included interpretations of section 110(a)(2)(A) of the CAA in a background section, but this section did not include comments specific to EPA's March 13, 2015 proposed action on the North Carolina infrastructure SIP submittal. EPA provided an analysis of these same interpretations of section 110(a)(2)(A) in an October 16, 2014, rulemaking regarding the infrastructure SIP of Maryland for 2008 8-hour ozone NAAQS. (*See* 79 FR 62010) and we are incorporating those responses by reference. Specifically, please see EPA's Response 2, which addresses the Commenter's interpretation regarding CAA plain language; Response 3, which addresses the Commenter's interpretation of the legislative history of the CAA; Response 5, which addresses the Commenter's interpretation of EPA regulations (40 CFR 51.112); Response 6, which addresses the Commenter's interpretation of EPA interpretations of section 110 in infrastructure SIP rulemakings; and Response 4, which addresses the Commenter's interpretation of Supreme Court and appellate court decisions.

Comment 1: The Commenter contends that North Carolina's infrastructure submission ''fails to include stringent enough emission limits and other restrictions on sources of ozone precursors, like nitrogen oxides (''NO_X''), to ensure that areas not designated nonattainment will attain and maintain the 2008 eight-hour ozone NAAQS.'' Based on this contention, the Commenter then asserts that ''North Carolina's I–SIP does not meet the basic infrastructure requirements under section 110(a)(2) and must be disapproved.''

Response 1: EPA disagrees with the Commenter's contention that NC DAQ's 2008 8-hour ozone infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because it fails to include enforceable emission limitations sufficient to ensure attainment and maintenance of the 2008 8-hour ozone NAAQS in attainment areas. In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

EPA's interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (*i.e.,* were nonattainment) or were meeting the NAAQS (*i.e.,* were attainment) and established specific planning requirements in section 172 for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A). Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to

develop and implement plans to attain and maintain the NAAQS.

As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), North Carolina submitted a list of existing emission reduction and other control measures in the SIP that control emissions of volatile organic compounds (VOCs) and NO_X. The submission also identifies North Carolina's statutory authority to adopt emission control standards to meet established air quality standards such as the 2008 ozone NAAQS. Therefore, EPA believes North Carolina's submission appropriately reflects the first step in the State's planning process for attaining and maintaining the 2008 ozone NAAQS and meets the requirements of section 110(a)(2)(A) because the SIP contains enforceable control measures for ozone precursors and the submission provides that North Carolina has the tools to develop and implement measures as may be needed to attain and maintain the 2008 8-hour ozone standard.

Comment 2: The Commenter contends that recent monitoring of the 2008 ozone NAAQS in areas not designated nonattainment confirms that North Carolina's existing emission limitations are insufficient to attain and maintain the NAAQS. The Commenter specifically contends that the exceedances of the ozone NAAQS with 2010–2012 data, in areas [Forsyth and Guilford counties] not designated nonattainment under the standard demonstrate that North Carolina's existing emissions limitations cannot ensure attainment and maintenance of the eight-hour ozone standard.

Response 2: EPA disagrees with the Commenter's contention that NCDAQ's 2008 8-hour ozone infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because of the monitor design values noted by the Commenter. While EPA shares the Commenter's concern regarding any county monitoring violations of the NAAQS, such concerns are outside the scope of what is germane to an evaluation of section 110(a)(2)(A) for an infrastructure SIP submission. With regard to the 2010–2012 design values for Forsyth and Guilford Counties as mentioned by the Commenter, Forsyth and Guilford Counties attained the 2008 8-hour ozone NAAQS with 2011–2013 data and continue to attain with preliminary 2013–2015 data.

Regardless, EPA does not believe that this 2010–2012 monitoring data referenced by the Commenter provides an appropriate basis upon which to disapprove North Carolina's infrastructure SIP as it relates to section 110(a)(2)(A) requirements. Pursuant to section 110(a)(2)(A), an infrastructure SIP submission must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act. The Commenter, however, seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) requires the state to submit control measures sufficient to demonstrate attainment in an area designated attainment but that has a recent monitored violation of the NAAQS. EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs.

Further, the Act provides states and EPA with other tools to address concerns that arise with respect to violations of the NAAQS in a designated attainment area, such as the authority to redesignate areas pursuant to section 107(d)(3), the authority to issue a ''SIP Call'' pursuant to section 110(k)(5), or the general authority to approve SIP revisions that can address such violations of the NAAQS through other appropriate measures. As described above, EPA believes that North Carolina's infrastructure submission is sufficient because it appropriately addresses the structural SIP requirements of section 110(a)(2)(A) by including enforceable emission control measures and the authority to adopt and implement additional measures, if needed.

Comment 3: The Commenter contends that North Carolina's infrastructure SIP must ensure that proper mass limitations and short term averaging periods are imposed on certain specific large sources of NO_X such as power plants. Moreover, the Commenter contends that emission limits must apply at all times, including during periods of start-up, shutdown, and malfunction (SSM), to ensure that all areas of North Carolina attain and maintain the 2008 eight-hour ozone NAAQS. Absent such limits, the Commenter contends that an I–SIP submission may not be approved. Specifically the Commenter contends that enforceable emission limitations for the State's coal fired EGUs [electric generating units] should be set on a pounds per hour (''lb/hr'') basis, based on, at most, a corresponding 0.07 lb/MMBtu limit. The Commenter further contends that setting a lb/hr limit will ensure consistent protection of the ambient air quality regardless of whether the nominal maximum heat input capacity for the unit is accurate or changes in the future and addresses the issue of variations in mass emissions during startup and shutdown so that even if the NO_X emission rate in lb/MMBtu is higher during startup and shutdown (for instance when selective catalytic reduction technology is not being engaged), hourly emissions of NO_X would not cause or contribute to violations of the NAAQS.

Response 3: EPA appreciates the commenter's support of North Carolina's pursuit of additional NO_X emission limitations at coal-fired power plants in North Carolina. However, EPA does not believe that approval of the infrastructure SIP is contingent on the State adopting additional controls for the State's coal fired EGUs. Congress established the CAA such that each state has primary responsibility for assuring air quality within the state and determining an emission reduction program for its areas subject to EPA approval, with such approval dependent upon whether the SIP as a whole meets the applicable requirements of the CAA. *See Commonwealth of Virginia, et al.,* v. *EPA,* 108 F.3d 1397, 1410 (D.C. Cir. 1997) (citing *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995)). EPA cannot condition approval of the North Carolina infrastructure SIP upon inclusion of a particular emission reduction program as long as the SIP otherwise meets the requirements of the CAA. As explained in the proposal and in this final action, North Carolina does not need to adopt additional emission control requirements in order to meet the requirements in section 110(a)(2)(A).

Furthermore, we disagree with the commenter's contention that EPA cannot approve an infrastructure SIP submission without ensuring that it contains emission limits applicable at all times, including during periods of SSM. For the reasons stated in the proposal, EPA does not believe that an action on a state's infrastructure SIP is necessarily the appropriate type of action to address this type of deficiency.

See 80 FR at 13315–17. Rather, as described in the proposal, EPA believes that the authority Congress provided to EPA under section 110(k)(5), for example, allows EPA to take appropriately tailored action. Indeed, EPA recognizes that a number of states have existing SSM provisions contrary to the CAA and EPA guidance and, in the time since the proposal for this action, has finalized a separate action addressing those state regulations. *See* ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33840 (June 12, 2015) (SSM SIP Action of 2015). In the SSM SIP Action of 2015, EPA concluded that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus issued a ''SIP call'' for each of those 36 states pursuant to CAA section 110(k)(5).[1] North Carolina's unlawful SSM provisions are covered by that action. *See, e.g., id.* at 33964. EPA continues to believe that existing, unlawful provisions related to excess emissions during SSM events should be addressed through more appropriate authorities provided by Congress; not in piecemeal fashion, in the context of reviewing a state's infrastructure SIP submission.

Comment 4: The Commenter contends that, to comply with section 110(a) and avoid additional nonattainment designations for areas impacted by ozone levels above the standard, ''EPA must disapprove North Carolina's infrastructure SIP to ensure that large sources of NO_X and VOCs cannot cause or contribute to exceedances of the 8-hour ozone NAAQS and, thereby prohibit implementation, attainment, and maintenance of the NAAQS throughout all areas of the State, in violation of CAA section 110(a)(1) and (2)(A).'' The commenter states that the inadequacies of the SIP are highlighted by recent monitoring data.

Response 4: EPA disagrees that it must disapprove North Carolina's submittal to ensure that large sources of NO_X and VOC do not contribute to exceedances of the 8-hour ozone NAAQS such that additional areas would need to be designated nonattainment in the future. In essence, this comment suggests that as part of the 110(a)(2)(A) SIP, the state must demonstrate that all areas of the state will maintain the standard in the future. As explained previously, we disagree that the language and structure of the CAA mandate such a result. The CAA recognizes that air quality may change over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment and has provisions addressing such changes. These include provisions providing for redesignation in section 107(d) and provisions in section 110(k)(5) allowing EPA to call on the state to revise its SIP, as appropriate.

Under CAA section 110(a)(2)(H), the State must demonstrate in its infrastructure SIP submission that it has the authority to revise of its SIP, including as needed to address any finding by EPA that the SIP is substantially inadequate to attain the NAAQS. To satisfy CAA section 110(a)(2)(H), North Carolina's submittal cites to statutory authority that allows the state to adopt standards and plans to implement the requirements of the CAA and Federal implementing regulations, and to specifically establish lower emissions limits if needed to attain or maintain the ozone NAAQS. Therefore, the CAA provides appropriate tools to address changes in air quality over time and North Carolina's submittal also appropriately addresses the elements needed to address any changes in air quality over time.

Comment 5: The Commenter contends that ozone concentrations will be exacerbated by ongoing climate change and that North Carolina's existing emission limits are not stringent enough to adequately protect the public from the dangers posed by exposure to elevated ozone concentrations. The Commenter contends that this underscores the need for North Carolina to impose tighter emission limits if it hopes to attain and maintain the current NAAQS for ozone in areas not currently designated nonattainment.

Response 5: EPA agrees that climate change is a serious environmental issue; however, for the reasons provided in the previous responses, we disagree that states are required to anticipate and plan for possible future nonattainment within each area of the state as part of the infrastructure SIP.

We note that given the potential wide-ranging impacts of climate change on air quality planning, EPA is developing climate adaptation implementation plans to assess the key vulnerabilities to our programs (including how climate change might affect attainment of national ambient air quality standards) and to identify priority actions to minimize these vulnerabilities. With respect to climate impacts on future ozone levels, EPA's Office of Air and Radiation has identified as a priority action the need to adjust air quality modeling tools and guidance as necessary to account for climate-driven changes in meteorological conditions and meteorologically-dependent emissions. These efforts are just beginning.

Additionally, as previously stated regarding tighter emission limits, EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS. As explained above, to the extent that climate change or any other factor exacerbates air quality in the future, the CAA provides the appropriate tools to assess and address these conditions.

III. Today's Action

In this rulemaking, EPA is taking final action to approve the portions of North Carolina's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 2008 8-hour ozone NAAQS, with the exception of the PSD permitting provisions in sections 110(a)(2)(C), prong 3 of D(i) and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), and the state board requirements of section 110(E)(ii).

IV. Final Action

With the exceptions described above, EPA is taking final action to approve North Carolina's November 2, 2012, infrastructure SIP submission because it addresses the required infrastructure elements for the 2008 8-hour ozone NAAQS. NCDAQ has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to section 110 of the CAA to ensure that the 2008 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina.

[1] The SSM SIP Action of 2015 also embodies EPA's updated SSM Policy as it applies to SIP provisions and provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events. EPA has encouraged any state with deficient SSM provisions to correct those provisions as soon as possible (as some states already have), but in no case longer than the 18-month timeframe provided in the SSM SIP Action of 2015.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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).

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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2016. 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. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 22, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

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 II—North Carolina

■ 2. In § 52.1770, the table in paragraph (e) is amended by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	**Federal Register** citation	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	11/2/2012	11/5/2015 [Insert **Federal Register** citation].	.....	With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements; 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements; 110(a)(2)(E)(ii) concerning state board requirements.

[FR Doc. 2015–28098 Filed 11–4–15; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0807; FRL–9936–54–Region 5]

Air Plan Approval; Ohio; Test Methods; Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that a portion of an October 26, 2010, action was in error and is making a correction pursuant to section 110(k)(6) of the Clean Air Act. The October 26, 2010, EPA action approved various revisions to Ohio regulations in the EPA approved state implementation plan (SIP). The revisions were intended to consolidate air quality standards into a new chapter of rules and to adjust the cross references accordingly in various related Ohio rules. These changes included a specific revision to the cross reference in the Ohio rule pertaining to methods for measurements for comparison with the particulate matter air quality standards. This final correction action removes any misperception that EPA approved any revision to the pertinent rule other than the revised cross reference. This action will therefore assure that the codification of the October 26, 2010, action is in accord with the actual substance of the action.

DATES: This final rule is effective on December 7, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2009–0807. 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, *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 at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Summary of EPA's Proposed Rulemaking
II. Comments and EPA's Responses
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Rulemaking

On June 4, 2003, Ohio submitted a variety of revisions to the EPA approved version of Ohio Administrative Code (OAC) 3745–17 in the state's SIP, which regulates particulate matter and opacity from affected sources. While EPA subsequently approved many of these revisions, EPA published action on June 27, 2005, proposing to disapprove specific submitted revisions in OAC 3745–17–03(B) that in EPA's view relaxed existing SIP opacity limitations without an adequate analysis under section 110(l) or section 193 of the Clean Air Act.[1] Consistent with this proposed disapproval, the version of OAC 3745–17–03(B) submitted by the state on June 4, 2003, was not, and is not, an approved provision of the Ohio SIP.

On September 10, 2009, for purposes of consolidating its existing SIP rules identifying applicable air quality standards, and to adjust the cross references between rules accordingly, Ohio submitted additional revisions to several of its existing rules to EPA for approval into the SIP. Most notably, these rule revisions included a modification to the existing cross reference in OAC 3745–17–03(A), which was necessary because the ambient particulate matter measurement method identified in this paragraph was for purposes of assessing attainment with the ambient air quality standards now located in OAC 3745–25–02, rather than in OAC 3745–17–02.

On October 26, 2010, at 75 FR 65572, EPA published a direct final action approving the relevant revisions in the September 10, 2009, submission. In the preamble and in the codification of the October 26, 2010, action, EPA erroneously listed the approved SIP revisions as including the entirety of OAC 3745–17–03, rather than specifying more precisely that the approval as it pertained to OAC 3745–17–03 applied only to the revised cross reference in OAC 3745–17–03(A). This error left the misimpression that EPA had approved other significant substantive revisions in OAC 3745–17–03, including those in OAC 3745–17–03(B) that EPA had previously proposed to disapprove. The codification in the October 26, 2010, action with respect to OAC 3745–17–03 should have been explicitly limited to OAC 3745–17–03(A), to reflect the EPA approval of only the revised cross reference.

EPA subsequently recognized that the codification erroneously left the misimpression that it had approved more of OAC 3745–17–03 than the revision of the cross reference in OAC 3745–17–03(A). On April 3, 2013, at 78 FR 19990, EPA published action to correct the error. EPA took this action pursuant to its general rulemaking authority under Administrative Procedures Act section 553. Two parties challenged EPA's April 3, 2013, action, and one of these parties also filed a petition for reconsideration of that action, objecting that EPA failed to correct the error in the October 26, 2010, action in accordance with the procedures of section 110(k)(6) of the Clean Air Act.

EPA responded to the petition for reconsideration by agreeing to take this action pursuant to section 110(k)(6), as requested by the petitioner. Accordingly, EPA published proposed rulemaking on February 7, 2014, using its authority under section 110(k)(6) to correct errors in its rulemaking of October 26, 2010.[2] Given the petitioners' expressed interest in commenting on EPA's action, EPA elected to use its authority under section 110(k)(6) for this action because, under these circumstances, it would provide the best mechanism to correct the apparent misunderstandings concerning the error in the October 26, 2010, action.

EPA's February 7, 2014, proposal provides an extensive description of the error in its October 26, 2010, rulemaking, provided in subsections entitled, ''What was the error in description and codification?'', ''What precipitated this error?'', and ''Why was it evident that this was an error?'' It is not necessary to repeat that detailed explanation here. EPA proposed to correct the error to remove any misimpression in its October 26, 2010,

[1] See 70 FR 36901 (June 27, 2005).

[2] See 79 FR 7412 (Feb. 7, 2014).

rulemaking that EPA had approved any revisions to OAC 3745–17–03 other than the cross reference in OAC 3745–17–03(A). Specifically, EPA proposed to take action pursuant to Clean Air Act section 110(k)(6) repromulgating the correction published on April 3, 2013. EPA solicited comments on this proposed error correction, while noting that any comments on the technical or legal merits of certain substantive revisions to OAC 3745–17–03 (*e.g.,* the opacity-related provisions in OAC 3745–17–03(B)) or on the pending proposed disapproval of those provisions would not be germane to this error correction rulemaking.

EPA intended to correct the error in the October 26, 2010, action first and then separately to complete the action to address the merits of the substantive revisions to OAC 3745–17–03 in the June 4, 2003, SIP submission that were the subject of the June 27, 2005, proposed disapproval. To this end, EPA published a supplemental proposal on June 26, 2014, reopening comment on its prior proposed disapproval of revisions to OAC 3745–17–03.[3] Subsequently, however, Ohio has withdrawn the portion of the June 4, 2003, submission that EPA proposed to disapprove.[4]

Accordingly, since the provisions is withdrawn, EPA does not need to complete action on the June 4, 2003, SIP submission. Significantly, this also confirms that the submitted substantive revisions to OAC 3745–17–03 are not part of the EPA approved SIP and that the EPA's October 26, 2010, action could not have revised those elements of the existing version of OAC 3745–17–03 in the SIP, inadvertently or otherwise. Except for an amendment to the cross reference to ambient air quality standards in OAC 3745–17–03(A) (which EPA approved on October 26, 2010), the version of OAC 3745–17–03 in the SIP remains the version effective in the state on January 31, 1998, approved by EPA on October 16, 2007.

II. Comments and EPA's Responses

EPA received comments on its proposed error correction from three parties: (i) The Ohio Environmental Protection Agency (Ohio EPA); (ii) the Ohio Utility Group; and (iii) a group including the Ohio Chamber of Commerce, Ohio Manufacturers Association, and Ohio Chemistry Technology Council (Chamber *et al.*). The following are significant adverse comments from each commenter and EPA's responses.

Ohio EPA

Comment: The commenter asserted that: ''On February 7, 2014, U.S. EPA proposed, as an error correction, to remove from Ohio's State Implementation Plan (SIP) a previously approved (October 26, 2010) portion of OAC Rule 3745–17–07 regarding methods for measurements to determine compliance with Ohio's 20% opacity limitation.''[5] With this statement, the commenter is implying that EPA in fact approved substantive revisions to OAC 3745–17–03 in the October 26, 2010, action, rather than merely approved the cross reference in OAC 3745–17–03(A). The commenter suggested that EPA acted on ''the entirety'' of the revisions to OAC 3745–17–03.

Response: EPA disagrees with the commenter's premise that the Agency approved any portion of OAC 3745–17–03 other than the revision to the cross reference in OAC 3745–17–03(A). EPA's February 17, 2014, proposed action rule provides an extensive explanation of the error that occurred in the October 26, 2010, action and the genesis of the error. Ohio's clearly stated purpose in making the September 10, 2009, submission was to consolidate its existing SIP provisions relating to ambient air quality standards and to revise certain cross references in existing approved SIP rules in order to reflect that reorganization. The specific SIP revisions at issue in the state's submission were reflected in redline and the redlined document identified the cross reference in OAC 3745–17–03(A) as the only revision relevant to OAC 3745–17–03. This indicates that approval of any substantive revisions in OAC 3745–17–03(B) would have been beyond the scope of the rulemaking. Moreover, EPA had already proposed to disapprove revisions to OAC 3745–17–03(B) on June 27, 2005, EPA received numerous, substantial comments for and against that proposed disapproval, and the rulemaking of October 26, 2010, provided no evidence of consideration of any of these comments. Although the commenter described EPA's proposed error correction action as an action to ''remove . . . a previously approved'' portion of rule, this is simply incorrect. EPA did not ''previously approve'' the portions of OAC 3745–17–03 that the Agency rulemaking of October 26, 2010, did not substantively address. EPA fully acknowledged in the February 17, 2014, proposal that the error that occurred in the October 26, 2010, action was the result of misunderstandings and miscommunications that it is seeking to rectify in this final error correction action. EPA is taking this final action in order to avoid further confusion on the part of regulated entities, regulators, and members of the public.

Comment: The commenter stated that it ''firmly believes [that the provision in OAC 3745–17–03(B)] is fully approvable.'' The commenter explained that it was ''attaching, and reaffirming'' its prior comments on EPA's proposed disapproval of this provision in the June 27, 2005, action. The commenter further requested that ''[c]onsideration should be taken to the previous comments submitted by Ohio EPA and others regarding the approvability of the provision at question in this action.''

Response: As explained in the February 17, 2014, proposal for this action, EPA is focusing this section 110(k)(6) rulemaking on the specific error that occurred in the October 26, 2010, action. This rulemaking is not addressing the substantive merits of any portion of OAC 3745–17–03. Instead, this rulemaking is addressing whether EPA made an error in its October 26, 2010, rulemaking by including a codification that went beyond the scope of the rulemaking and whether EPA should correct that error by correcting the codification to reflect that the only portion of OAC 3745–17–03 that was addressed in that rulemaking was the cross reference in OAC 3745–17–03(A). Accordingly, the commenter's resubmission of its prior comments on the June 27, 2005, proposed disapproval is inappropriate and not germane to this action.

In addition to being outside the scope of this error correction action, EPA notes that the commenter's arguments also support EPA's conclusion that the October 26, 2010, action was in error to the extent that it appeared to approve any revision beyond the cross reference in OAC 3745–17–03(A). The commenter explicitly acknowledged that EPA previously received significant comments concerning the merits of OAC 3745–17–03(B), in particular comments that in the commenter's view warrant reversal of EPA's prior proposed disapproval. Furthermore, the commenter in effect argued that EPA has not adequately considered these comments. This is fully consistent with EPA's own observation that its October 26, 2010, rulemaking provided no

[3] See 79 FR 36277 (June 26, 2014).

[4] See letter from Craig W. Butler, Director, Ohio EPA, to Susan Hedman, Regional Administrator, USEPA Region 5, dated September 5, 2014, ''request[ing] withdrawal of [Ohio's] June 4, 2003 request to incorporate paragraph (B)(1)(b) into Ohio's SIP.''

[5] EPA's October 26, 2010, rulemaking makes no reference to OAC 3745–17–07 (containing opacity limits). EPA presumes that the commenter intends to refer to OAC 3745–17–03, which among other provisions has provisions relating to measurement of opacity.

evidence of any consideration of public comments concerning OAC 3745–17–03(B) whatsoever (again, because this provision was outside the scope of that rulemaking). Thus, the commenter appeared to agree with EPA's view that the October 26, 2010, rulemaking does not provide any evidence of the consideration of comments regarding OAC 3745–17–03(B) that would be necessary for any approval or disapproval of OAC 3745–17–03(B) to be considered lawful. Moreover, the commenter did not appear to dispute EPA's view that rulemaking on OAC 3745–17–03(B) could not be considered a lawful and valid part of the October 26, 2010, rulemaking even if it had been intended to be within the scope of the rulemaking. As explained in the February 17, 2014, proposal for this action, EPA had no such intentions and the fact that EPA did not address prior substantive comments on the merits of OAC 3745–17–03(B) should have alerted the commenter and other parties to this fact.

Finally, EPA acknowledges the commenter's request that that EPA complete its consideration of comments on the merits of OAC 3745–17–03(B), but such consideration is outside the scope of this rulemaking. By separate action, EPA intended to address the merits of the substantive revisions to OAC 3745–17–03 in the June 4, 2003, SIP submission that were the subject of the June 27, 2005, proposed disapproval. To this end, EPA published a supplemental proposal on June 26, 2014, reopening comment on its prior proposed disapproval of certain substantive revisions to OAC 3745–17–03.[6] Subsequently, however, Ohio withdrew its submittal of revisions to OAC 3745–17–03(B).[7] This renders consideration of comments with respect to the withdrawn submission moot, both for purposes of the June 27, 2005, proposed disapproval and for purposes of this error correction action.

Comment: The commenter objected that ''U.S. EPA has made certain assertions regarding [OAC 3745–17–03(B)] that go beyond the scope of this proposed correction. U.S. EPA refers to the provision as 'significant and substantive' and states the 'unapproved' revisions 'would allow significantly more opacity during certain periods.' '' The commenter disputed these statements. The commenter asserted its belief that ''U.S. EPA has crossed the threshold and cannot go forward with the package under 110(k), since U.S. EPA is now making a technical argument as to why the previously approved SIP revision is no longer acceptable.'' The commenter also argued that ''as a procedural matter, U.S. EPA must start over from the beginning and outline and address the entire technical issue in full and not use the 110(k) 'error' approach.''

Response: The premise of the commenter's arguments is that EPA's February 17, 2014, action in effect proposed to finalize EPA's prior proposed disapproval of certain portions of OAC 3745–17–03, not merely correcting the error that led to the misimpression that EPA had already approved the revisions in toto. The commenter is thereby ignoring EPA's clear statements about the actual scope of this error correction.

As explained in the February 17, 2014, proposal for this action, EPA is focusing this section 110(k)(6) rulemaking on the specific error that occurred in the October 26, 2010, action. EPA provided extensive discussion and explanation of the error that occurred in the October 26, 2010, action and why EPA could not be considered to have acted on any revisions to OAC 3745–17–03 that were outside the scope of that rulemaking. EPA explained the significance of OAC 3745–17–03(B) in the February 17, 2014, proposal as a means of explaining why EPA considered it important to correct the errors in its October 26, 2010, rulemaking. EPA noted in passing that it had already proposed to disapprove certain provisions for reasons that were already a matter of public record in the **Federal Register** as a means of emphasizing that it could not have approved those revisions in the October 26, 2010, action without an explicit discussion and justification for any such approval.

The commenter appears to agree that the revisions in OAC 3745–17–03(B) that it advocated for EPA to approve are significant and substantive. EPA statements regarding the significance of the error, however, cannot be considered to constitute final review of the merits of the erroneously addressed provisions. The October 26, 2010, action clearly did not address the merits of OAC 3745–17–03(B), and EPA's action proposing to correct an error related to these provisions did not address the merits of these provisions either.

The commenter disagreed in particular with EPA's characterization of OAC 3745–17–03(B) in the February 17, 2014, proposal as allowing significantly more opacity during certain periods. A more precise statement would have been that EPA had proposed to disapprove the pertinent revisions to OAC 3745–17–03(B) in the June 27, 2005, proposal based in significant part on the view that the revisions would allow significantly more opacity during certain periods. The commenter, along with several other commenters, has disputed EPA's proposed views regarding the merits of OAC 3745–17–03(B). As explained in detail in the February 17, 2014, proposal for this error correction, however, EPA did not intend, and could not have intended, to address the substantive merits of those revisions in the October 26, 2010, action. Indeed, with Ohio's withdrawal of its request for rulemaking on these provisions, EPA will no longer be conducting final rulemaking on the merits of OAC 3745–17–03(B). Nevertheless, the more relevant point is that the existence of these disputes as to the merits of OAC 3745–17–03(B) illustrates the importance of correcting any errors that might create the misimpression that EPA had completed its review of these issues. EPA believes that the significance of the provisions in OAC 3745–17–03(B) and the outstanding questions regarding whether those provisions could have been approved consistent with CAA requirements provide added value to correcting any misimpressions regarding the status of those provisions, namely misimpressions reasserted in these comments that EPA had already completed rulemaking on these provisions.

Contrary to the commenter's statement, EPA's proposed rulemaking to correct the errors in its October 26, 2010, action was not based on a technical argument regarding the merits of OAC 3745–17–03(B), including any technical argument as to whether these provisions allow significantly more opacity during certain periods. This assertion regarding whether the now withdrawn revisions to OAC 3745–17–03 would allow more opacity (made in EPA's 2005 proposed rulemaking addressing the merits of Ohio's now withdrawn SIP revision and contested by various commenters) illustrates the significance of the error in the October 26, 2010, action. However, the commenter provided no reason why characterization of the issue as significant and identification of any of the unresolved issues that were not addressed in the October 26, 2010, rulemaking (or elsewhere) should preclude EPA from assuring that the

[6] See 79 FR 36277 (June 26, 2014).

[7] See letter from Craig W. Butler, Director, Ohio EPA, to Susan Hedman, Regional Administrator, USEPA Region 5, dated September 5, 2014, which may be found in the docket for this final action.

October 26, 2010, rulemaking is characterized properly.

Comment: The commenter objected to EPA statements in a separate unrelated rulemaking regarding SIP revisions for the State of Alabama. The commenter referred to EPA statements that the commenter characterized as citing ''the 2005 proposed disapproval of Ohio's revision, in part, as justification for the proposed disapproval of Alabama's revision.'' The commenter further asserted that this ''mislead[s] the readers of the Alabama proposal that Ohio's proposed disapproval has followed its due course, when it has not.'' The commenter requested that ''any action taken on the Alabama proposal should not be used as justification for disapproving Ohio's provision.''

Response: EPA acknowledges that the proposed action concerning the State of Alabama mentioned the June 27, 2005, proposed disapproval of the Ohio submission. The existence of that proposal was, and is, a matter of record. EPA mentioned the June 27, 2005, proposed disapproval merely as means of explaining its views on relevant issue, not as a basis for a particular final action. The commenter did not explain why this comment concerning a proposed action in another state is relevant to the present error correction action concerning Ohio, nor does EPA consider it germane to this final action. In any event, the state has now withdrawn the portion of the submission that EPA proposed to disapprove, so this comment is moot.

Ohio Utility Group

Comment: The commenter asserted that ''U.S. EPA's action is not trivial and is not a mere 'correction.' In support of this statement, the commenter recited its view of the history of rulemaking on OAC 3745–17–03(B), including adoption by Ohio and proposed disapproval by EPA. The commenter observed that EPA received extensive comments on the June 27, 2005, proposed disapproval, but acknowledged that ''U.S. EPA never finalized this proposed action and, based on a review of the record, U.S. EPA never responded to comments submitted on this proposed rule.'' The commenter presented a summary of arguments in support of the merits of the opacity ''exemption'' in OAC 3745–17–03(B) that EPA proposed to disapprove in the June 27, 2005, proposal, and concluded that ''this exemption is technically defensible and the data [compiled to formulate the exemption] were never rebutted by U.S. EPA.''

Response: The commenter did not elaborate on its argument that EPA's proposed error correction action ''is not trivial'' or why EPA's proposed action is not consistent with EPA's authority to correct errors under section 110(k)(6). To the extent that the commenter is arguing that EPA's authority under section 110(k)(6) is limited to correcting ''trivial'' errors, EPA disagrees. On its face, section 110(k)(6) authorizes EPA to correct any error in a rulemaking action and does not restrict that authority to correction of errors that other parties might characterize as ''trivial.'' By its plain terms, EPA's authority under section 110(k)(6) extends broadly to ''action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification.'' Similarly, by its plain terms EPA's authority is not limited with respect to the nature or seriousness of the error, *i.e.,* it is not restricted to correction of ''trivial'' errors.

EPA and the commenters appear to agree on the fact that the revisions to OAC 3745–17–03(B) that EPA proposed to disapprove are important substantive provisions. In EPA's view, the importance of these provisions makes it necessary for EPA to clarify the fact that the October 26, 2010, rulemaking did not make any substantive revision to these provisions, and EPA cannot be considered to have lawfully acted on the revisions provisions without considering the comments for and against its June 27, 2005, proposal to disapprove them. Regardless of whether the error was ''trivial'' or not, EPA has concluded that the error warrants correction pursuant the authority of section 110(k)(6) (or under authorities that EPA is not using in this action).

The commenters' substantive arguments regarding the merits of OAC 3745–17–03(B) are not germane here, because they are not relevant to determining whether the codification contained in EPA's October 26, 2010, action was an erroneous description of that rulemaking action. The only issue in this action is EPA's correction of the error. Moreover, now that the state has withdrawn the submission seeking substantive revisions to OAC 3745–17–03(B), these comments are moot.

Comment: The commenter, in describing EPA's actions, states that ''[i]n 2010, . . . it appeared that U.S. EPA approved [OAC] 3745–17–03 in its entirety.''

Response: The commenter evidently agrees that EPA had only ''appeared'' to have approved substantive revisions to OAC 3745–17–03(B) in the October 26, 2010, action, because that is how they themselves describe what occurred.

Comment: The commenter made several assertions that it believes preclude EPA from finalizing this error correction. First, the commenter ''object[ed] to U.S. EPA's statement that a comment period was not required in issuing [the correction EPA published on April 3, 2013].'' The commenter stated that section 110(k)(6) dictates how EPA should make corrections to past rulemakings. The commenter also noted that section 110(k)(6) in particular requires that an error made through notice and comment rulemaking can only be corrected through notice and comment rulemaking. The commenter asserted that EPA's April 3, 2013, action to effectuate the correction of the October 26, 2010, action was invalid because it failed to meet this requirement of section 110(k)(6).

Response: While EPA continues to believe that the Administrative Procedures Act provides independent authority for agencies to issue corrections, that authority was not the basis of this rulemaking. The commenter submitted a petition for reconsideration requesting that EPA publish notice and solicit comment pursuant to its error correction authority under Clean Air Act section 110(k)(6). EPA granted that request, and this action is the final step of the requested error correction rulemaking. The commenter objected to the procedure EPA used to correct the error in the April 3, 2013, rulemaking, but that rulemaking is being replaced by this rulemaking under section 110(k)(6). Thus, comments concerning the procedure EPA should or should not have followed with respect to the April 3, 2013, rulemaking are not relevant and in fact are made moot by this action. In short, EPA is correcting the error by the procedure that the commenter advocated.

Comment: The commenter also objected that EPA did not have ''good cause'' (in its April 3, 2013, rulemaking) under the Administrative Procedures Act section 553(b) to make corrections without undergoing notice and comment. The commenter asserted its view that notice and comment (for EPA's April 3, 2013, action) was ''not impracticable, unnecessary or contrary to the public interest.'' In other words, the commenter disagreed with EPA's determination that there was a good cause exception to the normal requirements for notice and comment, given the nature of error at issue.

Response: EPA disagrees with the commenter's conclusion that correction of what was essentially a typographical

error requires full notice and comment rulemaking in all cases. Nevertheless, EPA notes that this comment suggests that the commenter acknowledged that Administrative Procedures Act section 553(b) authorizes corrections, even without notice and opportunity for comment, so long as EPA adequately justifies the decision not to undergo notice and opportunity for comment. In any case, EPA concludes that this rulemaking does not invoke that authority to forego notice and comment for good cause, and this action makes moot the rulemaking (published April 3, 2013) that did invoke that authority.

Comment: The commenter also objected to EPA's description of the error in the October 26, 2010, action as essentially a typographical error. The commenter claimed that ''[t]he Utilities did not submit comments [at the time of EPA's October 26, 2010, rulemaking] because U.S. EPA approved Ohio Adm. Code 3745–17–03 in its entirety as the notice indicated. Had the Utilities understood that these rules were selective to subpart (A), the Utilities may have submitted comments on this proposal.''

Response: As an initial matter, EPA notes that the commenter's claim supports the Agency's view that the error in the October 26, 2010, action engendered confusion and misunderstanding among some affected parties. The commenter speculates that had EPA's October 26, 2010, rulemaking used preamble language and a codification that more clearly identified that the only revision to OAC 3745–17–03 that EPA was approving was the cross reference in OAC 3745–17–03(A), it might have commented. Presumably those comments would have urged EPA to approve portions of OAC 3745–17–03 that were outside the scope and purpose of the applicable state submission, which with respect to OAC 3745–17–03 only requested the revision of the cross reference in OAC 3745–17–03(A). In such a hypothetical situation, EPA presumably would have responded to those comments by explaining that it was not approving any revision to OAC 3745–17–03 beyond the cross reference in OAC 3745–17–03(A) and that comments beyond that narrow issue were beyond the scope of the October 26, 2010, rulemaking.

In any case, the commenter has now had the opportunity to comment on the very issue that it speculated it would have commented on under the 2010 conditions it hypothesized. The proposed rulemaking for this error correction action proposed to find that rulemaking on portions of OAC 3745–17–03 other than OAC 3745–17–03(A) in the 2010 air quality standards rulemaking would have been outside the scope of that rulemaking. Thus, EPA solicited comment on precisely the issue that the commenter speculated it would have commented on in its hypothesized 2010 circumstances, *i.e.,* whether or not rulemaking on OAC 3745–17–03(B) would have been an appropriate part of the 2010 rulemaking on Ohio's air quality standards submittal. Of note is that in the actual, present circumstances, the commenter had the benefit of express EPA statements in the February 7, 2014, proposal, stating that any action in response to Ohio's submittal of September 10, 2009, on portions of OAC 3745–17–03 other than OAC 3745–17–03(A) would be outside the scope of the rulemaking because it would not be pertinent to the SIP revision request that EPA was considering.

Finally, EPA notes that the commenter did in fact comment, to urge approval of revisions in OAC 3745–17–03(B), without contesting EPA's view that these provisions are outside the scope of the relevant state submission and EPA's rulemaking thereon. As explained in the proposal for this action, those revisions were not at issue in its October 26, 2010, rulemaking and are not at issue in this error correction. EPA regrets the inconvenience to all parties that arose from the error in its October 26, 2010, rulemaking. However, the point here is that it is unnecessary to speculate on how the commenter would have commented on the October 26, 2010, rulemaking had that rulemaking more clearly stated that the only revision to OAC 3745–17–03 under consideration was the revision to the cross reference in OAC 3745–17–03(A). The commenter has now had the opportunity to comment on the applicable issues, and EPA is addressing its comments here.

Comment: The commenter also objected to EPA's statements in the proposal for this action that it is correcting what is essentially a typographical error. The commenter asserted that this ''correction is not trivial.''

Response: The commenter did not explain its substantive grounds for objecting to EPA's proposed error correction. The commenter omits any rationale for why the significance of the provisions of OAC 3745–17–03(B) would justify labeling the mistaken codification in EPA's October 26, 2010, rulemaking as anything other than an error or why, regardless of label, the misleading codification does not warrant correction. For example, the commenter implies that a significance criterion applies in judging whether a statement is in error, as if an action with significant ramifications cannot be in error or that errors cannot have significant consequences. However, the commenter offered no rationale for why the misstatements in the October 26, 2010, rulemaking, whatever the significance of those misstatements, should not be considered to be in error.

EPA's proposed rulemaking provides extensive discussion of why EPA believes that the codification in its October 26, 2010, action was in error, including multiple reasons that demonstrate that EPA did not intend and could not have intended to approve provisions in OAC 3745–17–03 that were beyond the stated purpose of Ohio's submission, which with respect to OAC 3745–17–03 was only to revise the cross reference in OAC 3745–17–03(A). Conspicuously absent from the commenter's comments is any specific argument contesting EPA's rationale for this error correction, be it to question EPA's interpretation of Ohio's September 10, 2009, submission, to dispute that EPA did not intend and could not have intended to take action on OAC 3745–17–03(B), or to challenge EPA's assertion that in any case there has been no legally valid action on OAC 3745–17–03(B) because EPA has not addressed pertinent comments on its prior proposed disapproval of that separate revision (including comments that the commenter itself attests to making).

Comment: The commenter states, ''the Utilities disagree with U.S. EPA's assertion that its 'correction' does not allow substantive comments on Ohio Adm. Code 3745–17–03.'' The commenter further asserted that ''U.S. EPA's action is essentially making Ohio's SIP more stringent than it was when it approved Ohio Adm. Code 3745–17–03 in 2010. . . . [Therefore,] the Utilities believe that substantive comments on Ohio Adm. Code 3745–17–03 are proper and should be considered by U.S. EPA.''

Response: These comments misrepresent EPA's assertion, mischaracterize EPA's action, and provide no rationale for EPA to change its views on relevant matters. EPA's proposed rulemaking states: ''any substantive revisions to OAC 3745–17–03, including any revisions to OAC 3745–17–03(B)(1), are not at issue in this rulemaking. Only comments regarding EPA's correction of the error in the October 26, 2010, action are germane to this rulemaking under section 110(k)(6).'' The commenter may elect to make comments that are not germane, and the commenter has

exercised its right to do so, though the commenter has not challenged EPA's proposed rationale as to the scope of comments that should be considered germane. For example, even if EPA's action could be misconstrued as a substantive revision to the approved SIP (which it is not), and whether the newer version of OAC 3745–17–03(B) is less stringent than the older version (as the commenter contended in these comments) or not (as the commenter contended in its attached comments from 2005), the commenter does not explain why this asserted change in stringency justifies predicating EPA's action to correct an error on the substantive merits of erroneously codified provisions. Therefore, EPA concludes that comments as to the substantive merits of OAC 3745–17–03(B) are not germane to this action, which only addresses the error that occurred in the October 26, 2010, action pertaining to Ohio EPA's submission regarding its air quality standards rules.

Similarly, the commenter mischaracterized EPA's proposed error action, asserting that EPA is hereby removing an approval of portions of OAC 3745–17–03 that, it asserted, EPA approved in the October 26, 2010, action. The proposed rulemaking explained at length that EPA cannot have approved any portion of 3745–17–03 in 2010 other than the cross reference in OAC 3745–17–03(A), and so the action EPA proposed clarifies the approved SIP without changing the substance of what has actually been approved. Again, the commenter provided no rationale for adopting its views as to the nature of EPA's proposed action rather than the views EPA proposed.

Chamber et al.

Comment: The commenter provided an extensive description of provisions in OAC 3745–17–03(B). The commenter also provided a history of this provision, including Ohio's submission of the provision to EPA in June 2003, EPA's proposal to disapprove the provision in June 2005, the (erroneous) appearance of EPA approving the provision on October 26, 2010, the EPA correction of this appearance on April 3, 2013, without reference to correction authority in Clean Air Act section 110(k)(6), a petition for EPA to reconsider this correction, and EPA's proposal published on February 7, 2014, to make this correction under the authority of Clean Air Act section 110(k)(6).

Response: EPA generally agrees with the commenters recitation of the facts, but does not agree with the implication that ''appearing'' to approve the revision means that it was in fact approved. Moreover, this portion of these comments provides background information and does not urge any changes to EPA's views underlying the relevant proposed action, and so no detailed review of this portion of these comments is warranted. Any history of the provisions of OAC 3745–17–03(B) should also note that Ohio (subsequent to these comments) has withdrawn its submission that sought approval of the provision.

Comment: The commenter stated that it ''submit[ted] these comments for two reasons. First, we would like to briefly address EPA's comment that the COMS provision is 'significant and substantive' and 'would allow significantly more opacity during certain periods.' This appears to be a reference to [text in EPA's June 2005 proposed rulemaking (at 70 FR 36903), quoted in the comment].''

The commenter raised several objections to these EPA statements. The commenter asserted that the scenario EPA discussed in the June 2005 proposed disapproval, intended as an example case in which the revised version of OAC 3745–17–03(B) ''allow[s] excess opacity on occasions that excess opacity is currently prohibited,'' to reflect an unlikely pattern of operation that would not be expected to be identified as a violation using the reference method (Method 9) of the unrevised rule. ''In summary, the alternative of continuous instrumental monitoring of in-stack opacity in lieu of periodic Method 9 visible emission observations may be 'significant and substantive' in terms of imposing more stringent performance obligations, but it certainly [is] not a 'significant and substantive' relaxation of the performance obligation where Method 9 is the SIP reference test for opacity.''

Response: The commenter is correct that the pertinent statement in the February 7, 2014, proposed rulemaking reflects the views expressed in the cited statement in EPA's June 27, 2005, proposed rulemaking. The commenter also observed that EPA has not completed rulemaking pursuant to this June 2005 proposed disapproval. EPA's purpose for making these statements in the proposal for this error correction was to provide context and to explain the significance of the error, not to take a substantive position. To be clear, in the June 2005 proposal, EPA proposed to find that the revised version of OAC 3745–17–03(B) would have allowed significantly more opacity during certain periods and that the state had failed to provide a section 110(l) or section 193 analysis to justify the resulting relaxation; subsequently, EPA received comments disputing that finding, and EPA has not yet taken final action on that proposal.

Because Ohio has withdrawn its June 2003 submission, however, EPA will be conducting no further rulemaking on that submission. Therefore, it is no longer germane to any ongoing rulemaking whether Ohio's June 2003 submission would have tightened or relaxed the stringency of Ohio's existing SIP. In any case, the desirability of clarifying the status of OAC 3745–17–03(B) is not contingent on any final judgment regarding the effect of previously submitted revisions to OAC 3745–17–03(B) on allowable opacity. In its February 7, 2014, proposal, EPA sought merely to explain why the error in its October 26, 2010, final rule warranted correction. Comments from the Ohio Utilities Group discussed above suggest that the provisions of OAC 3745–17–03(B), and the associated relaxation of requirements, are too important to be the subject of an error correction. These comments from the Chamber *et al.* argue that the provisions of OAC 3745–17–03(B) are not a ''significant and substantive'' relaxation of the opacity-related requirements and in fact may be a ''significant and substantive'' tightening of performance obligations. Regardless of these conflicting comments, three parties have concluded that the status of OAC 3745–17–03(B) is sufficiently important to comment on rulemaking proposing to clarify the status of this rule. Even aside from questions regarding the substantive consequences of revisions to OAC 3745–17–03(B), EPA seeks clarity regarding which rules have been approved into the SIP, especially for rules that prompt significant substantive interest. Consequently, EPA has concluded that it is important to clarify the scope of EPA's rulemaking on Ohio's submittal addressing air quality standards and to correct the errors in the October 26, 2010, action that created a misimpression that EPA had approved OAC 3745–17–03(B)as a part of the SIP.

Comment: The commenter also asked that EPA complete its rulemaking action on the June 2003 SIP revision that EPA addressed in the June 2005 proposed disapproval.

Response: Ohio has withdrawn the pertinent elements of its June 2003 SIP revision submission. Thus, no portion of this submission remains pending.

III. What action is EPA taking?

Pursuant to section 110(k)(6), EPA is determining that its October 26, 2010, rulemaking was in error to the extent

that it appeared to approve revisions to OAC 3745–17–03 beyond the revision to the cross reference in OAC 3745–17–03(A). Through this action, EPA is clarifying that in the October 26, 2010, action, the Agency did not approve any revisions to OAC 3745–17–03 except for the specific revision to the cross reference in OAC 3745–17–03(A) requested by the state. But for that change, the currently applicable version of OAC 3745–17–03 in the Ohio SIP is the version effective in the state on January 31, 1998, approved by EPA on October 16, 2007. The currently applicable version of OAC 3745–17–03 in the Ohio SIP does not contain any revisions addressed in EPA's proposed approval and disapproval on June 27, 2005. This action establishes that the codification of EPA's October 26, 2010, action, in relevant part at 40 CFR 52.1870(c)(151)(i)(A), is clarified pursuant to the authority of Clean Air Act section 110(k)(6) to codify the approval of only the revised cross reference in OAC 3745–17–03(A) and not of any other portions of OAC 3745–17–03. In particular, EPA in that action did not approve any revisions related to OAC 3745–17–03(B).

On April 3, 2013, EPA used its authority under section 553 of the Administrative Procedures Act to amend the erroneous codification in its October 26, 2010, rulemaking without notice and comment rulemaking. In that rulemaking, EPA corrected the erroneous statements and the misleading codification to reflect more clearly that EPA had only approved the one narrow revision requested by the state in OAC 3745–17–03, *i.e.,* the revision of the cross reference in OAC 3745–17–03(A). Thus, effective April 3, 2013, the Code of Federal Regulations has properly reflected the corrected codification. In response to a petition for reconsideration, EPA today is replacing that prior correction with an error correction pursuant to section 110(k)(6). Nevertheless, during the pendency of the current rulemaking pursuant to section 110(k)(6), EPA opted not to stay or revoke the correction action of April 3, 2013, to avoid exacerbating the misimpressions caused by the October 26, 2010, error. Therefore, the *status quo* is that the Code of Federal Regulations already reflects the corrected codification.

Ordinarily, a rulemaking establishing a corrected codification would include not just a preamble but would also include a codification section, in which the Office of the Federal Register is instructed to amend the applicable sections of the Code of Federal Regulations. However, this action involves circumstances in which the pertinent section of the Code of Federal Regulations already correctly reflects the EPA approved version of OAC 3745–17–03, as a result of action taken April 3, 2013. Conceptually, this action replaces the pertinent revisions to the Code of Federal Regulations promulgated on April 3, 2013, with identical revisions pursuant to this action. In practical terms, the net effect of this action is no change in the Code of Federal Regulations. It is inappropriate to provide a null set of instructions, to instruct the Office of the Federal Register to make no changes to the Code of Federal Regulations. Therefore, this action includes no instructions to the Office of the Federal Register, no requested revisions to the Code of Federal Regulations, and indeed no codification section. As a result, the Office of the Federal Register's records will show the pertinent revisions as being made April 3, 2013. Nevertheless, this action should be viewed as replacing those corrections, promulgated under the authority of Administrative Procedures Act section 553, with identical corrections, promulgated under the authority of Clean Air Action section 110(k)(6).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 Clean Air Act. This action merely corrects an error in EPA's prior action and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 4, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: October 22, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–28095 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–19087; PPWOCRADN0–PCU00RP14.R50000]

RIN 1024–AE00

Disposition of Unclaimed Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides procedures for the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated or discovered on, and removed from, Federal lands after November 16, 1990. It implements section 3(b) of the Native American Graves Protection and Repatriation Act.

DATES: The rule is effective December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW., Washington, DC 20240, telephone (202) 354–2204, email *melanie_o'brien@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior (Secretary) is responsible for implementation of the Native American Graves Protection and Repatriation Act (NAGPRA or Act) (25 U.S.C. 3001 *et seq.*), including the issuance of appropriate regulations implementing and interpreting its provisions. NAGPRA addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations in certain human remains, funerary objects, sacred objects, and objects of cultural patrimony, for which the Act uses the broader term ''cultural items'' (25 U.S.C. 3001(3)). Pursuant to Section 13 of NAGPRA (25 U.S.C. 3011), the Department of the Interior (Department) published the initial rules to implement NAGPRA in 1995 (60 FR 62158, December 4, 1995); those rules are now codified at 43 CFR part 10. Subsequently, the Department published additional rules concerning:

- Civil penalties (68 FR 16354, April 3, 2003);
- Future applicability (72 FR 13189, March 21, 2007); and
- Disposition of culturally unidentifiable human remains (75 FR 12378, March 15, 2010).

Section 3(b) of the Act (25 U.S.C. 3002 (b)) explicitly directs the Secretary to publish regulations for the disposition of unclaimed cultural items excavated or discovered on, and removed from, Federal lands after November 16, 1990. When we published the NAGPRA regulations on December 4, 1995, we reserved 43 CFR 10.7 for this purpose.

This rule is limited to Federal lands, as NAGPRA provides that ownership or control of any cultural item excavated or discovered on, and removed from, tribal land after November 16, 1990, is in either a known lineal descendant (for human remains and associated funerary objects) or in the Indian tribe from whose tribal land the cultural items were removed, and does not require the lineal descendant or the Indian tribe to make a claim for the cultural items.

Consultation regarding a proposed rule for § 10.7 began in 2005. On three separate occasions, we consulted with representatives of Indian tribes, Native Hawaiian organizations, museums, and scientific organizations. We also consulted with the Native American Graves Protection and Repatriation Review Committee (Review Committee) during its scheduled meetings in Albuquerque, NM (November 2005); Washington, DC (April 2007); Phoenix, AZ (October 2007); and Washington, DC (November 2010).

We published a proposed rule on October 29, 2013 (78 FR 64436). Public comment was invited for a 60-day period, ending December 30, 2013. The proposed rule also was posted on the National Park Service's National NAGPRA Program Web site. The Review Committee commented on the record on the proposed rule at a public meeting on November 6, 2013.

Summary of and Responses to Comments on the Proposed Rule

During the comment period, we received 27 written comments on the proposed rule, contained in 20 separate submissions from 5 Indian tribes, 1 Indian organization, 1 non-federally recognized Indian group, 1 Native Hawaiian organization, 1 museum, 1 scientific organization, 3 Federal entities, 6 individual members of the public, and 1 anonymous commenter. All relevant comments on the proposed rule were considered during the final rulemaking.

Final Rule 43 CFR 10.2 Definition of ''Unclaimed Cultural Items''

Comment 1: Four commenters stated that the definition of unclaimed cultural items should include the phrase ''as used in § 10.7 of this part.''

Our Response: The term ''*unclaimed cultural items''* is used only in § 10.7 and therefore the specific reference is not needed.

Comment 2: Three commenters stated that the definition of unclaimed cultural items should be expanded and the difference between the categories of unclaimed cultural items be clarified. One of these commenters added that the definition should provide a timeframe that structures how long cultural items must be held by the Federal agency prior to being classified as unclaimed.

Our Response: We agree. In the final rule, we have revised the definition of unclaimed cultural items and clarified the difference between the categories. We have included a timeframe.

Comment 3: Four commenters stated that the definition of unclaimed cultural items imposes an inappropriate time limit on Indian tribes and Native Hawaiian organizations to make claims for cultural items. One of these commenters added that the definition assumes Federal agencies have been proactive and have provided notice to all potential claimants.

Our Response: A potential claimant may make a claim for unclaimed cultural items at any time prior to transfer or reinterment under this rule. While the rule establishes a timeframe for cultural items to become unclaimed, there is no timeline imposed for Federal agencies to transfer or to reinter cultural items. We feel the timeframes established by the definitions in this final rule strike an appropriate balance between assuring Federal agencies that the NAGPRA process will end at a certain time and granting non-claimant Indian tribes and Native Hawaiian organizations an opportunity to request the transfer of these cultural items.

Comment 4: One commenter stated that the definition of ''disposition'' in § 10.2(g)(5) should be changed to include disposition of unclaimed cultural items.

Our Response: We agree. In this final rule, we have added a new paragraph at § 10.2 (g)(5)(iv).

Comment 5: One commenter stated that a notice under § 10.6(c) is only required upon ''proposed disposition,'' and not upon the determination of an Indian tribe entitled to priority of custody. Therefore, publication of a notice under § 10.6(c) cannot be a determining factor in the definition of unclaimed cultural items.

Our Response: A notice under § 10.6(c) is not dependent on an actual claim but is dependent on the existence of a potential claimant. Under section 3(a) of the Act (25 U.S.C. 3002(a)), ownership or control of cultural items is transferred to the Indian tribe or Native Hawaiian organization which ''upon notice, states a claim. . .'' The notice required by § 10.6(c) precedes a claim from an Indian tribe or Native Hawaiian organization and is dependent only upon the *identification* of one or more Indian tribes or Native Hawaiian organizations or lineal descendants as a potential claimant. Furthermore, that notice is the only communication to the public during the disposition process. Consequently, publication of a notice under § 10.6(c) is an appropriate factor for determining when cultural items become unclaimed.

Comment 6: One commenter stated that reasonableness is not a criterion for transfer of custody under the disposition process established in § 10.6. The definition at § 10.2(h)(2)(ii) should read: ''No Indian tribe with priority of custody has been identified.''

Our Response: We believe, as a general matter, that Federal agencies should use reasonable efforts in complying with the requirements of NAGPRA. In addition, section 3(a)(2)(C) of the Act (25 U.S.C. 3002 (a)(2)(C)) explicitly states that the cultural affiliation of cultural items is established using a reasonableness standard.

Final Rule § 10.7(b)(1) Federal Agencies Must Report Unclaimed Cultural Items to the Manager, National NAGPRA Program

Comment 7: One commenter stated that the term ''has'' is better defined by adding ''possession or control'' after it.

Our Response: A Federal agency does not have ''possession'' or ''control'' of cultural items that are excavated or discovered on, and removed from, Federal lands after November 16, 1990, as the terms ''possession'' and ''control'' are defined in § 10.2. Instead, the Federal agency acts as caretaker or temporary custodian for these cultural items.

Comment 8: One commenter stated that the phrase ''a list of the items'' should be replaced with ''a list of currently held items.'' The commenter also suggested that ''the nature'' of unclaimed items be better explained.

Our Response: The sentence introducing § 10.7(b)(1) in this final rule (previously § 10.7(a)(1)) states the unclaimed cultural items on the list are items that the Federal agency ''has.'' We believe that the use of the present tense in the introductory sentence makes clear that the reporting requirement refers to unclaimed cultural items currently held by the Federal agency. The required description of ''the nature of the unclaimed cultural items'' is the same as the current requirement in a notice under 43 CFR 10.6(c). The purpose of both documents is the same—to provide information adequate to allow lineal descendants, Indian tribes, or Native Hawaiian organizations to determine their interest in the cultural items under these regulations.

Comment 9: One commenter stated that there is nothing in the statute that allows the National NAGPRA Program to create and maintain an inventory of cultural items that have been removed from Federal lands after 1990, unclaimed or otherwise. The commenter suggested that Federal agencies should convey periodic notices of the existence of unclaimed cultural items to potential claimants but not report those items to the National NAGPRA Program.

Our Response: Section 3(b) of the Act (25 U.S.C. 3002(b)) directs the Secretary to promulgate regulations for the disposition of unclaimed cultural items in consultation with the Native American Graves Protection and Repatriation Review Committee and other interested parties. The Review Committee recommended that the National NAGPRA Program maintain a database of unclaimed cultural items. We have included the Review Committee's recommendation in this final rule. The list of unclaimed cultural items submitted to the National NAGPRA Program promotes transparency in the disposition of unclaimed cultural items by providing information adequate to allow lineal descendants, Indian tribes, or Native Hawaiian organizations to determine their interest in cultural items under these regulations.

Comment 10: Seven commenters stated that the list of unclaimed cultural items should include additional information. Suggestions included the specific site of removal, the specific types of cultural items, the names of those consulted on the cultural items, and any potential claimants. One of these commenters added that the list of unclaimed cultural items should identify which items have potential claimants and which items have no identified potential claimants.

Our Response: The proposed rule required that the list include a description of the place of discovery and the nature of the unclaimed cultural items, and these requirements are retained in this final rule at § 10.7(b)(1). We agree that information on consultation efforts under 43 CFR 10.5 could be useful for purposes of disposition of cultural items. In response to these comments, this final rule requires that the list include a summary of consultation efforts under § 10.5. A summary of consultation efforts inherently will include the identification of potential claimants. We have qualified that the description of the place of discovery or excavation, and removal, should generally protect any sensitive information.

Comment 11: Three commenters questioned the date of the reporting requirement for Federal agencies to submit a list of unclaimed cultural items to the National NAGPRA Program. One of these commenters added that it would be difficult for Federal agencies to track when reports were required, as cultural items might have varying reporting deadlines. Two of these commenters added that the requirement should be shortened and lists should be submitted within one year or 90 days after excavation or discovery and removal.

Our Response: By adding to the definition of unclaimed cultural items the specific circumstances under which cultural items become unclaimed in this final rule, we adjusted the dates for submitting a list of unclaimed cultural items to the Manager of the National NAGPRA Program. For those cultural items that meet the definition of unclaimed cultural items on the effective date of the regulation, the list must be submitted within one year. We feel this provides Federal agencies with sufficient time to prepare this list. For items that meet the definition of unclaimed cultural items *after* the effective date of the regulation, the list must be submitted within one year after the cultural items meet the definition. This allows for Federal agencies to submit lists of unclaimed cultural items at regular intervals. To simplify the reporting requirements, a Federal agency could submit a list of all unclaimed cultural items that met the definition for unclaimed cultural items during the previous year and still be compliant with the regulation.

For example, under the definition at § 10.2 (h)(2)(ii), if a Federal agency:

obtains cultural items from Federal lands on . . .	and cannot reasonably identify any Indian tribes or Native Hawaiian organizations or lineal descendants as a potential claimant by . . .	then a list of the unclaimed items must be submitted by . . .
January 19, 2016	January 19, 2018	January 19, 2019.
May 23, 2016	May 23, 2018	May 23, 2019.
October 16, 2016	October 16, 2018	October 16, 2019.
December 5, 2016	December 5, 2018	December 5, 2019.

In this example, a list submitted on January 18, 2019, of all unclaimed cultural items that met the definition during calendar year 2018 would satisfy the requirements of this final rule.

Alternately, under the definition at § 10.2 (h)(2)(i), if a Federal agency:

obtains cultural items from Federal lands on . . .	and publishes a notice under § 10.6(c) after determining the lineal descendant, Indian tribe, or Native Hawaiian organization that appears to be entitled to ownership or control on . . .	and no Indian tribe or Native Hawaiian organization submits a claim, or no lineal descendant responds to the notice by . . .	then a list of the unclaimed items must be submitted by . . .
January 19, 2016	January 18, 2018	January 18, 2019	January 18, 2020.
May 23, 2016	May 22, 2018	May 22, 2019	May 22, 2020.
October 16, 2016	October 15, 2018	October 15, 2019	October 15, 2020.
December 5, 2016	December 4, 2018	December 4, 2019	December 4, 2020.

In this example, a list submitted on January 17, 2020, of all unclaimed cultural items that met the definition during calendar year 2019 would satisfy the requirements of this final rule.

Comment 12: Five commenters stated that the National NAGPRA Program should be required to post the lists submitted by Federal agencies to its Web site.

Our Response: The National NAGPRA Program publishes information on summaries, inventories, and notices on its Web site, and will publish similar information for these lists.

Final Rule § 10.7(b)(2) Federal Agencies Must Care for Unclaimed Cultural Items Consistent With the Federal Curation Regulations at 36 CFR Part 79

Comment 13: Seven commenters requested an expansion of the language in the proposed rule, including adding language directly from 36 CFR part 79 in the text of § 10.7. Some of these commenters noted that some cultural items under NAGPRA do not fit within the definitions established by 36 CFR part 79.

Our Response: This final rule requires Federal agencies to care for and manage all unclaimed cultural items under NAGPRA in a manner consistent with but *not* pursuant to 36 CFR part 79. Even unclaimed cultural items that do not fit the definitions of 36 CFR part 79 must be provided with the same level of care and management as those items that are covered by 36 CFR part 79. There is no need to include the text at 36 CFR part 79 in this final rule.

Comment 14: One commenter suggested that, in addition to 36 CFR part 79, unclaimed cultural items should be cared for in accordance with a Plan of Action if one was prepared under § 10.5(e).

Our Response: As long as there is no conflict with this final rule, a Plan of Action prepared under § 10.5(e) related to the care and management of unclaimed cultural items that is consistent with 36 CFR part 79 and already in place may still be used.

Final Rule § 10.7(b)(3) Federal Agencies Must Consider and Respect the Traditions of Identified Potential Claimants to the Maximum Extent Feasible

Comment 15: Three commenters stated that there should be respect for cultural practices of potential claimants to unclaimed cultural items.

Our Response: We agree, and in the final rule we clarified that the potential claimants referenced in this section are the potential claimants listed in a notice of intended disposition.

Comment 16: Five commenters stated that the word ''feasible'' was vague and should be replaced with ''permitted under law.''

Our Response: There are no applicable laws that require consideration or respect of potential claimants to unclaimed cultural items. The suggested wording is more restrictive and could result in less consideration for the traditions of potential claimants. We believe that the word ''feasible'' provides Federal agencies with appropriate discretion to respect the desires of potential claimants listed in a notice of intended disposition, and better aligns with the existing requirements at § 10.5(e)(7).

Final Rule § 10.7(c) Federal Agencies May Transfer Control of Unclaimed Cultural Items

Comment 17: Five commenters approved of the process for transferring control of unclaimed cultural items to other Indian tribes or Native Hawaiian organizations. One of these commenters suggested concurrence with any disposition plan should be required from any non-claiming Indian tribes. One of these commenters suggested that tribal laws or customs of the Indian tribe with the closest cultural relationship to the unclaimed cultural items should be followed. One of these commenters suggested the word ''another'' before Indian tribe or Native Hawaiian organization should not be used and ''an'' should be substituted.

Our Response: The transferee of unclaimed cultural items will have the right to control the disposition of the cultural items, as no potential claimant will have made a claim. Consequently, we have specified in this final rule that the transfer of cultural items is conditioned on the transferee agreeing to accept transfer and treat the cultural items according to the transferee's own laws and customs. Also, in this final rule we have specified that the transferee in question is an Indian tribe or Native Hawaiian organization that is

not an Indian tribe or Native Hawaiian organization with a potential claim to the unclaimed cultural items.

Comment 18: Three commenters stated that transfer should be allowed to Indian groups that are not federally recognized, and that § 10.7 should include the same authority to transfer as applied to culturally unidentifiable human remains in 43 CFR 10.11(c)(2)(ii)(A).

Our Response: Because this was not proposed, including non-federally recognized Indian groups among the potential transferees of cultural items is beyond the scope of this final rule. This comment will be considered during any proposed revision of these regulations in their entirety.

Final Rule § 10.7(d) Federal Agencies May Reinter Unclaimed Human Remains or Funerary Objects

Comment 19: One commenter stated that reinterment should be noted as satisfactory for the requirement to care and manage cultural items consistent with 36 CFR part 79.

Our Response: Title 36 CFR part 79 does not address reinterment. Under this final rule, the requirement to care for and manage unclaimed cultural items consistent with 36 CFR part 79 does not impinge on, or otherwise affect, the discretion of a Federal agency to transfer or reinter cultural items for which it acts as caretaker or temporary custodian.

Comment 20: Three commenters stated that the draft rule unfairly emphasized reinterment and precluded options for other disposition strategies, including cooperative curation agreements or future claims. One of these commenters also felt allowing reinterment violates tribal rights as established in the Act in section 11 (25 U.S.C. 3009).

Our Response: This final rule provides a Federal agency with the discretion to transfer or reinter unclaimed cultural items. It does not require either of these actions. Also, this final rule is consistent with sections 3(e) and 11(1)(B) of the Act (25 U.S.C. 3002(e) and 3009(1)(B), respectively). In order to take the actions under sections 3(e) and 11(1)(B) of the Act, an Indian tribe or Native Hawaiian organization must first have control of the cultural items in question.

Comment 21: Five commenters stated that the draft rule should put more emphasis on reinterment and require Federal agencies to justify *not* reinterring unclaimed cultural items. One of these commenters suggested that Federal agencies should use field documentation procedures and immediately rebury any human remains discovered on Federal land.

Our Response: This final rule provides a Federal agency with the discretion to reinter unclaimed human remains or funerary objects according to applicable interment laws or policy. Requiring a Federal agency to immediately rebury human remains or funerary objects removed from Federal land contradicts section 3(a) of the Act (25 U.S.C. 3002(a)).

Comment 22: Two commenters stated that reinterment should require the concurrence of any potential claimants or consulting Indian tribes and Native Hawaiian organizations and any reinterment should be done in accordance with the tribal laws and customs of the potential claimants. One of these commenters felt any application of state law in reinterment should be restricted.

Our Response: An Indian tribe or Native Hawaiian organization that has been identified as a potential claimant in a notice of intended disposition but has not made a claim does not control the right of disposition of human remains or funerary objects. The concurrence of such potential claimants or consulting Indian tribes and Native Hawaiian organizations with a proposed reburial of unclaimed human remains or funerary objects, and the conduct of the reburial in accordance with their laws and customs, are not legally required. Moreover, requiring a Federal agency to obtain the concurrence of the potential claimants very likely would be infeasible where there are multiple such Indian tribes or Native Hawaiian organizations, each having different laws and customs. However, this rule does not preclude a Federal agency from consulting with any potential claimant on the proposed reinterment of unclaimed human remains or funerary objects and on having the reburial conducted in accordance with their laws and customs. As for restricting the application of State law to the reinterment of unclaimed human remains or funerary objects, we have eliminated altogether the provision in the proposed rule allowing for the offer of human remains or funerary objects for disposition according to State or other law or policy.

Final Rule § 10.7(e) Federal Agencies Must Follow Certain Requirements Prior to Transferring Control or Reinterring Under Paragraphs (c) and (d)

Comment 23: Seven commenters stated that any notice related to the transfer or reinterment of unclaimed cultural items should be published in the **Federal Register,** either in addition to or in place of a notice in a newspaper. Three of these commenters suggested posting the notices to the National NAGPRA Program Web site in addition to other forms of notice.

Our Response: We believe that requiring notices to be published in newspapers is consistent with other notice requirements currently required under the regulations at § 10.6 implementing section 3 of the Act (25 U.S.C. 3002). This comment will be considered during any proposed revision of these regulations in their entirety. In light of technological changes since the promulgation of § 10.6, we have provided a second form of notice of proposed transfer of cultural items or reinterment of unclaimed human remains or funerary objects through postings on the National NAGPRA Program's Web site.

Comment 24: One commenter stated that the notice should include the previous determination of the Indian tribe or Native Hawaiian organization with priority of custody, if any (*e.g.,* aboriginal land determination), and not only the ''affiliation, if any, of the unclaimed cultural items.''

Our Response: In response to this comment, the final rule requires that the notice include a summary of consultation efforts under § 10.5. A summary of consultation efforts inherently will include the identification of any potential claimants.

Comment 25: One commenter stated that a newspaper with general circulation ''in the area in which each potential claimant now resides'' is impractical. Disposition could possibly be to all Indian tribes or NHOs with standing under the Act.

Our Response: In the case where potential claimants have been identified, the locations of the newspapers where a notice of proposed transfer or reinterment is published under this final rule are identical to the locations of the newspapers where a notice of intended disposition was published under § 10.6(c). In the case of cultural items for which no potential claimant could be identified, the location where a notice of proposed transfer or reinterment is published is only the area in which the cultural items were excavated or discovered, and removed, as there are no potential claimants for these cultural items.

Comment 26: One commenter stated that there was no process provided if an Indian tribe or Native Hawaiian organization asserts priority of ownership or control under section 3(a) of the Act and § 10.6 . If the claim is determined to be valid, disposition

would occur under § 10.6(c) and not under § 10.7, as the cultural items would no longer be unclaimed.

Our Response: If an Indian tribe or Native Hawaiian organization states a valid claim for cultural items appearing in a notice of proposed transfer or reinterment under § 10.7, the cultural items are no longer unclaimed. As the Federal agency will no longer have the discretion to proceed with a transfer or reinterment under this final rule, the disposition of these cultural items will proceed under § 10.6(c). If the valid claim is from an Indian tribe or Native Hawaiian organization already listed in a notice of intended disposition, and if there are no competing claims, the Federal agency will transfer the right of control over the cultural items to the claimant. If the valid claim is from an Indian tribe or Native Hawaiian organization not already listed in a notice of intended disposition, the Federal agency will follow the notice provision under § 10.6(c) prior to any transfer.

Final Rule § 10.7(a) The Secretary Has the Authority To Promulgate the Rule on Unclaimed Cultural Items

Comment 27: Two commenters suggested moving the statement on the purpose of this rule from the end of the rule to the beginning of the rule.

Our Response: We agree. Proposed rule § 10.7(e) has been renumbered § 10.7(a) in this final rule.

Changes From the Proposed Rule

Based on the preceding comments and responses, the drafters have made the following changes to the proposed rule language:

- § 10.2(g)(5)(iv). This section specifies that disposition of unclaimed cultural items is established under § 10.7 of these regulations.
- § 10.2(h)(2)(i). This section specifies that cultural items are unclaimed under the following circumstances: The Federal agency publishes a notice of intended disposition, and the agency has not received any claim from an Indian tribe or Native Hawaiian organization, or any response from a lineal descendant to the notice within one year of publishing the notice.
- § 10.2(h)(2)(ii). This section specifies that cultural items are unclaimed under the following circumstances: The Federal agency knows, or has reason to know, that cultural items have been excavated or discovered on, and removed from Federal lands; for two years, the Federal agency has tried to reasonably identify any Indian tribe or Native Hawaiian organization, or a lineal descendant, as a potential claimant, and at the end of the two-year period, the Federal agency cannot reasonably identify an Indian tribe or Native Hawaiian organization, or a lineal descendant, as a potential claimant.
- § 10.7(a) of the proposed rule has been renumbered § 10.7(b) in this final rule.
- § 10.7(a)(1) has been renumbered § 10.7(b)(1) in this final rule. This section specifies that the list of unclaimed cultural items must include a summary of consultation efforts under § 10.5, and adjusts the deadline for submitting a list of unclaimed cultural items. For those cultural items that meet the definition of unclaimed cultural items on the effective date of the regulation, a list of items must be submitted within one year. For items that meet the definition of unclaimed cultural items after the effective date of the regulation, a list of items must be submitted within one year of the cultural items becoming unclaimed.
- § 10.7(a)(3) has been renumbered § 10.7(b)(3) in this final rule. This section specifies that the potential claimants who are referenced are the potential claimants listed in a notice of intended disposition.
- § 10.7(b) of the proposed rule has been renumbered § 10.7(c) in this final rule. This section specifically identifies the Indian tribe or Native Hawaiian organization to which control may be transferred under this rule as an Indian tribe or Native Hawaiian organization that does not have a potential claim to the cultural items. Also, this section specifies that such transfer is conditioned on the transferee agreeing to accept transfer and treat the cultural items according to the transferee's own laws and customs.
- § 10.7(c) of the proposed rule has been renumbered § 10.7(d) in this final rule. This section specifies that, under this rule, any reinterment of unclaimed human remains or funerary objects by the Federal agency must be according to applicable interment laws. Also, the provision in the proposed rule regarding the offer of human remains or funerary objects for disposition according to State or other law has been eliminated.
- § 10.7(d) of the proposed rule has been renumbered § 10.7(e) in this final rule.
- § 10.7(d)(3) has been renumbered § 10.7(e)(3) in this final rule. This section specifies that the Manager of the National NAGPRA Program will post information received from the Federal agency under § 10.7(e)(2) of this rule, on the National NAGPRA Program's Web site.
- § 10.7(e) has been renumbered § 10.7(a) in this final rule.

Compliance With Other Laws, Executive Orders, and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule only pertains to the disposition of cultural items in the custody of a Federal agency for which potential claimants have chosen not to take ownership or control, or when no potential claimants have been identified. Thus, this rule does not constitute a significant economic burden.

Small Business Regulatory Enforcement Fairness Act

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

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

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

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

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required. No taking of property will occur as a result of this rule.

Federalism (Executive Order 13132)

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

Civil Justice Reform (Executive Order 12988)

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

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

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

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. In accordance with the Presidential Memorandum entitled ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951, April 29, 1994); Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, Nov. 9, 2000); the President's Memorandum for the Heads of Executive Departments and Agencies on the Implementation of Executive Order 13175 (Nov. 5, 2009); and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation With Indian Tribes (Dec. 1, 2011); we have evaluated this rule and determined that it has a potential effect on federally recognized Indian tribes. The rule was developed in consultation with the Native American Graves Protection and Repatriation Review Committee, which includes members nominated by Indian tribes and traditional religious leaders. Formal consultation with the Review Committee was held on November 16–17, 2005, in Albuquerque, NM; on April 19–20, 2007, in Washington, DC; on October 15–16, 2007, in Phoenix, AZ; on May 15–16, 2008, in De Pere, WI; on October 30–31, 2009, in Sarasota, FL; and on November 18–19, 2010, in Washington, DC. Also, the Review Committee had an opportunity to comment on the proposed rule following publication, which it did at a public meeting on November 6, 2013, in Mt. Pleasant, MI.

Formal consultation with Indian tribes began on November 15, 2005, in Albuquerque, NM, and continued on April 18, 2007, in Washington, DC, and on October 14, 2007, in Phoenix, AZ. We have fully considered tribal and Review Committee comments in the final rule.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in 43 CFR part 10 and assigned OMB Control Number 1024–0144. This rule does not contain any new information collections that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): ''Policies, directives, regulations, and guidelines: That are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Effects on the Energy Supply (Executive Order 13211)

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

Drafting Information

The proposed rule and this final rule were prepared by staff of the National NAGPRA Program, National Park Service; Office of Regulations and Special Park Uses, National Park Service; and Office of the Solicitor, Division of Parks and Wildlife and Division of Indian Affairs, Department of the Interior.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians-claims, Indians-lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Department amends 43 CFR part 10 as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

■ 2. Amend § 10.2 by adding paragraph (g)(5)(iv) and paragraph (h) to read as follows:

§ 10.2 Definitions.

* * * * *

(g) * * *

(5) * * *

(iv) Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony is governed by § 10.7.

(h) *Unclaimed cultural items* means Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony:

(1) That have been excavated or discovered on, and removed from, Federal lands after November 16, 1990, and

(2) Whose disposition under 25 U.S.C. 3002(a) and § 10.6 of this part has not occurred because either:

(i) Within one year after publication of a notice under § 10.6(c) of this part,

no Indian tribe or Native Hawaiian organization has sent a written claim for the cultural items to the appropriate Federal agency, or no lineal descendant has responded to a notice for human remains and associated funerary objects; or

(ii) Within two years after knowing or having reason to know that cultural items were excavated or discovered, and removed, the appropriate Federal agency could not reasonably identify any Indian tribe or Native Hawaiian organization or lineal descendant as a potential claimant.

■ 3. Add § 10.7 to read as follows:

§ 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(a) This section carries out section 3(b) of the Act (25 U.S.C. 3002(b)) regarding unclaimed cultural items.

(b) A Federal agency that has unclaimed cultural items (human remains, funerary objects, sacred objects, or objects of cultural patrimony) must:

(1) Submit a list of the items to the Manager, National NAGPRA Program that describes the general place of discovery or excavation, and removal; the nature of the unclaimed cultural items; and a summary of consultation efforts under § 10.5 of this part. This list must be received by December 5, 2016, or within 1 year after the cultural items have become unclaimed under § 10.2(h), whichever is later;

(2) Care for and manage unclaimed cultural items consistent with the regulations at 36 CFR part 79; and

(3) To the maximum extent feasible, consider and respect the traditions of any potential claimants listed in a notice under § 10.6(c) concerning the unclaimed cultural items, including, but not limited to, traditions regarding housing, maintenance, and preservation.

(c) Subject to paragraph (e) of this section, a Federal agency that has unclaimed cultural items may, upon request, transfer them to an Indian tribe or Native Hawaiian organization that is not a potential claimant and agrees:

(1) To accept transfer; and

(2) To treat them according to the laws and customs of the transferee.

(d) Subject to paragraph (e) of this section, a Federal agency that has unclaimed human remains or funerary objects may reinter them according to applicable interment laws.

(e) Before a Federal agency makes a transfer or reinterment under paragraphs (c) or (d) of this section, it must:

(1) Submit the list required under paragraph (b)(1) of this section to the Manager, National NAGPRA Program; and

(2) Publish a notice of the proposed transfer or reinterment in a newspaper of general circulation in the area in which the unclaimed cultural items were excavated or discovered, and removed, and, if applicable, in a newspaper of general circulation in the area in which each potential claimant now resides.

(i) The notice must explain the nature of the unclaimed cultural items, summarize consultation efforts under § 10.5, and solicit claims under the priority of ownership or control in section 3(a) of the Act (25 U.S.C. 3002(a)) and § 10.6.

(ii) The notice must be published at least two times at least a week apart.

(iii) The transfer or reinterment may not take place until at least 30 days after publication of the second notice to allow time for any claimants under the priority of ownership or control in section 3(a) of the Act and § 10.6 to come forward.

(3) Send to the Manager, National NAGPRA Program a copy of the notice published under paragraph (d)(2) of this section and information on when and in what newspaper(s) the notice was published. The National NAGPRA Program will post information from published notices on its Web site.

Dated: October 21, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks .

[FR Doc. 2015–28041 Filed 11–4–15; 8:45 am]

BILLING CODE 4310–EJ–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 15–170; FCC 15–135]

Radio Frequency Devices, FCC Form 740 Temporary Suspension

AGENCY: Federal Communications Commission.

ACTION: Final rule; temporary suspension.

SUMMARY: This document temporarily waives the requirements of the Commission's rules that govern the submission of information associated with FCC Form 740 concerning imported Radio Frequency (RF) devices. U.S. Customs and Border Protection (CBP) is implementing a new electronic filing system which is scheduled to become fully operational by December 2016. In light of steps taken related to the transition to the new CBP system, parties importing RF devices will lose the ability to electronically file the required FCC information. The Commission does not believe that it would serve the public interest to establish an alternative means for importers to submit this information with us during the pendency of the rulemaking.

DATES: Effective December 7, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, (202) 418–2702.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* ET Docket No. 15–170, FCC 15–135, adopted October 16, 2015 and released October 19, 2015. The full text of this document is available on the Commission's Internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554.

Synopsis of the Suspension Order

1. The Commission took action to temporarily waive the requirements in §§ 2.1203 and 2.1205 of the Commission's rules that govern the submission of information in connection with imported Radio Frequency (RF) devices, effective July 1, 2016, through December 31, 2016, for the following reasons:

2. Section 2.1203 of the Commission's rules states that no RF device may be imported unless the importer or ultimate consignee (or their designated customs broker) declares that the device meets the conditions of entry set forth in our importation rules. Section 2.1205 provides two ways to make this declaration. At ports of entry where electronic filing with the U.S. Customs and Border Protection (CBP) is not available, the importer completes FCC Form 740 and attaches a copy to its customs import papers. Where electronic customs filing is available, the importer may submit the information electronically as part of its entry documentation submission to CBP. Currently, nearly all submissions are made electronically through the CBP's Automated Commercial System (ACS), and very few paper filings are submitted.

3. CBP is deploying a new electronic filing system, the Automated Commercial Environment (ACE), which will not have the capability for importers to submit the FCC-required Form 740 information electronically. FCC-related importation filings can continue to be submitted electronically

via ACS or paper until July 1, 2016. According to the current CBP schedule, as of July 1, 2016, CBP will no longer accept filings made via ACS.

4. The Commission adopted a Notice of Proposed Rulemaking (*NPRM*) in the above-captioned proceedings to update the rules that govern the evaluation and approval of RF devices, 80 FR 46900 (August 6, 2015). In the *NPRM,* the Commission proposed to amend § 2.1203 and remove § 2.1205, thereby eliminating the declaration and associated filing requirements. While the ongoing rulemaking may ultimately result in the elimination, modification, or retention of the §§ 2.1203 and 2.1205 requirements, the overall rulemaking proceeding is quite complex and it is possible that the Commission will be unable to reach and publish a final determination before July 1, 2016, the date upon which CBP will no longer accept the electronic filing of FCC Form 740s via ACS.

5. If the Commission retains or modifies the Form 740 information filing requirement, parties will be precluded from filing electronically after July 1, 2016 outside of the ACE system. The ACE system would have to be modified to render that system capable of accepting FCC Form 740s, which would require appreciable amount of time and expense and may not be able to be implemented by July 1. This would mean that for some period of time after July 1, all the Form 740 filings would be made via paper. Such a result would be impractical. The Commission estimated that it would receive approximately 20,000 such forms each week, with the same number of forms submitted to CBP. In addition, numerous importers would also have to file with FDA or other agencies that may regulate a given device. Given the circumstances, the Commission found that, absent a waiver, there would be significant burdens associated with the ACE implementation for Form 740, for the CBP and FCC. If the Commission ultimately eliminates the Form 740 requirements, any efforts to modify ACE to accommodate Form 740 will have been unnecessary. On the other hand, if the Commission determines to require the Form 740 information filing, the necessary changes to the ACE can be made at that time.

6. The timing of the Commission's open proceeding also introduces considerable regulatory uncertainty for the importation community that further supports the need for a waiver. Based on discussions with manufacturers with considerable importation volumes and import brokers and brokers' associations, the Commission determined that it could take a number of months for the members of the importation community to tailor their existing documentation and related processes to any new importation regime—even one that lifts burdens. Accordingly, this community needs to know whether its members should begin making the necessary preparations for compliance with a paper-based regime in July, or whether they can continue using their existing processes with some assurance that they will not be expected to make a flash cut to a paper filing process come July.

7. Section 1.3 of the Commission's rules provides that ''[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.'' For the above stated reasons, the Commission found good cause to temporarily waive the above-described filing requirements in §§ 2.1203 and 2.1205 of the rules effective July 1, 2016, and extending for six months. Assuming that the waiver remains necessary as of July 1, the Commission anticipates that any difficulties associated with not gathering data through Form 740 will be relatively limited in time and scope. The Commission will work with CBP to draw on other data to satisfy any informational needs that are currently provided through the operation of §§ 2.1203 and 2.1205. If the Commission decides to retain the requirement that importers submit some or all of the information required by §§ 2.1203 and 2.1205, it will set forth appropriate revised filing procedures at that time. To the extent that a waiver remains necessary as of July 1, our action only affects the manner in which the Commission collects the information about imported RF equipment that is associated with the requirements of §§ 2.1203 and 2.1205. The general proscription against importation of non-authorized equipment is unaffected and will remain fully in effect.

8. For the foregoing reasons, the Commission will temporarily waive the requirements of §§ 2.1203 and 2.1205, effective July 1, 2016. The waiver will remain in effect through December 31, 2016. The Commission also delegated authority to the Office of Engineering and Technology to extend this date, but no later than the effective date of any decision regarding §§ 2.1203 and 2.1205 in the *NPRM* proceeding.

9. Pursuant to sections 1, 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 301, 302, 303(e), 303(f), and 303(r), and Section 1.3 of the Commission's rules, 47 CFR Section 1.3, that §§ 2.1203 and 2.1205 of the Commission's rules and Regulations, ARE TEMPORARILY WAIVED, effective July 1, 2016, to the Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2015–28138 Filed 11–4–15; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 80, No. 214
Thursday, November 5, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–15–0056; FV15–920–1 PR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Kiwifruit Administrative Committee (Committee) to increase the assessment rate established for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit handled under the marketing order (order). The Committee locally administers the order and is comprised of growers of kiwifruit operating within the area of production. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins on August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 20, 2015.

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

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov,* or *Martin.Engeler@ams.usda.gov.* Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable kiwifruit beginning on August 1, 2015, and continue until amended, suspended, or terminated.

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

This proposed rule would increase the assessment rate established for the Committee for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 17 and September 16, 2015, and unanimously recommended 2015–16 fiscal year expenditures of $132,725 and an assessment rate of $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit handled to fund Committee expenses. In comparison, last year's budgeted expenditures were $120,925. The assessment rate of $0.040 is $0.015 more than the rate currently in effect. The Committee's recommended 2015–16 expenditures are $11,800 higher than last year's budgeted expenditures. The

primary reason for the increase is to provide funding for research. When applied to the Committee's crop estimate for the 2015–16 fiscal year of 2,297,000 9-kilo volume-fill containers or equivalent, the current assessment rate of $0.025 would not generate sufficient assessment income to cover anticipated expenses. The proposed assessment rate of $0.040 per 9-kilo volume-fill container or its equivalent would generate assessment income of $91,880. Anticipated assessment income combined with financial reserve and interest income, would provide sufficient funds for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the order. (§ 920.42)

The major expenditures recommended by the Committee for the 2015–16 fiscal period include $80,000 for management expenses, $14,000 for two financial audits, $14,330 for research, $7,500 for International Kiwifruit Organization (IKO) travel, $2,500 membership fee to Buy California, and $2,500 membership fee to the IKO. Major budgeted expenses for the 2014–15 fiscal period were $80,000 for management expenses, $7,500 for a financial audit, $5,000 for handler audits, $2,500 membership fee to Buy California, $2,500 for IKO membership, and $12,500 for IKO travel.

The assessment rate recommended by the Committee was derived by considering the amount of revenue needed to meet anticipated expenses divided by expected shipments of California kiwifruit. As previously mentioned, kiwifruit shipments for the 2015–16 fiscal period are estimated at 2,297,000 9-kilo volume-fill containers, which should provide $91,880 in assessment income. Anticipated assessment income derived from handler assessments, along with interest income and $40,756 from the Committee's authorized financial reserve would provide sufficient funds for the Committee to meet its budgeted expenses. It is anticipated that $29,119 would remain in the financial reserve at the end of July 2016, which would be within the maximum amount permitted by the order of approximately one fiscal year's expenses (§ 920.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2015–16 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 178 kiwifruit growers in the production area and approximately 28 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

The National Agricultural Statistical Service (NASS) reported total California kiwifruit production for the 2014 season at 27,400 tons, with an average price of $1,190 per ton. Based on the average price and shipment information provided by NASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. Based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, average annual grower revenue is less than $750,000. Thus, the majority of California kiwifruit growers may also be classified as small entities.

This proposed rule would increase the assessment rate established by the Committee and collected from handlers for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2015–16 expenditures of $132,725 and an assessment rate of $0.040 per 9-kilo volume-fill container. The proposed assessment rate of $0.040 is $0.015 higher than the 2014–15 rate. The quantity of assessable kiwifruit for the 2015–16 fiscal period is estimated at 2,297,000 9-kilo volume-fill containers. Thus, the $0.040 rate should provide $91,880 in assessment income. Anticipated assessment income derived from handler assessments, along with financial reserve funds and interest income, would provide sufficient revenue for the Committee to meet its budgeted expenses, while maintaining its financial reserve within the maximum amount permitted by the order of approximately one fiscal year's expenses (§ 920.42).

The major expenditures recommended by the Committee for the 2015–16 fiscal period include $80,000 for management expenses, $14,000 for two financial audits, $14,330 for research, $7,500 for International Kiwifruit Organization (IKO) travel, $2,500 membership fee to Buy California, and $2,500 membership fee to the IKO. Major budgeted expenses for the 2014–15 fiscal period were $80,000 for management expenses, $7,500 for a financial audit, $5,000 for handler audits, $2,500 membership fee to Buy California, $2,500 for IKO membership, and $12,500 for IKO travel.

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditure levels, to include maintaining the current assessment rate, but ultimately determined that the current assessment rate would generate insufficient revenue to meet its expenses.

According to data from NASS, the season average producer price was $11.09 per 9-kilo volume-fill container in 2013 and $11.78 per 9-kilo volume-fill container in 2014. A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for 2015–16 could range between $11.09 and $11.78 per 9-kilo volume-fill container of assessable kiwifruit. Therefore, estimated assessment revenue for the 2015–16 fiscal year as a percentage of total producer revenue could be between 0.34 percent and 0.36 percent.

This action would increase the assessment obligation imposed on

handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 17 and September 16, 2015, meetings, were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2015–16 fiscal year began on August 1, 2015, handlers began shipping kiwifruit in September and the marketing order requires that the rate of assessment apply to all assessable kiwifruit handled during the fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2015, an assessment rate of $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: October 30, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–28142 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3805; Directorate Identifier 2015–NE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Turbomeca S.A. ARRIEL 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines with modification TU34 or TU34A installed. This proposed AD was prompted by torque conformation box (TCB) failures. This proposed AD would require inspecting the TCB for correct resistance values and removing TCBs that fail inspection before further flight. We are proposing this AD to prevent failure of the TCB which could lead to loss of engine thrust control and damage to the aircraft.

DATES: We must receive comments on this proposed AD by January 4, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3805; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No.

FAA–2015–3805; Directorate Identifier 2015–NE–28–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2015–0177, dated August 25, 2015 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of torque conformation box (TCB) failures have been reported on engines incorporating mod TU34 or mod TU34A. Investigation concluded that these failures were caused by cracks on soldered joints of TCB resistors.
>
> This condition, if not corrected, could lead to limited power availability in a One Engine Inoperative (OEI) case, possibly resulting in reduced control of the helicopter.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3805.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 292 72 2860, Version A, dated July 15, 2015. The MSB describes procedures for checking TCB resistance values. 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 NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require inspecting the TCB for correct resistance values and removing TCBs that fail inspection.

Costs of Compliance

We estimate that this proposed AD affects 300 engines installed on helicopters of U.S. registry. We estimate that it would take about 1 hour to perform an inspection. We also estimate that 20% of these engines would fail the inspection and require TCB removal, which would take about 1 hour. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $30,600.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca S.A.: Docket No. FAA–2015–3805; Directorate Identifier 2015–NE–28–AD.

(a) Comments Due Date

We must receive comments by January 4, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. ARRIEL 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines with modification TU34 or TU34A installed.

(d) Reason

This AD was prompted by torque conformation box (TCB) failures. We are issuing this AD to prevent failure of the TCB, which could lead to loss of engine thrust control and damage to the aircraft.

(e) Actions and Compliance

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

(1) Within 600 engine flight hours (EFHs) or 6 months after the effective date of this AD, whichever occurs first, check the resistance values on the TCB. Use Accomplishment Instructions, paragraph 2.3.2 of Turbomeca S.A. Mandatory Service Bulletin (MSB) 292 72 2860, Version A, dated July 15, 2015, to do the inspection. Repeat this inspection every 600 EFHs since last inspection.

(2) Remove before further flight any TCB that fails the inspection required by paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use

the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(g) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0177, dated August 25, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3805.

(3) Turbomeca S.A. Mandatory Service Bulletin No. 292 72 2860, Version A, dated July 15, 2015, can be obtained from Turbomeca S.A., using the contact information in paragraph (g)(4) of this proposed AD.

(4) For service information identified in this proposed AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on October 28, 2015.

Colleen M. D'Alessandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–28011 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5318; Directorate Identifier 2015–CE–035–AD]

RIN 2120–AA64

Airworthiness Directives; Quest Aircraft Design, LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Quest Aircraft Design, LLC Model KODIAK 100 airplanes. This proposed AD was prompted by a report of limited control yoke movement of the elevator control system due to cushion edging jammed in the elevator control anti-rotation guide slot. This proposed AD would require repetitively inspecting the elevator control system cushion edging for proper condition; replacing the cushion edging; and at a specified time terminating the repetitive inspections by installing wear pads on the elevator bearing assemblies. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 21, 2015.

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

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

For service information identified in this proposed AD, contact Quest Aircraft Design, LLC, 1200 Turbine Drive, Sandpoint, Idaho 83864; telephone: (208) 263–1111; toll free: (866) 263–1112; email: *CustomerService@QuestAircraft.com;* Internet: *www.questaircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5318; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, Washington 98057; phone: (425) 917–6469; fax: (425) 917–6591; email: *david.herron@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–5318; Directorate Identifier 2015–CE–035–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report that, during a preflight inspection, an operator noted limited travel of the control yoke on a Quest Aircraft Design, LLC Model KODIAK 100 airplane. Upon further inspection of the control yoke system forward of the control yoke, cushion edging was found jammed in the elevator control anti-rotation guide slot. The jammed edging prevented the control yoke from having full nose up and nose down travel. The operator also reported the same problem on a different KODIAK 100 airplane in which the cushion edging plastic portion separated from the metal track.

Investigation revealed that over time the cushion edging may become worn and degrade. This condition, if not corrected, could result in failure of the elevator control system cushion edging, which could restrict elevator control yoke movement and cause loss of control.

Relevant Service Information

We reviewed Quest Aircraft KODIAK Mandatory Service Bulletin SB14–07, dated August 26, 2014; Quest Aircraft Field Service Instruction, Elevator Control System—Cushion Edging Inspection, Report No. FSI–105, Revision 00, not dated; Quest Aircraft KODIAK 100 Recommended Service Bulletin SB15–01, dated March 26, 2015; and Quest Aircraft Field Service Instruction, Yoke Anti-Rotation Guide Wear Pad Upgrade, Report No. FSI–108, Revision 00, not dated. The service information describes procedures for repetitively inspecting the cushion edging installed on the elevator control anti-rotation guide for proper condition,

wear, and security, and replacing if necessary; and removing the cushion edging and installing wear pads on the pilot and co-pilot arms of the elevator bearing assemblies as a terminating action to the repetitive inspections of the cushion edging. 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 NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 60 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the cushion edging on each side of the elevator control anti-rotation guide slot.	.5 work-hour × $85 per hour = $42.50 per inspection.	Not applicable	$42.50 per inspection.	$2,550 per inspection.
Required terminating action for repetitive inspections—replace cushion edging with wear pads.	3 work-hours × $85 per hour = $255 ..	$200	$455	$27,300.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace cushion edging	1 work-hour × $85 per hour = $85	$20	$105

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Quest Aircraft Design, LLC: Docket No. FAA–2015–5318; Directorate Identifier 2015–CE–035–AD.

(a) Comments Due Date

We must receive comments by December 21, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Quest Aircraft Design, LLC Model KODIAK 100 airplanes, all serial numbers 100–0001 through 100–0149, that are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2730; Elevator Control System.

(e) Unsafe Condition

This AD was prompted by a report of limited control yoke movement due to cushion edging jammed in the elevator control anti-rotation guide slot. We are issuing this AD to prevent failure of the elevator control system, which could result in loss of control.

(f) Compliance

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

(g) Inspect Cushion Edging

Before further flight after the effective date of this AD and repetitively thereafter at intervals not to exceed 50 hours time-in-service or at every annual inspection, whichever comes first, until the terminating action specified in paragraph (i) of this AD is done, inspect the cushion edging, part number (P/N) M22529/2–3R–25, located on each side of the elevator control anti-rotation guide slot, P/N 100–619–0008, for the pilot and co-pilot control yoke assemblies, following section 5.1 Cushion Edging Inspection of Quest Aircraft Field Service Instruction, Elevator Control System—Cushion Edging Inspection, Report No. FSI–105, Revision 00, not dated, as specified in Quest Aircraft KODIAK Mandatory Service Bulletin SB14–07, dated August 26, 2014.

(h) Replace Cushion Edging

If damage or wear is found during any inspection required in paragraph (g) of this AD, before further flight, replace the cushion edging following section 5.3 of Quest Aircraft Field Service Instruction, Elevator Control System—Cushion Edging Inspection, Report No. FSI–105, Revision 00, not dated, as specified in Quest Aircraft KODIAK Mandatory Service Bulletin SB14–07, dated August 26, 2014.

(i) Install Wear Pads (Terminating Action for the Repetitive Inspections)

Within 1 year after the effective date of this AD, remove the cushion edging, P/N M22529/2–3R–25, installed on the elevator control anti-rotation guide, and install wear pads, P/N 100–619–0037, on the elevator bearing assembly link arm following section 5. Instructions, including all subsections, of Quest Aircraft Field Service Instruction, Yoke Anti-Rotation Guide Wear Pad Upgrade, Report No. FSI–108, Revision 00, not dated, as specified in Quest Aircraft KODIAK 100 Recommended Service Bulletin SB15–01, dated March 26, 2015. Installing all four wear pads on the pilot and co-pilot arms of the elevator bearing assemblies terminates the repetitive inspections required in paragraph (g) of this AD.

(j) 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 (k) 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.

(k) Related Information

(1) For more information about this AD, contact David Herron, Aerospace Engineer, Seattle ACO, FAA, 1601 Lind Avenue SW., Renton, Washington 98057; phone: (425) 917–6469; fax: (425) 917–6591; email: *david.herron@faa.gov.*

(2) For service information identified in this AD, contact Quest Aircraft Design, LLC, 1200 Turbine Drive, Sandpoint, Idaho 83864; telephone: (208) 263–1111; toll free: (866) 263–1112; email: *CustomerService@QuestAircraft.com;* Internet: *www.questaircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 30, 2015.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–28198 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP10

Exempting Mental Health Peer Support Services From Copayments

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is withdrawing VA's proposed rulemaking, published in the **Federal Register** on November 28, 2014, to amend its regulation that governs VA services that are not subject to copayment requirements for inpatient hospital care or outpatient medical care. Specifically, the proposed rule would have amended the regulation to exempt mental health peer support services from having any required copayment. VA received no adverse comments concerning the proposed rule or its companion substantially identical direct final rule published in the **Federal Register** on the same date. In a companion document in this issue of the **Federal Register**, we are confirming that the direct final rule became effective on January 27, 2015. Accordingly, this document withdraws as unnecessary the proposed rule.

DATES: The proposed rule published on November 28, 2014, 79 FR 70941, is withdrawn as of November 5, 2015.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director Business Policy, Chief Business Office (10NB6), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on November 28, 2014, 79 FR 70941, VA proposed to amend 38 CFR 17.108 to eliminate copayments for mental health peer support services. VA published a companion substantially identical direct final rule at 79 FR 70938, on the same date. The direct final rule and proposed rule each provided a 60-day comment period that ended on January 27, 2015. No adverse comments were received. Six comments that supported the rulemaking were received from the general public. One commenter also urged VA to exempt evidence-based, cost-effective primary care services from having a required copayment. This comment is outside the scope of this rulemaking, and therefore, VA is not making any changes to this rulemaking based on this comment.

Because no adverse comments were received within the comment period, VA is withdrawing the proposed rule as unnecessary. In a companion document in this issue of the **Federal Register**, VA is confirming the effective date of the direct final rule, RIN 2900–AP11, published at 79 FR 70938.

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 October 26, 2015, for publication.

Dated: November 2, 2015.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2015–28255 Filed 11–4–15; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–2; Order No. 2793]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal One Through Three). The Commission will consider Proposals One and Two at this time. Proposal Three will be held in abeyance. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 20, 2016. *Reply Comments are due:* March 25, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Summary of Proposals
III. Initial Commission Action
IV. Ordering Paragraphs

I. Introduction

On October 8, 2015, the United Parcel Service, Inc. (UPS) filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding in order to consider changes to how the Postal Service accounts for the costs of competitive products in its periodic reports.[1] Proposals One, Two, and Three are attached to the Petition along with a report created by Dr. Kevin Neels (Dr. Neels), an economic consultant, which supports each Proposal. UPS concurrently filed a non-public library reference with its Petition.[2]

UPS explains that the Postal Accountability and Enhancement Act freed the Postal Service from certain rate-making conditions so that it could better compete with private companies in the parcel markets. Petition at 3. UPS notes, however, that when regulated entities such as the Postal Service are allowed to compete with private companies, ''the regulated entity has a natural incentive to leverage the monopoly revenues it is making from sales to its captive customers (here, those purchasing letter mail services) to finance the competitive ventures.'' *Id.* at 2. UPS contends that in exchange for new pricing ''freedoms,'' and in recognition of the Postal Service's ''inherent incentive'' to expand its competitive ventures at the expense of its captive customers, Congress mandated that ''the Postal Service could not subsidize its expansion into competitive parcel delivery markets with revenues it enjoys from the products it sells pursuant to the letter monopoly.'' *Id.* at 3, 4. UPS cites 39 U.S.C. 3633, which prohibits the subsidization of competitive products by market dominant products; requires that each competitive product cover its own attributable costs; and mandates that competitive products collectively cover an appropriate share of the Postal Service's institutional costs.[3]

UPS states that it is filing this Petition after an ''exhaustive analysis'' of the Postal Service's cost methodologies. *Id.* at 5. UPS asserts that its analysis reveals that the Postal Service is ''failing to ensure that its competitive products business is recovering all costs fairly attributable to that business'' and that the Postal Service ''is not accounting fully for the true costs'' of its competitive products. *Id.* at 5–6. UPS states that its analysis shows the Postal Service is misclassifying a significant amount of variable costs;[4] therefore, ''competitive products are not bearing the full scope of the variable costs attributable to them.'' *Id.* at 7. Accordingly, UPS presents three proposals to change the Postal Service's current costing methodologies. *Id.* at 1.

In Proposal One, UPS recommends that the Postal Service incorporate all the variable costs, including the inframarginal costs attributable to individual products.[5] In Proposal Two, UPS recommends that certain costs currently identified as fixed be reclassified as fully or partially variable and subsequently attributed to individual products. Petition, Proposal Two at 1. In Proposal Three, UPS recommends that the Commission increase the ''appropriate share'' pursuant to 39 U.S.C. 3633(a)(3), from 5.5 percent[6] to 24.6 percent, which is the competitive products' 3-year trailing average of the share of total attributable costs. Petition, Proposal Three at 1.

II. Summary of Proposals

A. Proposal One

In Proposal One, UPS explains that in order to attribute costs to products, the Postal Service first estimates the marginal cost of various cost segments. Petition, Proposal One at 1–2. UPS notes, however, that the Postal Service's cost attribution method ''effectively assumes that the cost associated with adding the last unit of mail is identical to the cost associated with adding each and every unit of mail.'' *Id.* at 4 (emphasis omitted).

UPS argues that this is only a reasonable assumption when marginal costs are consistent throughout all volume levels. *Id.* UPS claims that when marginal costs decline as the level of volume increases, the cost associated with the last mail piece is lower than the marginal cost associated with producing each preceding piece. *Id.* Thus, it argues that by attributing only the marginal cost of the last piece of mail, the Postal Service is failing to attribute the higher marginal costs associated with producing every preceding piece in those cost components that exhibit declining marginal costs. *Id.*

UPS recommends that the Postal Service include the inframarginal costs of individual products in its calculation of the costs attributable to those products. Petition at 1. It argues that distribution keys, which are currently used to calculate ''volume variable'' costs, can be used to distribute inframarginal costs to products. *Id.* Proposal One at 19, 20. UPS states that

[1] Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015 (Petition).

[2] Notice of Filing Library Reference UPS–RM2016–2/LR–NP1, October 8, 2015.

[3] *Id.* at 4–5. *See also* 39 U.S.C. 3633(a).

[4] The term variable cost is a relatively new term for Commission proceedings. It is not the same as volume variable cost, which is based on marginal cost. Each piece of mail that enters the postal system imposes an additional cost. As mail pieces continue to be entered into the postal system, these additional costs increase in total. Thus these costs vary with volume. The cost imposed on the postal system by the last piece entered into the system is the marginal cost. The additional costs imposed by previous pieces entered into the postal system are called inframarginal costs. The sum of all of these additional costs, including the cost of the last piece, is called variable costs.

[5] Petition, Proposal One at 1. UPS refers to the marginal costs associated with every preceding piece of mail as ''inframarginal costs.'' *Id.*

[6] *See* 39 CFR 3015.7(c). The Commission most recently retained this share at 5.5 percent. *See generally,* Docket No. RM2012–3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 (Order No. 1449).

''[a]ttributing inframarginal costs to products using the existing distribution keys is just as reliable as attributing marginal costs to products using those distribution keys. *Id.* at 20.

B. Proposal Two

In Proposal Two, UPS contends that the Postal Service has a ''systematic tendency to misclassify costs as fixed.'' Petition at 10. Such fixed costs, which are a major component of institutional costs, are not attributed to specific products.[7] UPS asserts that the Postal Service's misclassification of certain costs as fixed allows it to ''largely ignore'' such costs when setting the prices for its competitive products. Petition at 10. Based on UPS's belief that fixed and institutional costs are ''borne disproportionately'' by market dominant products, it concludes that the Postal Service's systemic misclassification of costs as fixed results in the improper subsidization of competitive products by market dominant products, in violation of 39 U.S.C. 3633(a)(1). *Id.* Proposal Two at 5.

Relying on Dr. Neels' analysis, UPS identifies 37 cost pools that it believes should be reclassified as wholly or partially variable. *Id.* at 1. UPS contends that Dr. Neels' analysis reveals that over $3 billion in costs have been misclassified as fixed, and thus, have not been properly attributed to products. *Id.* at 8. UPS requests that the Commission attribute these reclassified costs to specific products based on their respective shares of overall attributable costs in the prior fiscal year. *Id.* at 10. Using this methodology, UPS estimates that over $700 million of costs have not been properly attributed to the Postal Service's competitive products. *Id.* at 8.

C. Proposal Three

Unlike Proposals One and Two, Proposal Three does not involve issues related to the proper attribution of variable costs to the Postal Service's products. Rather, in Proposal Three, UPS requests that the Commission reconsider the ''appropriate share'' of institutional costs that must be covered by competitive products. Petition, Proposal Three at 1. Pursuant to 39 U.S.C. 3633(b), the Commission is required to review the appropriate share requirement at least every 5 years to determine if the percentage should be ''retained in its current form, modified, or eliminated.'' The current appropriate share, set by the Commission in CY 2012, is 5.5 percent. *See* Order 1449 at 27.

In light of competitive products' volume growth in recent years, along with the Postal Service's significant investments in its competitive business, UPS believes that the current appropriate share percentage does not reflect current market conditions. Petition, Proposal Three at 6–14. To ensure that the Postal Service competes fairly, UPS asserts that the appropriate share percentage should be set at a level that approximates the fixed costs that a private competitor must bear. *Id.* at 14. Accordingly, UPS recommends that the appropriate share percentage be set at 24.6 percent. *Id.* UPS states that this percentage is equal to the average of the ''previous three years of attributable cost shares'' for competitive products. *Id.* UPS also encourages the Commission to adopt a mechanism that would adjust the appropriate share percentage each year in order to account for the fluctuation of postal cost and market realities. *Id.* at 14–15.

III. Initial Commission Action

The Commission establishes Docket No. RM2016–2 for consideration of Proposals One and Two as raised by the Petition. The Commission holds Proposal Three in abeyance until it has completed its review of Proposals One and Two. As discussed above, Proposals One and Two both relate to the proper attribution of all variable costs to the Postal Service's products. Given the interrelatedness of these two proposals, the Commission finds that it is appropriate to consider them together in this docket. However, as UPS itself discussed in its Petition, if Proposals One and Two are adopted, unattributed costs will decline from $34.2 billion in FY 2014 to approximately $17 billion. Petition at 11–12.

Given the potentially significant impact that Proposals One and Two could have on the size of the Postal Service's unattributed costs, and given that Proposal Three relates to the portion of these costs that should be covered by competitive products, the Commission finds that consideration of Proposal Three should be delayed until the impact of Proposals One and Two are known. Both the Commission and the mailing community will benefit from having this information before evaluating UPS's proposed adjustments to the appropriate share requirement. Further, the Commission must allocate its finite resources across multiple priorities. Simultaneously considering all three proposals may result in the Commission having insufficient resources to bring to bear on other critical responsibilities.

Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on Proposals One and Two in the Petition no later than January 20, 2016. Reply comments are due no later than March 25, 2016. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–2 for consideration of Proposals One and Two from the Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, filed October 8, 2015.

2. Consideration of Proposal Three from the Petition is held in abeyance until the Commission has completed its review of Proposals One and Two.

3. Comments are due no later than January 20, 2016. Reply comments are due no later than March 25, 2016.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–28127 Filed 11–4–15; 8:45 am]

BILLING CODE 7710–FW–P

[7] *Id.* Proposal Two at 2. 39 U.S.C. 3633(a)(3) requires that competitive products cover an ''appropriate share'' of institutional costs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0434; FRL–9936–61–Region 6]

Approval and Promulgation of State Implementation Plans, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Louisiana. These rule revisions are the 2007 General Revisions, and 2008–2010

Miscellaneous Rule Revisions to the SIP that were submitted by the State of Louisiana. The overall intended outcome is to make the approved Louisiana SIP consistent with current Federal and State requirements. This action is in accordance with the federal Clean Air Act (the Act).

DATES: Comments must be received on or before December 7, 2015.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2012–0434, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email:* Alan Shar at *shar.alan@epa.gov*.
- *Mail or delivery:* Air Planning Section Chief (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2012–0434. The 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 the disclosure of which is restricted by statute. Do not submit electronically any information through *www.regulations.gov* or email that you consider to be CBI or other information whose disclosure is restricted by statute. 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 and any form of encryption, and be free of any defects or viruses. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional information on submitting comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar (6PD–L), telephone (214) 665–6691, email *shar.alan@epa.gov*. To inspect the hard copy materials, please contact Alan Shar.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Background

On July 5, 2011 (76 FR 38977) EPA finalized approval of general rule revisions to the Louisiana SIP which covered the years of 1996–2006.

We are now proposing to approve two revisions to the Louisiana SIP submitted to EPA by the Louisiana Department of Environmental Quality (LDEQ). The first submittal is the 2007 general revisions submitted to EPA with a letter dated August 14, 2009. The second submittal is the 2008–2010 miscellaneous rules revisions submitted to EPA with a letter dated August 29, 2013.

Evaluation

The 2008–2010 miscellaneous rules revisions apply to Louisiana Administrative Code (LAC) 33: III, Chapters 7 and 13. The 2007 general revisions apply to LAC 33: III, Chapters 1, 2, 5, 6, 9, 11, 13, 15, 21, 22, 23, and 25. The Louisiana rule revisions submittals, their corresponding Chapters, and our actions are shown in Table 1 below.

TABLE 1—SUBMITTALS, THEIR CORRESPONDING CHAPTERS, AND ACTIONS

Submittals	Calendar year	Revisions to LAC 33:III Chapters acting upon	Chapters not acting upon
Miscellaneous rules	2008–2010	7, 13	
General revisions	2007	1, 9, 11, 13, 14, 21, 22, 23, and 25	2, 5, 6, and 15.

Certain provisions of the 2007 general revisions are not being acted upon here because they were withdrawn or we plan to act on them separately in the future. In a letter dated October 2, 2015 LDEQ withdrew its revisions to Chapter 15 from our review. The October 2, 2015 withdrawal letter is available in this docket. The EPA plans to act on SIP revisions to Chapters 2, 5, and 6 separately in the future.

There is no increase in the amount of emissions or number of sources affected as a result of ministerial or administrative rules revisions throughout this notice; therefore, section 110(l) of the Act has been complied with.

In 2006, EPA revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. The LDEQ adopted revisions to NAAQS for particulate matter in LAC 33:III, Chapter 7. This revision will update the Louisiana air quality regulations to include the revised NAAQS for particulate matter. The revision is consistent with the NAAQS for $PM_{2.5}$ and PM_{10} standards of 40 CFR 50. See 71 FR 61144 (October 17, 2006), and *http://www3.epa.gov/ttn/naaqs/criteria.html* (URL dated October 5, 2015). We propose their approval into the SIP.

Currently, the LAC 33:III Chapter 13 Abrasive Blasting is not in the EPA-approved SIP. The 2007 general revisions submittal establishes the standards of performance for abrasive blasting operations and includes provisions concerning requirement to control emissions through either enclosure or establishment of best management practices, maintenance of control equipment, recordkeeping requirements, and prohibited materials and methods that cannot be used in abrasive blasting activities requirements. The LDEQ later in its

2008–2010 miscellaneous rules submittal revised this rule by incorporating an updated version of the American Society for Testing and Materials (ASTM) Test Method in § 1327 for taking samples when determining the weight percent of fines in abrasive materials. Incorporating a specific ASTM Test Method in § 1327 will provide for consistency in the rule and facilitate compliance determinations. Revisions to LAC 33:III Chapter 13 will result in enhancing the SIP, and reducing particulate matter emissions from abrasive blasting operations. We propose their approval into the SIP.

Revisions to LAC 33:III Chapter 1 General Provisions concern § 111 Definitions. The revisions defines the term SPOC or the Single Point of Contact. The revision is ministerial or administrative in nature. We propose its approval into the SIP.

Revisions to LAC 33:III Chapter 9 General Regulations on Control of Emissions and Emission Standards concern § 918 Recordkeeping and Annual Reporting and § 919 Emission Inventory which require data for emission reports be collected annually, include air pollutants that a NAAQS has been issued for, and the owner or operator submit reports to the Office Environmental Assessment. The revisions are ministerial or administrative in nature. We propose their approval into the SIP.

Revisions to LAC 33:III Chapter 11 Control of Emissions of Smoke concern reporting of opacity exceedances and exemptions. The revisions now require that reports be submitted to the SPOC instead of the Office of Environmental Compliance, Emergency and Radiological Services Division. The revisions are ministerial or administrative in nature. We propose their approval into the SIP.

Revisions to LAC 33:III Chapter 14 Conformity concern § 1410 Criteria for Determining Conformity of General Federal Actions and § 1434 Consultation that designate the secretary of Department of Environmental Quality or a designee and assistant secretary of the Office of Planning and Programming or a designee participate in the conformity consultation process. The revisions are ministerial or administrative in nature. We propose their approval into the SIP.

Revisions to LAC 33:III Chapter 21 Control of Emission of Organic Compounds concern §§ 2103, 2108, 2113, 2116, 2122, 2123, 2132, 2153, and 2159. See Part B of the TSD for more information. The revisions throughout this Chapter are ministerial and administrative in nature. We propose their approval into the SIP.

Revision to LAC 33:III Chapter 22 Control of Emissions of Nitrogen Oxides concerns § 2201 removing the term ''Air Permits Division.'' This revision is ministerial or administrative in nature. We propose its approval into the SIP.

Revisions to LAC 33:III Chapter 23 Control of Emissions for Specific Industries concern §§ 2301 and 2303 deleting the terms ''Air Quality Assessment Division;'' and § 2307 deleting ''the Office of Environmental Compliance, Emergency and Radiological Services Division'' when submitting the required reports and plans. The revision are ministerial or administrative in nature. We propose their approval into the SIP.

Revisions to LAC 33:III Chapter 25, Subchapter B—Biomedical Waste Incineration Rules concern § 2511 Standards of Performance for Biomedical Waste; Subchapter C-Refuse Incinerators § 2521 Refuse Incinerators; and Subchapter D-Crematories § 2531 Standards of Performance for Crematories. On July 5, 2011 (76 FR 38977) EPA approved the existing provisions of LAC 33:III Chapter 25 into the SIP. The revisions reflect the updated names of offices or departmental organizations that reports or test results should be submitted to for review and approval. The revisions are ministerial or administrative in nature. We propose their approval into the SIP.

Certain provisions of the Louisiana SIP are affected by EPA's June 12, 2015 National SIP Call (80 FR 33967). Those provisions are identified as §§ 1107(A), 1507(A)(1), 1507(B)(1), 2153(B)(1)(i), 2201(C)(8), 2307(C)(1), and 2307(C)(2). Finally, our proposed approval of amendments to LAC 33:III, Chapters 11, 21, 22, and 23 should not, in any way, be construed as explicitly or implicitly voiding or minimizing any concerns or inadequacies identified in EPA's National SIP Call of June 12, 2015 (80 FR 33967) with respect to the above referenced provisions. We continue to expect that issues raised within the context of the EPA's National SIP Call to be addressed in a timely fashion. See section 110(k)(5) of the Act.

Proposed Action

We are proposing to approve rule revisions to LAC 33:III, Chapter 1, § 111; Chapter 7, §§ 701, 703, and 711; Chapter 9, §§ 918, and 919; Chapter 13, §§ 1323, 1325, 1327, 1329, 1331, and 1333; Chapter 14, §§ 1410, and 1434; Chapter 21, §§ 2103, 2108, 2113, 2116, 2121, 2122, 2123, 2132, 2153, and 2159; Chapter 22, § 2201; Chapter 23, §§ 2301, 2302, and 2307; and Chapter 25, §§ 2511, 2521, and 2531.

We are proposing to approve these revisions in accordance with sections 110, and 129 of the Act.

Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this proposed action approves 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 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 Clean Air Act;

• 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); and

• 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 27, 2015.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2015–28277 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0456; FRL–9936–56–Region 4]

Air Plan Approval; TN; Knox County Emissions Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Tennessee state implementation plan (SIP) submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation on behalf of the Knox County Department of Air Quality Management (County Department), on March 14, 2014, and May 14, 2015, that require certain sources in Knox County, Tennessee, to report actual emissions of volatile organic compounds and oxides of nitrogen to the County Department annually. These changes amend the Knox County Air Quality Management Regulations in the Knox County portion of the Tennessee SIP to reflect the State of Tennessee's SIP-approved emissions statement requirements for Knox County. This proposed action is being taken pursuant to the Clean Air Act and its implementing regulations.

DATES: Comments must be received on or before December 7, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0456 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–2015–0456'', Air Regulatory Management Section (formerly Regulatory Development 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.
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.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, 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. Bell can be reached at (404) 562–9088 and via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules and Regulations section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all adverse comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: October 20, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–28106 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0552; FRL–9936–70–Region 9]

Approval of California Air Plan Revisions, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_X) from fan-driven natural gas-fired central furnaces for residences and businesses. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 7, 2015.

ADDRESSES: Submit comments, identified by docket ID number EPA–R09–OAR–2015–0552, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit *http://www.epa.gov/dockets/comments.html* for further instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For the full EPA public comment policy and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/comments.html.*

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 942 3073, *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. The EPA's Evaluation and Action
A. How is the EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public Comment and Proposed Action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency/agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4905	Natural-Gas-Fired, Fan-Type Central Furnaces	01/22/15	04/07/15
SCAQMD	1111	Reduction of NO_X Emissions From Natural-Gas-Fired, Fan-Type Central Furnaces.	09/05/14	04/07/15

On April 30, 2015, the EPA determined that the submittal for SJVUAPCD 4905 and SCAQMD 1111 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a previous version of Rule 4905 into the SIP on May 30, 2007 in 72 FR 29886 and a previous version of Rule 1111 August 4, 2010 in 75 FR 46845.

C. What is the purpose of the submitted rule revisions?

NO_X helps produce ground-level ozone, smog and fine particulate matter ($PM_{2.5}$), which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. SJVUAPCD Rule 4905 and SCAQMD Rule 1111 are point-of-sale rules for fan-driven natural gas-fired furnaces. The most recent revisions to Rule 4905 reduced the emission limits for various furnace types to the same limits set in the SIP-approved version of Rule 1111. The most recent revisions to Rule 1111 briefly extended the compliance deadline for one type of furnace. The revisions to both Rule 4905 and Rule 1111 also added a fee option for manufacturers of furnaces who produce and sell furnaces not meeting the new limits within the first three years of compliance. The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The SIP must implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable, in ozone nonattainment areas classified Moderate and above (see CAA section 172(c)(1), 40 CFR 51.912(d) and 51.1112(c)). In addition, the SIP must require RACT for all major sources of NO_X in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2) and (f); 40 CFR 51.912(a) and 51.1112(a)(1)). SJVUAPCD and SCAQMD both regulate ozone nonattainment areas classified as Extreme for the 1997 and 2008 8-hour standards (40 CFR 81.305). SJVUAPCD Rule 4905 and SCAQMD Rule 1111 regulate area sources that are too small to exceed the major source threshold of 10 tons per year for Extreme ozone nonattainment areas and are therefore not subject to major source ozone RACT requirements under CAA section 182(b)(2) and (f). Nonetheless, the SIP must implement all RACM/RACT for NO_X necessary to demonstrate attainment as expeditiously as practicable and to meet any reasonable further progress (RFP) requirements (see CAA section 172(c)(1), 40 CFR 51.912(d) and 51.1112(c)). A RACM/RACT evaluation is generally performed in context of a broader plan.

The SIP must also implement RACM, including RACT, as expeditiously as possible in $PM_{2.5}$ nonattainment areas classified as Moderate (see CAA sections 172(c)(1) and 189(a)(1)(C)). SJVUAPCD and SCAQMD both regulate $PM_{2.5}$ nonattainment areas classified as Moderate for the 2006 24-hour $PM_{2.5}$ standard (40 CFR 81.305). A RACM/RACT evaluation is generally performed in context of a broader plan.

SIP rules must implement Best Available Control Measures (BACM), including Best Available Control

Technology (BACT), in $PM_{2.5}$ nonattainment areas classified as Serious or above (see CAA section 189(b)(1)(B)). SJVUAPCD regulates a $PM_{2.5}$ nonattainment area classified as Serious for the 1997 $PM_{2.5}$ standard (40 CFR 81.305). A BACM/BACT evaluation is generally performed in context of a broader plan.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

5. ''Improving Air Quality with Economic Incentive Programs,'' EPA, January 2001 (EPA–452/R–01–001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with CAA requirements and relevant guidance regarding enforceability, stringency and SIP revisions. The TSDs have more information on our evaluation.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because we believe they fulfills all relevant requirements. We will accept comments from the public on this proposal until December 7, 2015. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP. While we are proposing to fully approve the rules, the TSDs discuss why fee provisions in these rules limit the creditable emission reductions from these rules in some CAA planning actions.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD and SCAQMD rules as described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. 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 (CAA section 110(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 Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 19, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–28278 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0673; FRL–9936–69–Region 9]

Partial Approval and Disapproval of Nevada Air Plan Revisions, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a partial approval and partial disapproval of revisions to the Clark County portion of the Nevada State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOCs), oxides of sulfur (SO_X), and particulate matter (PM) emissions. We are proposing action on rescissions of local rules that regulate these pollutants under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 7, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2015–0673, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit *http://www.epa.gov/dockets/comments.html* for further instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For the full EPA public comment policy and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972–3073, *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
A. Which rules has the county rescinded?
B. Are there other versions of these rules?
C. What is the purpose of the SIP-approved rules?
II. EPA's Evaluation and Action
A. How is the EPA evaluating the request for rescission?
B. Do the rule rescissions meet the evaluation criteria?
C. What are the deficiencies?
D. Federal and Local Enforcement of Rules
E. Proposed Action and Public Comment
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. Which rules has the county rescinded?

On November 20, 2014, the Nevada Division of Environmental Protection (NDEP) submitted a SIP revision that includes amendments to two local rules adopted by the Clark County Board of County Commissioners (''Clark County'') and rescissions of four local Clark County rules.[1] In this action, we are proposing action on the rescissions. The EPA will take action on the rule amendments in a separate rulemaking.

Table 1 lists the rule rescissions that the EPA herein proposes to approve, with the date the rule was first locally effective and the EPA's date and citation of approval.

TABLE 1—SUBMITTED RULE RESCISSIONS PROPOSED FOR APPROVAL

Rule section of the Clark County Air Quality Regulations (CCAQR)	Title	Local effective date	SIP approval date	FR Citation
Section 29	Sulfur Contents of Fuel Oil	December 29, 1978	August 27, 1981	46 FR 43141.
Section 30, subsections 30.1–30.7 (excluding subsection 30.4).	Incinerators	December 29, 1978	August 27, 1981	46 FR 43141.
Section 30, subsection 30.4	[exemptions for certain types of incinerators].	September 3, 1981	June 18, 1982	47 FR 26386.
Section 30, subsection 30.8	[related to maximum allowable emission rates].	September 3, 1981	June 18, 1982	47 FR 26386.

Table 2 lists the rule rescissions that the EPA herein proposes disapprove, with the date the rule was first locally effective and the EPA's date and citation of approval.

TABLE 2—SUBMITTED RULE RESCISSIONS PROPOSED FOR DISAPPROVAL

Rule section of the (CCAQR)	Title	Local effective date	SIP approval date	FR citation
Section 52, subsections 52.1–52.10 (excluding subsections 52.4.2.3 and 52.7.2).	Handling of Gasoline at Service Stations, Airports and Storage Tanks.	December 28, 1978	April 14, 1981	46 FR 21758.
Section 52, subsections 52.4.2.3 and 52.7.2.	[related to vapor recovery and sales information].	September 3, 1981	June 18, 1982	47 FR 26386.
Section 60 (excluding subsections 60.4.2–60.4.3).	Evaporation and Leakage	June 28, 1979	April 14, 1981	46 FR 21758.
Section 60, subsection 60.4.2	[General prohibition on the use of cutback asphalt].	September 3, 1981	March 20, 1984	49 FR 10259.
Section 60, subsection 60.4.3	[Exceptions to subsection 60.4.2]	September 3, 1981	June 18, 1982	47 FR 26386.

[1] Under state law, NDEP is the Governor's designee for maintaining the Nevada SIP. NDEP is also the agency responsible for air quality planning and permitting within the entire state except for Clark County and Washoe County. In Clark County, air quality planning and permitting jurisdiction, with certain exceptions, lies with the Clark County Board of County Commissioners, which acts through the county's Department of Air Quality (DAQ).

On May 20, 2015, the submittal for Clark County was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

This rule rescissions include four sections of the Clark County portion of the Nevada SIP, Sections 29, 30, 52, and 60. Previously, NDEP submitted, and the EPA approved into the SIP, various subsections of these rules separately. As a result, the SIP elements concerning each of these Clark County Air Quality Regulations (CCAQR) rules consist of several subsections as identified in Tables 1 and 2.[2] These sections were repealed locally on April 5, 2011.[3]

C. What is the purpose of the SIP-approved rules?

Clark County adopted a number of rules to meet CAA national ambient air quality standard (NAAQS) nonattainment requirements in the late 1970s and 1980s, and submitted many of these for incorporation into the Nevada SIP. The rules that were approved into the SIP included CCAQR Sections 29, 30, 52, and 60.

Sections 29, 30, 52, and 60 establish limits and control measures to reduce emissions of SO_X, PM, and VOCs from the combustion of fuels (Section 29), incinerators (Section 30), gasoline dispensing facilities (Section 52) and other processes and industries that use solvents, degreasing, surface coating, and cutback asphalt (Section 60).

Clark County began a process to revise the CCAQR in May 2005. In part, Clark County was concerned with regulatory conflict resulting from the delegation of authority or the local incorporation by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for many source categories covered under existing local rules. As a result, Clark County repealed Sections 29, 30, 52, and 60 on April 5, 2011.

The EPA's technical support document (TSD) associated with today's proposal has more information about these rules.

II. EPA's Evaluation and Action

A. How is the EPA evaluating the request for rescission?

Once a rule has been approved as part of a SIP, the rescission of that rule from the SIP constitutes a SIP revision. To approve such a revision, the EPA must determine whether the revision meets relevant CAA criteria for stringency, if any, and complies with restrictions on relaxation of SIP measures under CAA section 110(l), and the General Savings Clause in CAA section 193 for SIP-approved control requirements in effect before November 15, 1990.

Stringency: Generally, rules must be protective of the NAAQS, and must require Reasonably Available Control Technology (RACT) in nonattainment areas for ozone and Reasonably Available Control Methods (RACM), including RACT, for PM nonattainment areas. Clark County is currently designated as a maintenance area for the revoked 1997 ozone standard, and as attainment for the 2008 ozone standard. (40 CFR 81.329). Clark County regulates a PM_{10} maintenance area for the 1987 standard and is currently designated as attainment for the 2010 SO_2 standard. (40 CFR 81.329). Therefore, these rules are not currently subject to CAA RACT, RACM, or analogous stringency standards.

Plan Revisions: States must demonstrate that SIP revisions would not interfere with attainment, reasonable further progress or any other applicable requirement of the CAA under the provisions of CAA section 110(l). We note that, despite its current ozone NAAQS attainment designations, air quality monitoring data from 2012–2014 suggest that ozone concentrations within Clark County no longer meet the 2008 ozone standard, so SIP changes that would allow an increase in ozone precursor emissions (such VOC emissions) may not be protective of the NAAQS.

Section 29 limited the sulfur content of fuel oils in order to reduce SO_X emissions, a precursor for PM. Section 30 regulated the operation of incinerators, and limited the emissions of PM. Section 52 regulated the operation of gasoline dispensing facilities, and limited the emissions of VOCs. Section 60 regulated the use, storage, and disposal of solvents in large scale degreasing and coating operations, and for cutback asphalt. Therefore, consistent with CAA section 110(l) requirements, Clark County must demonstrate that the rescission of Sections 29, 30, 52 and 60 would not interfere with attainment and reasonable further progress of the NAAQS or any other applicable CAA requirement.

General Savings Clause: CAA section 193 prohibits the modification of any rule adopted before November 15, 1990 in areas designated as nonattainment for an air pollutant unless the modification insures equivalent or greater emission reductions of the relevant pollutant.

Guidance and policy documents that we use to evaluate these requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

B. Do the rule rescissions meet the evaluation criteria?

We have concluded that CCAQR Sections 29 and 30 are appropriate for rescission. Clark County is currently designated as attainment or maintenance for each of the NAAQS. As a result, Clark County rules are not required to meet RACT or analogous standards, and are subject to the general savings clause in CAA section 193. Clark County also documented that these two rescissions should not increase emissions of ozone precursors, and that any additional emissions would not interfere with the maintenance of applicable NAAQS for SO_2 and PM. This satisfies the requirements on plan revisions.

However, CCAQR Sections 52 and 60 are not appropriate for rescission as summarized below and described in more detail in our TSD.

C. What are the deficiencies?

Clark County has not demonstrated that rescinding CCAQR Sections 52 and 60 would satisfy the requirements of CAA section 110(l). Specifically, we propose to disapprove the rescissions of

[2] Unless otherwise specified, all references to CCAQR Sections in this document are to those sections in their entirety.

[3] The SIP approved versions of CCAQR sections 29, 30, 52, and 60 rules were all approved into the SIP prior to 1985. The County has since updated the locally effective rules several times. Clark County's most recently adopted local rules differed substantially from the SIP-approved versions. The most recently adopted local versions were the subject of the county's local repeal action. However, we understand that the intent of the county and NDEP in submitting the repeal of these later-adopted (not SIP-approved) versions of the rules is to remove the SIP-approved versions of the rules from the Clark County portion of the Nevada SIP.

sections 52 and 60 based on the following concerns:

1. The rescission of Section 52 from the SIP would allow an increase in VOC emissions, as any other applicable Federal or State rules or standards would not apply to the same breadth of sources as the SIP-approved rule. This would constitute a relaxation of the SIP and would not be protective of the 2008 ozone NAAQS.

2. The rescission of Section 60 would allow an increase in VOC emissions. Subsection 60.4 prohibits the use of cutback asphalt in summer months, with certain exceptions, which is not prohibited by any other Federal or State rules that would apply absent subsection 60.4. Removing this prohibition would constitute a relaxation of the SIP and would not be protective of the 2008 ozone NAAQS.

D. Federal and Local Enforcement of Rules

While Clark County is no longer enforcing these rules, Clark County Sections 52 and 60 would remain federally enforceable as part of the applicable SIP if the EPA were to finalize today's proposed disapproval of the rescissions of these two rules.

E. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, we are proposing a partial approval and partial disapproval of the Clark County rule rescissions submitted by NDEP on November 20, 2014. We are proposing to approve the rescissions of CCAQR Sections 29 and 30 and to disapprove the rescissions of Sections 52 and 60. Final approval of the rescissions of Clark County Sections 29 and 30 would remove the rules from the Nevada SIP. Final disapproval of the rescissions of Clark County Sections 52 and 60 would retain both rules in the Nevada SIP.

Neither sanctions nor a Federal Implementation Plan (FIP) would be imposed should the EPA finalize this disapproval. Sanctions would not be imposed under CAA section 179(b) because the SIP submittal that we are partially disapproving is not a required SIP submittal. Similarly, EPA would not promulgate a FIP in this instance under CAA section 110(c)(1) because the partial disapproval of the SIP revision retains existing SIP rules and does not reveal a deficiency in the SIP for the area that a FIP must correct.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed partial SIP approval and partial SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply approves and disapproves the removal of certain State requirements from the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply approves and disapproves the removal of certain State requirements from the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' The EPA has determined that the proposed approval and disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve and disapprove the removal of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations 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.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves and disapproves the removal of certain State requirements from the SIP and does not alter the

relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP revisions that the EPA is proposing to approve and disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP revision under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply approves and disapproves the removal of certain State requirements from the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (E.O). 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 19, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–28276 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 268, 270, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL–9936–51–OSWER]

RIN 2050–AG70

Hazardous Waste Generator Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing an extension to the comment period for the proposed rule on improvements to the generator regulations published in the **Federal Register** on September 25, 2015. EPA is proposing to revise the hazardous waste generator regulations under the Resource Conservation and Recovery Act (RCRA) to improve compliance and thereby enhance protection of human health and the environment. Specifically, EPA proposes to revise certain components of the hazardous waste generator regulatory program; address gaps in the regulations; provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; reorganize the hazardous waste regulations to make them more user-friendly and thus improve their usability by the regulated community; and make technical corrections and conforming changes to address inadvertent errors, remove obsolete references to programs that no longer exist, and improve the readability of the regulations. The comment period is being extended to December 24, 2015.

DATES: Comments on the proposed rule published September 25, 2015 (80 FR 57918) must be received on or before December 24, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0121, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific

aspects of this rulemaking, contact Jim O'Leary, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, at (703) 605–0761 (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

This document extends the public comment period established in the **Federal Register** for 30 days. In that **Federal Register** notice, EPA proposed revising and reorganizing the regulations for generators of hazardous waste. The purpose of these proposed revisions is to make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous waste is managed, and improve environmental protection by closing important gaps in the regulations. Several requests were received from potential commenters to extend the comment period to allow greater time to comment. EPA is hereby extending the comment period, which was set to end on November 24, 2015, to December 24, 2015. Please note that late comments on this rule making may not be considered.

To submit comments or access the docket, please follow the detailed instructions as provided under **ADDRESSES**. If you have questions, consult the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 22, 2015.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response.

[FR Doc. 2015–28099 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, 266, 268, and 273

[EPA–HQ–RCRA–2007–0932; FRL–9936–49–OSWER]

RIN 2050–AG39

Management Standards for Hazardous Waste Pharmaceuticals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing an extension to the comment period for the proposed rule on the management and disposal of hazardous waste pharmaceuticals published in the **Federal Register** on September 25, 2015. EPA is proposing new hazardous waste pharmaceutical regulations under the Resource Conservation and Recovery Act (RCRA) to improve compliance and thereby enhance protection of human health and the environment. Specifically, EPA proposed to revise the regulations to improve the management and disposal of hazardous waste pharmaceuticals and tailor them to address the specific issues that hospitals, pharmacies and other healthcare-related facilities face. The revisions are also intended to clarify the regulation of the reverse distribution mechanism used by healthcare facilities for the management of unused and/or expired pharmaceuticals. The comment period is being extended to December 24, 2015.

DATES: Comments on the proposed rule published September 25, 2015 (80 FR 58014) must be received on or before December 24, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2007–0932, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Kristin Fitzgerald, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–308–8286; email address: *fitzgerald.kristin@epa.gov* or Joshua Smeraldi, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–308–0441; email address: *smeraldi.josh@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** for 30 days. In that **Federal Register** notice, EPA proposed new regulations for the management of hazardous waste pharmaceuticals. The purpose of this proposed regulation is to improve the management and disposal of hazardous waste pharmaceuticals and tailor them to address the specific issues that hospitals, pharmacies and other healthcare-related facilities face. The revisions are also intended to clarify the regulation of the reverse distribution mechanism used by healthcare facilities for the management of unused and/or expired pharmaceuticals. Several requests were received from potential commenters to extend the comment period to allow greater time to comment. EPA is hereby extending the comment period, which was set to end on November 24, 2015, to December 24, 2015. Please note that late comments on this rule making may not be considered.

To submit comments or access the docket, please follow the detailed instructions as provided under **ADDRESSES**. If you have questions, consult the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 22, 2015.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response.

[FR Doc. 2015–28100 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 80, No. 214

Thursday, November 5, 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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Microarray Equipment & Supplies, LLC of Cupertino, California, an exclusive license to U.S. Patent Application Serial No. 14/724,736, ''OLIGONUCLEOTIDE PROBES FOR SPECIFIC IDENTIFICATION OF NOROVIRUSES AND OTHER PATHOGENS'', filed on May 28, 2015.

DATES: Comments must be received on or before December 7, 2015.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Mojdeh Bahar of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Microarray Equipment & Supplies, LLC of Cupertino, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2015–28239 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Renewal of an Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3) and the office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the Agricultural Research Service's (ARS) intent to seek reinstatement of the ARS Animal Health National Program Assessment Survey, renamed as the Agricultural Research Service National Program Assessment Survey and expanded so that it can be used by other ARS National Programs. This voluntary information collection will give the beneficiaries of ARS research the opportunity to provide input on the impact of the research conducted by ARS in the last National Program cycle for each of the respective National Programs. This input will be used for planning the research agenda for the next 5-year program cycle.

DATES: Comments must be received by January 4, 2016 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Dr. Robert C. MacDonald, Agricultural Project Coordinator, Agricultural Research Service, Office of National Programs, 5601 Sunnyside Avenue, GWCC, Room 4–2142, Beltsville, Maryland, 20705. Submit electronic comments to *robert.macdonald@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. MacDonald at (301) 504–1184.

SUPPLEMENTARY INFORMATION:

Title: ARS Animal Health National Program Assessment Evaluation Form.

OMB Number: 0518–0042.

Expiration Date: April 30, 2016.

Type of Request: Approval to seek reinstatement of the ARS Animal Health National Program Assessment Survey, renamed as the Agricultural Research Service National Program Assessment Survey and expanded so that it can be used by other ARS National Programs. This voluntary information collection will give the beneficiaries of ARS research the opportunity to provide input on the impact of the research conducted by ARS in the last National Program cycle for each of the respective National Programs. This survey seeks input from the beneficiaries of research conducted by ARS for program planning and ensures alignment of the ARS National Programs with the needs of our customers, partners, and stakeholders.

Abstract: ARS research covers the span of nutrition, food safety and quality, animal and plant production and protection, and natural resources and sustainable agricultural systems. It is organized into seventeen National Programs addressing specific areas of this research. These

National Programs serve to bring coordination, communication, and empowerment to approximately 750 research projects carried out by ARS and focus on the relevance, impact, and quality of ARS research. The requested voluntary electronic evaluation survey will give the beneficiaries of ARS research the opportunity to provide input on the impact of several ARS National Programs. For the purpose of this National Program Assessment, impact is defined as

research that has influenced or will significantly influence the area covered by the National Program; has created or will create information, best practices, and/or economic opportunities for the National Program's customers, partners, and stakeholders; or has enabled or will enable action and regulatory agencies to formulate policies and regulations to support American agriculture. The report and evaluation form will be available online through a dedicated URL. The input provided through the completion of the evaluation form will be shared with customers, partners, and stakeholders as part of each National Program's assessment process.

The ARS has 17 National Programs, each of which are assessed every 5 years on a rotating basis as part of ARS' National Program planning cycle to

ensure the relevance, quality, and impact of ARS research. The assessment serves as both a retrospective evaluation and as the foundation for future priority setting for the Agency. Although the exact process for an assessment varies by the nature of the National Program, all include the following four stages:

- Conducting an in-house program assessment and documenting research accomplishments and/or progress for presentation to external reviewers;
- Conducting an external review of accomplishments and/or progress, based on the preceding documentation, focused on the research's relevance, quality, and impact;
- Recording the results of the review; and
- Informing ARS leadership of evaluation results.

All of the methodologies for an assessment include developing a written report of accomplishments from research conducted during the previous 5 years. One assessment method involves sending the accomplishment report to a broad group of informed stakeholders for their reference and asking them to respond by completing an online survey about the impact of the National Program. This survey information is then compiled into a report that can be shared with stakeholders and ARS Administrators. The survey information can also be used for the next step of the National Program Planning cycle, which is planning for the following 5 years.

This survey has previously been used by only one of ARS' National Programs but interest in its use has expanded. Three National Programs will be using this survey within the 3-year information collection period and possibly a fourth, which has been included in the burden hour estimate. Because ARS National Program planning cycle is 5 years in length and is staggered among National Programs, only one or two National Programs will be using the survey in any given year. The survey consists of a set of questions used in common by several or all of the National Programs and a few questions specific to a given National Program.

Estimate of Burden: Completing the electronic evaluation form is estimated to average 15 minutes per response.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the input provided by a wide array of customers, and; (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 26, 2015.

Simon Y. Liu,

Associate Administrator.

[FR Doc. 2015–28238 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Infant and Toddler Feeding Practices Study-2 (WIC ITFPS–2) Age 5 Extension Study

AGENCY: Food and Nutrition Service, United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public and other public agencies to comment on this proposed information collection. This collection is a revision of the currently approved WIC Infant and Toddler Feeding Practices 2 Study (ITFPS–2). The revision is to amend the 36-month data collection instrument and extend the data collection on the cohort of infants by two years, to their 5th birthdays and therefore through the entire period of their WIC eligibility. The data will be used to estimate the type and prevalence of various feeding practices in the WIC population and assess whether the new WIC food packages (instituted in 2009) have influenced feeding practices. This study will also examine the circumstances and influences that shape caregivers' feeding decisions for their children, and will describe the impact of these decisions throughout early childhood.

DATES: Written comments must be received on or before January 4, 2016.

ADDRESSES: *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the information collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological methods of data collection.

Written comments may be sent to: Allison Magness, Ph.D., R.D., Social Science Research Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Allison Magness at 703–305–2576 or via email to *allison.magness@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Allison Magness, Ph.D., R.D., Social Science Research Analyst, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Allison Magness at 703–305–2576 or via email to *allison.magness@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) INFANT AND TODDLER FEEDING PRACTICES STUDY–2 (ITFPS–2) AGE 5 EXTENSION.

Form Number: N/A.

OMB Number: 0584–0580.

Expiration Date of Approval: 05/31/2018.

Type of request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service's (FNS) WIC ITFPS–2 will provide information on the feeding practices of infants from the time of birth up to 3 years of age. The proposed revision will amend the 36-month data collection instrument and extend the longitudinal data collection of the current cohort of infants up to 5 years of age, through the end of their WIC eligibility. This proposed extension is needed to understand the influence of environmental characteristics, WIC, and children's nutrient intake, meal and snack patterns, and feeding practices on children's subsequent nutrition, health, weight, and growth. The results will assist in the development of appropriate and effective prevention strategies to improve the health of young children. With over 50 percent of the nation's infants enrolled in WIC, it is hoped that prevention strategies implemented in WIC will have a substantial impact on the growth and health of U.S. infants and children.

The study activities subject to this notice include: Informing State WIC offices and local WIC sites that the study has been extended and their role in the extension study; collecting contact information on 2,444 caregivers in the study during the 36-month telephone interview; administering four additional telephone interviews to up to 3,184 caregivers of children enrolled in the study when their child is 42-, 48-, 54-, and 60-months old; and obtaining their child's height and weight measurements at 48- and 60-months from WIC administrative records, health care provider records, or direct measurements at WIC sites.

The State WIC office and local WIC site staff will be invited to participate in a webinar that will highlight key study findings to date (from reports cleared by FNS) and describe the study extension to age 5. States and sites will participate in conference calls to discuss the follow-up activities. Each study participant will receive a letter about the study extension when the child is 33 months of age and will be asked to provide updated contact information to ensure ongoing participation, at the time of the 36-month interview. Prior to being contacted for each subsequent telephone interview, the caregiver for each child in the cohort will be mailed an advance letter that includes a toll-free number to call for questions or to complete the interview. Participants will also be re-contacted between interviews throughout this study. Participants will receive periodic mailings, calls, emails, and text messages asking them to provide updated contact information and reminding them of upcoming interviews and height and weight (H/W) measurements. WIC site staff will weigh and measure study children at ages 48- and 60-months. Additional H/W measures will come from provider records, WIC State agency administrative records, and home health agency measurements. WIC site staff will also provide updated contact information when requested.

Affected Public: Approximately 3,885 respondents will be contacted to participate in this data collection. Individuals/Households (3,360; 2,178 respondents and 1,183 non-respondents); State, Local, or Tribal government (107 respondents and 0 non-respondents); and Business-for-profit/not-for-profit (418; 334 respondents and 84 non-respondents). There are approximately 1,266 non-respondents who will be contacted but choose not to participate. The total annual responses for this collection are (100,310 = 81,958 respondents and 18,352 non-respondents). The total burden estimate for this collection is (11,438.62 = 10,691.25 respondents and 747.37 non-respondents).

The burden for all affected public, respondents and non-respondents is broken down in the table below.

Type of Respondents: Caregivers of children in cohort; State agency data managers and WIC site staff; and health care providers.

Estimated Total Annual Number of Respondents: 3,885.

Estimated Annual Frequency of Response: 25.81919.

Estimated Total Annual Responses: 100,310 total responses.

Estimated of Time per Respondent: 0.1140364.

Estimated Total Annual Burden Hours: 11,439.

The estimated burden for each type of respondent is given in the table below.

Respondent Type	Respondent Description	Type of Survey Instrument	Sample size (a)	Number of Respondents	Frequency of Response (annual)	Total Annual Responses	Average Hours per Response	Sub-Annual Burden	Number of non-respondents	Frequency of Response (annual)	Total Annual Responses	Average Hours per response	Sub-Total Annual Burden	Total Burden Hours
Individuals and Households	WIC Participants	Study extension letter @ 33 mo (b)	3360	2688	1	2688	0.034	91.40	672	1	672	0.034	22.69	114.25
		Consent form (b)	3360	2016	1	2016	0.050	100.81	1344	1	1344	0.050	0.00	168.02
		36-mo survey: contact information module (c)	3360	2444	1	2444	0.050	122.22	916	1	916	0.050	0.00	168.02
		39-mo contact information form (d)	3184	2228	1	2228	0.100	222.85	955	1	955	0.100	11.00	318.35
		42-mo advance letter (e)	3184	2706	1	2706	0.050	135.30	478	1	478	0.050	0.00	159.18
		42-mo telephone survey (e)	3184	2319	1	2319	0.000	1159.45	865	1	865	0.000	109.27	1159.45
		Reminders 42-mo interview (f)	1592	1592	3	4775	0.017	79.75	0	3	0	0.017	0.00	79.75
		42-mo thank you email/text (g)	2319	1855	1	1855	0.003	5.19	464	1	464	0.003	1.23	6.49
		45-mo contact information form (d)	3024	2117	1	2117	0.100	211.71	907	1	907	0.100	90.75	302.44
		48-mo advance letter (h)	3025	2571	1	2571	0.050	128.56	454	1	454	0.050	21.49	151.25
		48-mo telephone survey (h)	3025	2200	1	2200	0.000	1100.21	825	1	825	0.000	0.00	1100.21
		H/W measurement card (i)	2200	1540	1	1540	0.000	1540.30	660	1	660	0.000	0.00	1540.30
		HIPAA form (j)	440	220	1	220	0.050	11.00	220	1	220	0.050	85.96	22.00
		Text or mail provider measures (k)	440	110	1	110	0.000	5.50	330	1	330	0.000	20.41	5.50
		Home health agency measurement (l)	440	3	1	3	0.250	0.75	437	1	437	0.250	0.00	110.02
		Reminders 48 mo interview & H/W (m)	1513	1513	5	7563	0.017	126.30	0	5	0	0.017	0.00	126.30
		48-mo thank you email/text (g)	2200	1760	1	1760	0.003	4.93	440	1	440	0.003	9.89	6.16
		51-mo contact information form (d)	3025	2118	1	2118	0.100	211.75	908	1	908	0.100	0.00	302.51
		54-mo advance letter (n)	2865	2435	1	2435	0.050	121.77	430	1	430	0.050	0.00	143.26
		54-mo telephone survey (n)	2865	2087	1	2087	0.000	1043.50	778	1	778	0.000	0.00	1043.50
		Reminders 54 mo interview (f)	1433	1433	3	4298	0.017	71.77	0	3	0	0.017	1.11	71.77
		57-mo contact information form (d)	2865	2006	1	2006	0.100	200.56	860	1	860	0.100	5.08	286.52
		60-mo advance letter (o)	2722	2314	1	2314	0.050	115.68	408	1	408	0.050	5.08	136.10
		60-mo telephone survey (o)	2722	1979	1	1979	0.000	989.42	743	1	743	0.000	4.57	989.42
		H/W measurement card (i)	1979	1385	1	1385	0.000	1385.19	594	1	594	0.000	4.57	1385.19
		HIPAA form (j)	396	198	1	198	0.050	9.89	198	1	198	0.050	22.69	19.79
		Text or mail provider measures (k)	396	99	1	99	0.000	4.95	297	1	297	0.000	0.00	4.95
		Home health agency measurement (l)	396	3	1	3	0.000	0.67	393	1	393	0.000	0.00	0.67
		Reminders 60 mo interview & H/W (m)	1361	1361	5	6805	0.017	113.64	0	5	0	0.017	11.00	113.64
		60-mo thank you email/text (g)	1979	1583	1	1583	0.003	4.43	396	1	396	0.003	0.00	5.54
		Birthday card respondent year 4 (p)	3025	2420	1	2420	0.008	20.33	605	1	605	0.008	109.27	25.41
		Birthday card child age 4 (p)	3025	2420	1	2420	0.008	20.33	605	1	605	0.008	0.00	25.41
		Birthday card respondent year 5 (p)	2722	2178	1	2178	0.008	18.29	544	1	544	0.008	1.23	22.86
		Birthday card child age 5 (p)	2722	2178	1	2178	0.008	18.29	544	1	544	0.008	90.75	22.86
Individuals and Households Subtotal			**3360**	**2178**		**75622**		**9396.71**	**1183**		**18269**		**740.39**	**10137.10**
State and Local Government	State WIC data manager or point of contact	Study extension webinar (q)	27	27	1	27	1.000	27.00	0	1	0	1.000	0.00	27.00
		Conference calls on extension (r)	27	27	2	54	1.000	54.00	0	2	0	1.000	0.00	54.00
		Communication materials (s)	27	27	1	27	0.100	2.70	0	1	0	0.100	0.00	2.70
		HT/WT Admin data form (t)	27	27	2	54	1.500	81.00	0	2	0	1.500	0.00	81.00
		Subtotal	**27**	**27**	**6**	**162**		**164.70**	**0**	**6**	**0**		**0.00**	**164.70**
	WIC site staff	Study extension webinar (q)	80	80	2	160	1.000	160.00	0	2	0	1.000	0.00	160.00
		Conference call on extension (r)	80	80	2	160	1.000	160.00	0	2	0	1.000	0.00	160.00
		Communication materials (s)	80	80	1	80	0.100	8.00	0	1	0	0.100	0.00	8.00
		Request for contact information (u)	80	80	38	3,040	0.084	253.84	0	38	0	0.084	0.00	253.84
		HT/WT measurement (v)	80	80	30	2,400	0.217	520.08	0	30	0	0.217	0.00	520.08
		Subtotal	**80**	**80**		**5840**		**1101.92**	**0**		**0**		**0.00**	**1101.92**
State and Local Government Subtotal			**107**	**107**		**6002**		**1266.62**			**0**		**0.00**	**1266.62**
Profit/Non-Profit Business	Provider data manager	Provider Data Request Form (w)	418	334	1	334	0.084	27.92	84	1	84	0.084	6.98	34.90
Profit/Non-Profit Business Subtotal			**418**	**334**		**334**		**27.92**	**84**		**84**		**6.98**	**62.81**
GRAND TOTAL			**3885**	**2619**		**81958**		**10691.25**	**1266**		**18352**		**747.37**	**11438.62**

(a) 4,367 = base study participants enrolled, assume study attrition of 10% per year.
(b) Assume study attrition from base study enrolled of 10% per year x 2.5 years = 4,367*.9*.9*.95 = 3,360. Assume 80% will read extension letter and 60% will sign consent form.
(c) Assume 72.7% will complete survey contact info section of 36-mo. survey.
(d) Assume 70% will complete contact information form.
(e) Assume study attrition will be 10% per year x 3 years = 4,367*.9*.9*.9= 3,184 at end of 36-months. Assume 85% will read the advance letter and 72.8% of still enrolled will complete survey.
(f) Assume 50% of cohort at 42-mo and 54-mo will require reminders about interview (e.g., telephone, email, text). Assume average of 3 contacts each.
(g) Assume 80% of respondents will have a valid email/text address to receive thank you.
(h) Assume study attrition will be 10% per year: 4,367*.9*.9*.9*.95 = 3025. Assume 85% will read advance letter and 72.7% will complete survey.
(i) Assume 70% of respondents to the 48-mo or 60-mo interview will go to the WIC site or their provider for H/W measurement. Assume 1 hour for reading letter, travel to/from WIC site or provider, and measuring child.
(j) Assume 20% of those who complete interview will not agree to go to WIC/provider but will agree to sign HIPAA form and 50% of these will return form.
(k) Assume 20% of those who complete the interview will not agree to go to WIC/provider but will agree to send in provider measures and 25% will do so.
(l) Assume 3 will use HHA for measurement.
(m) Assume 50% of cohort at 48-mo and 60-mo will require reminders about interview and H/W measures (e.g., telephone, email, text). Assume average of 5 contacts each.
(n) Assume study attrition @ 10% per year" 4,367*.9*.9*.9*.9 = 2,865. Assume 85% will read advance letter and 72.7% will complete survey.
(o) Assume study attrition @ 10% per year: 4,367*.9*.9*.9*.9*.95 =2,722. Assume 85% will read advance letter and 72.7% will complete survey.
(p) Assume 80% of cohort will read birthday cards. Caregiver and child will both read child card.
(q) Assume study extension webinar attended by all 27 States and 2 representatives from each site.
(r) Assumes 1 conference call with State and 1 conference call with State and site with 2 representatives per site.
(s) Time reviewing 1 email communication about extension.
(t) Assume administrative H/W records will be provided by State WIC office 2 times for those enrolled in WIC who do not return H/W card.
(u) Assume will request participant contact information from WIC sites about once a month over data collection period.
(v) Assume 60% of participants who return measurement cards will be measured at WIC with about 22 children weighed and measured per site (((1539+1389)*.60)/80=22). Assume 10 minutes for measurements and 3 minutes for data transfer, for a total of 13 minutes per child.
(w) Assume H/W data for participants who returned HIPAA form will be provided by 80% of providers.

Dated: October 30, 2015.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–28273 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Submission for OMB Review; Comment Request

November 2, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if they are received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Federal-State Special Supplemental Nutrition Program Agreement.

OMB Control Number: 0584–0332.

Summary Of Collection: The Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers' Market Nutrition Program (FMNP), and the Senior Farmers Market Nutrition Program (SFMNP) are carried out by the U.S. Department of Agriculture under Section 17 of the Child Nutrition Act (CNA) of 1966, as amended, and the SFMNP under 7 U.S.C. 3007. The Federal-State Special Supplemental Nutrition Programs Agreement (FNS–339) is the annual contract between USDA and each State agency seeking to operate one or more of the following programs: (1) WIC, (2) FMNP, and (3) SFMNP. A signed contract is required before the Food and Nutrition Service (FNS) can release Program funds.

Need and Use of the Information: The agreement requires the signatures of the Chief State agency official and includes a certification/assurance regarding drug free work place, a certification regarding lobbying and a disclosure of lobbying activities. If the information is not collected Federal funds cannot be

provided to the State agency without a signed agreement.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 188.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 31.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–28270 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre, and Gunnison National Forests; Gunnison County; Colorado; Crested Butte Mountain Resort Ski Area Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Crested Butte Mountain Resort (CBMR) has submitted a proposal to the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests (NF) to pursue approval of select projects from its 2013 Master Development Plan (MDP). The GMUG has accepted this proposal and is initiating the preparation of an Environmental Impact Statement (EIS) to analyze and disclose the potential environmental effects of implementing the projects. The Proposed Action includes: A Special Use Permit (SUP) boundary adjustment to include skiable terrain in the Teo Drainage area, the addition of lift-served terrain in the Teo Park and Teo Drainage area, installation of additional snowmaking infrastructure, realignment of the existing North Face lift, and supplemental mountain biking trails.

DATES: Comments concerning the scope of the analysis must be received by December 7, 2015. Two public open houses regarding this proposal will be held: One on November 18, 2015 from 5–8 p.m.; and one on November 19, 2015 from 5–8 p.m. (See the **SUPPLEMENTARY INFORMATION** section for further information on the open houses). The draft environmental impact statement is expected to be available for public review in November 2016, and the final environmental impact statement is expected June 2017.

ADDRESSES: Send written comments to: Scott Armentrout, Forest Supervisor, c/o Aaron Drendel, Recreation Staff Officer, Gunnison Ranger District, Grand Mesa, Uncompahgre, and Gunnison National Forests, 216 N. Colorado St., Gunnison, CO 81230; FAX (970) 642–4425 or by email to: *cbmr@fs.fed.us* (please include ''CBMR EIS Projects'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Aaron Drendel, Recreation Staff Officer, Gunnison Ranger District. Mr. Drendel can be reached by phone at (970) 641–0471 or by email at *adrendel@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service is responding to an application submitted under the National Forest Ski Area Permit Act of 1986 and Ski Area Recreational Opportunity Enhancement Act of 2011 (SAROEA) by CBMR to implement projects from their accepted MDP. In the MDP, CBMR identified a deficiency in developed intermediate/advanced terrain compared with CBMR's skier and rider market. It also noted a slight deficit of developed expert terrain. The MDP also identifies a need to enhance summer recreation activities (consistent with the SAREOEA) in order to meet increasing guest expectations.

The GMUG, through acceptance of CBMR's Master Development Plan, has identified a need to:

- Meet increased public demand for developed intermediate, advanced, and expert terrain skiing terrain by developing the main mountain;
- Develop the total amount of developed and undeveloped terrain and ski pods, with an emphasis on intermediate and advanced skiers, in order to increase the skiing opportunities for the guests and thereby increase their length of stay;
- Provide an expanded offering of additional recreational activities for year-round utilization of existing facilities, consistent with summer use impact zones in the MDP;
- Continue to increase the quality of the facilities to meet the ever-increasing expectations of the local, regional, and destination skier markets; and
- Improve skier circulation and opportunities by realigning the North Face Lift and adding snowmaking infrastructure.

Proposed Action

The Proposed Action includes the following six elements:

- SUP boundary adjustment and amendment to the 1991 GMUG National Forests' Amended Land and Resource Management Plan;
- Construction of new intermediate and advanced ski trails and glades in Teo Park and Teo Drainage;
- Construction of two new lifts (Teo Drainage, and Teo Park), and realignment of the existing North Face lift;
- New snowmaking infrastructure on the following existing trails: *Championship, Black Eagle, Lower Gallowich, Rachel's,* and *Shep's Chute;*
- Construction of approximately 2,300 feet of new road and 450 feet of realigned road for construction and maintenance access; and
- Construction of approximately 15 miles of multi-use and mountain biking trails.

A full description of each element can be found at: *www.crestedbutte-eis.com*.

Responsible Official

The Responsible Official is Scott Armentrout, Forest Supervisor for the GMUG.

Nature of Decision To Be Made

Given the purpose and need, the Responsible Official will review the proposed action, the other alternatives, and the environmental consequences in order to decide the following:

- Whether to approve, approve with modifications, or deny the application for additional ski area improvements and associated activities.
- Whether to prescribe conditions needed for the protection of the environment on NFS lands.
- Whether or not to approve a site-specific Forest Plan Amendment changing the management area boundaries for the expansion.

Permits or Licenses Required

Forest Service Special Use Permit (SUP)

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Two public open houses regarding this proposal will be held: one at the Fred R. Field Western Heritage Center located at 275 S. Spruce Street, Gunnison, CO 81230 on November 18, 2015 from 5–8 p.m.; and one at the Ballrooms at the Lodge at Mountaineer Square, 620 Gothic Road,

Crested Butte, CO 81225 on November 19, 2015 from 5–8 p.m. Representatives from the GMUG and CBMR will be present to answer questions and provide additional information on this project.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Submitting timely, specific written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR part 218, subparts A and B. Additional information and maps of this proposal can be found at: *www.crestedbutte-eis.com*.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: October 26, 2015.

Scott Armentrout,

Forest Supervisor.

[FR Doc. 2015–27718 Filed 11–4–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai Resource Advisory Committee (RAC) will meet in Prescott, Arizona. 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: *http://www.fs.usda.gov/main/prescott/workingtogether/advisorycommittees*.

DATES: The meeting will be held December 1, 2015, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Prescott Fire Center, 2400 Melville Drive, Prescott, Arizona.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Prescott National Forest Supervisor's Office, 2971 Willow Creek Road, Bldg. 4, Prescott, Arizona. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordinator, by phone at 928–443–8130 or via email at *dmaneely@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:

1. Update RAC on Outreach Efforts For Vacant Positions;
2. Review Round 5 Projects; and
3. Rank and Select Round 5 Projects.

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 December 1, 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 to make oral comments must be sent to Debbie Maneely, RAC Coordinator, 344 South Cortez, Prescott, Arizona 86301; or by email to *dmaneely@fs.fed.us*, or via facsimile to 928–443–8208.

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: October 28, 2015.

Teresa A. Chase,

Forest Supervisor.

[FR Doc. 2015–28201 Filed 11–4–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2015–0014]

Notice of Availability of Proposed Changes to Section I of the Illinois Field Office Technical Guide for Public Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: NRCS is proposing to revise Section I of the Illinois Field Office Technical Guide to include ''Guidance for Illinois Food Security Act Wetland Determinations Including Offsite Methods'' which will replace the existing ''Wetland Mapping Conventions NRCS Illinois'' (commonly referred as State Wetland Mapping Conventions).

DATES: *Effective Date:* This notice is effective November 5, 2015. ''Guidance for Illinois Food Security Act Wetland Determinations Including Offsite Methods'' is in final draft, subject to revision and will be utilized immediately in order to better service requests for wetland determinations for compliance with the Food Security Act of 1985 (as amended) in a timely manner.

Comment Date: Submit comments on or before December 7, 2015.

ADDRESSES: Comments should be submitted, identified by Docket Number NRCS–2015–0014, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Submit state specific comments to the Illinois NRCS State Office, located at 2118 West Park Court, Champaign, Illinois 61821.
- NRCS will post all comments on *http://www.regulations.gov.* In general, personal information provided with comments will be posted. If your comment includes your address, phone number, email, or other personal identifying information, your

comments, including personal information, may be available to the public. You may ask in your comment that your personal identifying information be withheld from public view, but this cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Eric A. Gerth, Acting State Conservationist. Phone: 217–353–6600

SUPPLEMENTARY INFORMATION: ''Guidance for Illinois Food Security Act Wetland Determinations Including Offsite Methods'' will be used as part of the technical documents and procedures to conduct wetland determinations on agricultural land as required by 16 U.S.C. 3822. NRCS is required by 16 U.S.C. 3862 to make available for public review and comment all proposed revisions to standards and procedures used to carry out highly erodible land and wetland provisions of the law.

All comments will be considered. If no comments are received, ''Guidance for Illinois Food Security Act Wetland Determinations Including Offsite Methods'' will be considered final.

Electronic copies of the proposed ''Guidance for Illinois Food Security Act Wetland Determinations Including Offsite Methods'' are available through *http://www.regulations.gov* by accessing Docket No. NRCS–2015–0014. Alternatively, copies can be downloaded or printed from the Illinois NRCS Web site located at *http://www.nrcs.usda.gov/wps/portal/nrcs/site/il/home/*. Requests for paper versions or inquiries may be directed to the Illinois State Conservationist at the contact point shown above.

Signed this 28th day of October, 2015, in Champaign, Illinois.

Eric A. Gerth,

Acting State Conservationist.

[FR Doc. 2015–28183 Filed 11–4–15; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2017 New York City Housing and Vacancy Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before January 4, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ramon Toledo, US Census Bureau, Room 7H590T, Washington, DC 20233–8500; phone: (301) 763–5773 or email: *ramon.e.toledo@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 2017 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The primary purpose of the survey is to measure the rental vacancy rate, which is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes and by the private sector for business decisions. New York is required by city law to have such a survey conducted every three years.

Information to be collected includes: age, gender, race, Hispanic origin, and relationship of all household members; employment status, education level, and income for persons aged 15 and above. Owner/renter status (tenure) is asked for all occupied units. Utility costs, monthly rent, availability of kitchen and bathroom facilities, maintenance deficiencies, neighborhood suitability, and other specific questions about each unit such as number of rooms and bedrooms are also asked. The survey also poses a number of questions relating to handicapped accessibility. For vacant units, a shorter series of similar questions is asked. Finally, all vacant units and approximately five percent of occupied units will be reinterviewed for quality assurance purposes.

The Census Bureau compiles the data in tabular format based on specifications of the survey sponsor, as well as non-identifiable microdata. Both types of data are also made available to the general public through the Census Internet site. Note, however, that the sponsor, like the general public, does not receive any information that identifies any sample respondent or household.

II. Method of Collection

We will attempt to collect all information via a personal interview using a questionnaire that is available in English and Spanish. However, upon the respondent's request, a telephone interview may be conducted.

III. Data

OMB Control Number: 0607–0757.

Form Numbers: H–100, H–108.

Type of Review: Regular submission.

Affected Public: primarily households and some rental offices/realtors (for vacancies).

Estimated Number of Respondents: 17,000 occupied units, 1,500 vacant units, 2,400 reinterviews.

Estimated Time Per Response: 30 minutes—occupied, 10 minutes—vacant, 10 minutes—reinterview.

Estimated Total Annual Burden Hours: 9,200.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.—Section 8b and Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 30, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–28150 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 150324295–5963–03]

Privacy Act System of Records, New System of Records

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of new Privacy Act System of Records: ''COMMERCE/DEPT–25, Access Control and Identity Management System.''

SUMMARY: The Department of Commerce (Department) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled: COMMERCE/DEPT–25, Access Control and Identity Management System.

DATES: The system of records becomes effective on November 5, 2015.

ADDRESSES: For a copy of the system of records please mail requests to: Michael J. Toland, Departmental Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave. NW., Room 52010, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael J. Toland, Department Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave. NW., Room 52010, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On May 8, 2015, and June 29, 2015, the Department published and requested comments on a proposed new Privacy Act System of Records notice entitled: COMMERCE/DEPT–25, Access Control and Identity Management System. The system serves to provide electronic physical access control, intrusion detection and video management solutions to ensure the safety and security of DOC assets to include people, facilities, information and property. The system controls access to only those authorized as well as aids in the monitoring, assessment and response to security and emergency related incidents. By this notice, the Department is adopting the proposed new system as final effective November 5, 2015.

Public Comments and Responses

Interested parties were afforded the opportunity to participate in the rulemaking process through the submission of written comments on the proposed new systems of records notice (SORN). The Department received five public submissions in response to the proposed SORN. Due consideration was given to each comment received and the Department's responses to those comments are noted below.

One commenter recommended adding language under the Safeguards section to ''address how the records/system is planned to address insider threats.'' The Department disagrees with this commenter's suggestion. The addition of such language would potentially impact the effectiveness of the Department's Insider Threat Program.

Several commenters urged the Department to withdraw this proposed system of records and to ''refrain from implementing any intrusive system that needlessly monitors the movements of its employees.'' In support of their suggestion, two commenters said that ''The Department has not explained the need for tracking employees' every physical movement when on-site, which, in the proposed system of records, would go so far as to include monitoring the buttons employees strike on their work station keyboards.'' Further, those commenters raised concerns about employee morale and the security of the system. In addition, several commenters submitted the view that this SORN does not adequately describe provisions or processes to insure the safety and integrity of employees' sensitive personally identifiable information.

The Department disagrees with these comments. The system of records covered by this SORN are subject to the Federal Information Security Management Act (FISMA), which requires that controls be put in place to protect IT systems and the information contained within. Additionally, Privacy Impact Assessments have been conducted on these systems to further define procedures for protecting Personally Identifiable Information (PII) and address the impact on employees' privacy. Further, the SAFEGUARDS section of this notice describes methods for protecting information maintained in this system. For example, this section mentions that ''electronic records are password-protected or PKI-protected, consistent with the requirements of [FISMA] (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institutes of Standards and Technology, and the General Services Administration, all records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards.'' It should be noted that safeguards should be described in general terms and to the extent they would not compromise system security, which serves as an added layer of protection for employees' data.

One commenter suggested that it was unclear whether the Department is attempting to either (1) create a new database with all the information set forth in the SORN, or (2) come into compliance with statutes and regulations concerning employee data that the Department already has in an existing system. The Department is issuing this new SORN to ensure that the Department is in compliance with the Privacy Act, as amended, 5 U.S.C. 552a(e)(4) and (11); and OMB Circular A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals for all categories of information covered by DEPT–25. This SORN covers some similar categories of information as a government-wide SORN, GOVT–7, ''Personal Identity Verification Identity Management System (PIV IDMS).'' After a review, the Department decided to implement a more specific SORN with respect to this system of records.

The same commenter further suggested that if the SORN is bringing the Department into compliance, then certain personnel actions involving employee data collected prior to publication of the SORN are called into question. This comment goes beyond the scope of the content and adequacy of this SORN.

Another commenter proposed that implementation of the SORN will result in a significant staffing increase to administer and monitor the program. The Department disagrees. Adequate resources are available within the Department's Office of Security and Office of the Chief Information Officer to administer and monitor the program as it relates to Access Control and Identity Management.

One commenter suggested that employees will have difficulty determining what information the Department is maintaining on them and how to obtain the information kept. The Department disagrees with the commenter's suggestion. This notice has a section, CATEGORIES OF RECORDS IN THE SYSTEM, which enumerates the information collected from individuals. Should an employee need additional clarification on information collected and maintained on him or her in this system of records, the employee can file a Privacy Act request following the procedures outlined in the NOTIFICATION PROCEDURE section of this notice. With regard to obtaining information kept, another section, RECORDS ACCESS PROCEDURES, provides instructions on how an individual can request access to records on himself or herself. It should be noted that under the SYSTEM EXEMPTIONS FROM CERTAIN PROVISION OF THE ACT section, all information and material in the record which meets the

criteria of the subsections listed under parts of General Exemptions and Specific Exceptions of the Privacy Act are exempted from the notice, access, and contest requirement. Employees should refer to the aforementioned SYSTEM EXEMPTIONS FROM CERTAIN PROVISION OF THE ACT section of this notice for additional information about the requirements for exemptions.

Another commenter asked whether an employee will be monitored more closely based on political or religious or other beliefs. There is no authority for an agency to monitor its employees based on their political or religious beliefs. In fact, Section 552a(e)(7) of the Privacy Act, prohibits an agency from maintaining a record of how an individual exercises rights guaranteed under the First Amendment, and there are a number of other statutory and policy protections in place that guard against this type of behavior. Therefore, this commenter's concern is misplaced.

Other commenters expressed concerns about how the Department would employ the use of key-stroke monitoring. In particular, they wanted to know whether the information would be used for all agency employees, even those not suspected of committing any violations of Federal law or Department policies. One of the commenters stressed that ''It is a well-accepted IT Security policy within the Federal workspace (and also the private sector) that key-logging programs are insidious, and are used by cyber-criminals to mine data surreptitiously in order to gain unauthorized access to protected information resources. Their presence in the workplace is forbidden for these reasons.'' The Department would like to clarify for these commenters that key-stroke monitoring, which is included in this system of records, would be used under appropriate conditions to evaluate anomalous behavior, including suspected or established violations of Federal law or Department policies.

One commenter asked if the phrase ''agency, entity or persons'' referred to in a routine use includes data sharing with private sector companies or ''entities.'' The Department notes that two routine uses, numbers 12 and 13, found at 80 FR 26356 (May 8, 2015), of the notice contain the phrase ''agency, entity or persons.'' Routine use number 12 deals with sharing information when a breach occurs, while routine use 13 concerns sharing information ''for the purpose of performing audit or oversight operations as authorized by law.'' In both cases, sharing of information may occur with private sector companies or ''entities'' that have been contracted to provide the support or services described in the aforementioned routine uses. Information shared is kept to the minimum necessary to accomplish the prescribed tasks. It should be noted that pursuant to Federal Acquisition Regulations (FAR) Part 24, Privacy Act clauses are required to be included with any contracts for which a contractor is required to be involved with the design, development, or operation of a system of records on individuals to accomplish an agency function. Under one such clause, FAR 24.104, the contractor agrees to ''comply with the Privacy Act of 1974 (Act) and the agency rules'' when using any system of records on individuals in the performance of duties specified in the work statement. The notice also contains a routine use, number 9, which allows records from this system to ''be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records with the meaning of 5 U.S.C. 552a(m).''

The same commenter stated, ''Further, according to this new system, Commerce could disclose information to Agencies, entities and persons, to prevent, minimize, or remedy 'a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of the system.''' This commenter went on to ask whether some interested party in a civil lawsuit could request and gain access to data from this system of records under any of the notice's routine uses. The commenter is referring to routine use number 12, which concerns providing information for breach mitigation and notification. Provision of data from this system of records to an interested party engaged in a civil lawsuit is not part of this routine use.

One commenter suggested that according to the routine use 2 listed in the **Federal Register**, 80 FR 26536 (May 8, 2015), ''protecting the interest of the Department is an accepted justification for referring relevant records, 'as a routine use, to the appropriate agency, whether [F]ederal, state, local, or foreign, charged with the responsibility of . . . protecting the interest of the Department.' This seems to give the Department a lot of leeway to protect itself from having to disclose possible breaches, errors, or even somewhat embarrassing information. It also seems to give leeway to selectively identify which employees might be disciplined for wrongdoing or infractions that hurt the Department.'' The Department disagrees with this commenter's assertion. The Department has a duty to appropriately safeguard personally identifiable information (PII) in its possession and to prevent its compromise in order to maintain the public's trust. Additionally, the Department, like each Federal agency covered under OMB Memorandum M–07–16, ''Safeguarding Against and responding to the Breach of Personally Identifiable Information,'' is required to develop a breach notification policy and plan, and to establish a core management team responsible for responding to the breach of PII. To fulfill its commitment to employees, as well as to satisfy OMB requirements, the Department has developed and fully expects all staff to follow a Personally Identifiable Information (PII) and Business Identifiable Information, and Privacy Act (PA) Breach Notification Plan. There are no exceptions to following the plan, as well as reporting breaches. The Department has also established a Computer Incident Response Team (CIRT) and the Department of Commerce PII Breach Response Task Force for reporting and managing breaches.

One commenter asked how the Department would ''ensure that the usage of the new system of records will be limited in its scope [.]'' For instance, the individual proposed that the new system poses a risk of the data being used for purposes not intended in this notice. This commenter also suggested that ''the collection of badge in/badge out data, time in/time out data, login/logout data, keystroke monitoring and logs of internet activity all point to using this dataset to monitor, by hours and minutes, employees' schedules and work patterns. These paradata are not reliable indicators of the time employee's work and they should not be used for disciplinary purposes.'' Employees are responsible for performing their duties at acceptable levels and for conducting themselves in a manner consistent with law, regulations, and policies. If an employee would be found to have behaved in a way that violated these standards, the Department will use evidence to prove those failings by the appropriate statutory standard. Most acts of misconduct are proved by evidence other than the data at issue here, but this data may constitute evidence of misconduct under certain circumstances. The Department's usage of badge records will be undertaken in accordance with this SORN, and there are policies in place that ensure evidence of employee misconduct used in disciplinary actions is truthful, reliable, and probative of the misconduct that is charged.

One commenter proposed that ''to ensure security of this system and to protect employees, there should be a system of records of who accesses [the] information [maintained in this system of records], when, for what purposes, and how that information was authorized.'' The Privacy Act of 1974, as amended, 5 U.S.C. 552a, defines conditions under which agencies may disclose information from records retrieved by a person's name or other personal identifier. As a general rule, the Department may not disclose a record about such a person, except upon a written request by, or with the prior written consent of, that individual. However, it is important to note that to carry out its statutory responsibilities the Department at times may need to disclose information in Privacy Act records for purposes other than those listed in the Act. With this in mind, under certain specific conditions, the Privacy Act authorizes disclosure of information in a record, whether or not the person to whom the information relates has requested or consented to disclosure. For instance, the Act authorizes disclosures under, 5 U.S.C. 552a(b), Conditions of Disclosure. The Act also authorizes agencies, such as the Department, to make such disclosures, once they publish a description of what are called the ''routine uses'' of information in their records.

A level of protection is afforded to individuals because the routine use must be published in the **Federal Register**, and the routine use must include categories of users and the purpose of the use. A routine use must also be compatible with the purpose for which the information was collected. Further, another level of protection may be evidenced through the fact that publication of routine uses by the Department does not *require* it to disclose information in a record—it merely *permits* the Department to disclose information when deemed appropriate or necessary by the Department. The Department's policy is to carefully decide whether a disclosure of information permitted by a routine use is appropriate or necessary, based on the totality of the circumstances. If the Department believes that disclosure of information protected by the Privacy Act is appropriate or necessary in a situation not covered by a routine use, or by any other exception to the act's general prohibition on disclosure, it will seek written consent for the disclosure from the person to whom the record pertains. Lastly, a level of protection comes from the Privacy Act requirement for agencies to maintain an accurate accounting of certain disclosures, except in instances where disclosure is made to the subject of the record. This accounting must be maintained for a period of five years or the life of the record, whichever is longer, and must be made available upon request by the subject of the record, except for disclosures related to law enforcement activities. With regard to this accounting of disclosures, according to the OMB Privacy Act Implementation Guide, published in the **Federal Register** on July 9, 1975 (40 FR 28948–28978), ''the intent was to view the accounting of disclosures as other than a system of records and to conclude that an accounting need not be maintained for the disclosures from the accounting of disclosures.''

Several commenters expressed concerns that this system of records could create Privacy Act issues. Along those lines, one commenter specifically questioned the protections afforded employees when data is released under one or more of the exemptions identified in notice's the SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT section. While system exemptions from certain provisions of the Privacy Act have been identified in this notice, those provisions are allowed by and used following the Privacy Act; they do not revise the Act. Further, it was recognized in the OMB Privacy Act Implementation Guide, published in the **Federal Register** on July 9, 1975 (40 FR 28973), that '' 'due process' in both civil action and criminal prosecution will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records, which are to be used in legal proceedings. To the extent that such an investigatory record is used as a basis for denying an individual any right, privilege, or benefit (including employment) to which the individual would be entitled in the absence of that record, the individual must be granted access to that record except to the extent that access would reveal the identity of a confidential source.''

Two other commenters stated that the notice does not provide any provisions or processes regarding any final disposition of employee personal information (PII) once it has been disclosed to other agencies, entities, or persons. This comment goes beyond the requirements of the Privacy Act.

More than one commenter submitted the view that the routine uses listed in this notice may result in matching programs as described in 5 U.S.C. 552a(a)(8). Further, commenters added that if the Department engages in any matching program, it must follow matching program requirements outlined in 5 U.S.C. 552a(o). The Department recognizes the concerns commenters may have about matching programs with respect to this system of records and would like to assure those commenters that should the Department engage in matching programs as defined by the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503 (''Computer Matching Act''), it will follow applicable procedural requirements. The Computer Matching Act, which amended the Privacy Act, establishes procedural safeguards affecting agencies' use of Privacy Act records when conducting certain types of computer matching programs. These procedures ensure the integrity, privacy, and verification of data used in computerized matching operations, and the Department intends to fully comply with these procedures should it engage in matching programs covered by the Computer Matching Act.

Multiple commenters requested that the Department work in collaboration with unions to create a more useful and less intrusive monitoring system of records. The Department has proposed to the Labor Management Forum Members, to hold a meeting(s) to discuss the appropriate process for access, reviewing and acting upon data collected through an electronic process. Those meetings should begin in early FY 16. In the view of the same commenters, the Department should provide notice and allow bargaining under Federal Services-Labor Management Relations Statute, 5 U.S.C. 7101–7135. The issuance of this notice by the Department is a matter of compliance with the Privacy Act and in no way interferes with labor's right to bargain over matters that relate to a change in working conditions.

In the view of one of the commenters, ''the Department failed to make any attempt to notify its labor partners of these proposed changes.'' In order to address any concerns with notification, the Department extended the comment period for this SORN so that labor unions had ample time to submit comments.

One commenter wondered if the data expected to be obtained through COMMERCE/DEPT–25 was worth the enormous investment of time in labor-management negotiation, Congressional review, and potential negative response from Department employees over such a program. Through a variety of methods, the Department already collects employee data. This SORN ensure employees understand the system of records and the means through which

they can ensure that their data is correct.

Several commenters conveyed their concerns about data security regarding this system of records, especially in light of the recent OPM data breaches in which millions of current and former Federal employees' records were compromised. One of those commenters put forth that while the notice listed safeguards for the system, ''it was unclear whether the data would be encrypted.'' Another commenter raised concerns about identity theft and the potential use of data for unintended purposes that increases risks and reduce privacy protections, especially in the context of data aggregated in one database. The Department recognizes these concerns and is applying lessons learned from recent high-profile cyber events. As with all Department IT systems, the appropriate FISMA controls, specifically those regarding encryption, will be applied based upon the security categorization of the system and the data contained within the system. The Department has taken the potential risk related to data aggregation into consideration with respect to this system of records. With this in mind, the Department has applied and will continue to apply all appropriate FISMA controls based upon the security categorization of a system.

More than one commenter suggested that the Department provided insufficient [business] justification for this system of records in the Purposes section. The Department disagrees with this suggestion. As articulated in the PURPOSES section, this notice is intended to ensure protection of Department assets.

One commenter suggested that the system of records should exclude home telephone numbers because ''the connection of home telephone to the purposes stated in the notice is unexplained and unclear.'' While this notice is intended to let employees know what information ''may'' be collected and what possible use of that information exists, the collection of a ''home'' telephone number for this system of records is not a mandatory requirement and as such the individuals have the option of not providing their home telephone number. However, having contact information, such as home telephone number, serves a number of purposes, including but not limited to Continuity of Operations (COOP) activities, telework, and notification of family in the event of an emergency.

The same commenter also submitted that ''social security numbers [(SSN] should be excluded and replaced by an employee number.'' The commenter said the ''connection of [SSN] to the purposes stated in the notice is unexplained and unclear.'' The Department has not adopted this suggestion, because the use of SSNs in this system of records is essential due to the various categories of individuals in the system. For instance, government contractors would not have an employee number. SSNs are also necessary for the Department to accurately report employees' earnings, so they get the proper credit towards their social security benefit. Even with the addition of an employee number, the Department would still need to capture the social security number for the reasons stated above.

The Department has considered this comment and to help clarify the meaning of cellular numbers, the term ''government and personal'' will be added before ''cellular telephone number'' under the CATEGORIES OF RECORDS IN THE SYSTEM section. It should be noted that the Department collects both personal and government cell numbers, because in many cases employees have dropped land line service, so their cell number is their personal home number. As previously stated, having contact information, such as a telephone number, serves a number of purposes, including but not limited to COOP activities, telework, and notification of family in the event of an emergency.

One commenter suggested that ''if a security problem does exist within the Commerce Department and its various Agencies that requires [the] level of attention [identified in this system], consultation with authoritative IT Security professionals on implementing a best-practices solution would seem to be a simpler, more cost-effective, and less intrusive alternative.'' The Department appreciates this commenter's view, and it regularly consults with other Government agencies and industry regarding best-practices for the identification, mitigation, and response to cyber related issues and concerns with a view towards improving Departmental capabilities. The Department proactively places emphasis on all phases of the NIST Cyber Security Framework—Identify, Protect, Detect, Respond, and Recover.

More than one commenter maintained that the descriptors in this notice need to be defined in more detail. For instance, some suggested that more information should be provided for the Purposes, Retrievability, and Record Sources sections. One of the commenters added that more clarity was needed for the RETRIEVABILITY section, specifically for the statement ''Information may be retrieved . . . by automated search based on extant indices and automated capabilities . . .'' While the Department disagrees with the commenters that the descriptors in this notice need to be defined in more detail within the notice, it does agree that it would be beneficial to create a document explaining SORN descriptors. As a way to provide explanations about the different sections of a SORN, the Department has produced a fact sheet about SORN descriptors, which will be made available on its public Web site under the Office of Privacy and Open Government Web page at *http://www.osec.doc.gov/opog/.*

One of the same commenters suggested that a plain language document should be provided that discusses this notice and its relationship to the Privacy Act. The Department agrees with the commenter that is would be beneficial to create a document explaining this notice and its relationship to the Privacy Act. As a start to providing the type of information requested, the Department has produced a fact sheet about SORN COMMERCE/DEPT–25, which will be made available on its public Web site under the Office of Privacy and Open Government Web page at *http://www.osec.doc.gov/opog/.*

In the view of another commenter, this notice did not provide an indication of ''how long information is retained and how that duration relates to the proposed uses.'' The Department notes that every SORN, including this one, contains a RETENTION AND DISPOSAL section, which describes the policies and guidelines in place with regard to the retention and destruction of records in this system.

Dated: October 29, 2015.

Michael J. Toland,

Department of Commerce, Freedom of Information and Privacy Act Officer.

For the reasons stated in the preamble, the Department of Commerce amends the Privacy Act System of Records: ''COMMERCE/DEPT–25, Access Control and Identity Management System,'' with the minor change as follows:

▪ To help clarify the meaning of cellular numbers under the CATEGORIES OF RECORDS IN THE SYSTEM section, the term ''government and personal'' will be added before the language ''cellular telephone number''.

[FR Doc. 2015–28056 Filed 11–3–15; 11:15 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2015]

Application for Additional Production Authority; The Coleman Company, Inc., Subzone 119I, (Textile-Based Personal Flotation Devices); Notice of Public Hearing and Extension of Comment Period

At the request of the applicant, a public hearing will be held on the application for additional production authority submitted by The Coleman Company, Inc., for activity within Subzone 119I in Sauk Rapids, Minnesota (80 FR 49986, 8–18–2015). The Commerce examiner will hold the public hearing on December 3, 2015, at 9:30 a.m., at the U.S. Department of Commerce, Hoover Building, Room 3407, 1401 Constitution Avenue NW., Washington, DC 20230. Interested parties should indicate their intent to participate in the hearing and provide a summary of their remarks (submitted to *ftz@trade.gov* or the address indicated below) no later than November 30, 2015.

The comment period for the case referenced above will be extended through January 4, 2016. Rebuttal comments may be submitted during the subsequent 15-day period, until January 19, 2016. Submissions (signed original and one electronic copy) shall be addressed to the FTZ Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 21013, 1401 Constitution Avenue NW., Washington, DC 20230–0002.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: October 30, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–28280 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Open Meeting

The Materials Technical Advisory Committee will meet on November 19, 2015, 10:00 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

OPEN SESSION:

1. Opening Remarks and Introduction.
2. Remarks from BIS senior management.
3. Report from working groups: Composite Working Group, Biological Working Group, Pump and Valves Working Group.
4. Report on regime-based activities.
5. Public Comments and New Business.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 12, 2015.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 30, 2015.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2015–28191 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment; Technical Advisory Committee

Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 18, 2015, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 10, 2015.

A limited number of seats will be available during the public session of the meeting.

Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 30, 2015.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2015–28199 Filed 11–4–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863, A–475–832, A–570–026, A–580–878, A–583–856, C–533–864, C–475–833, C–570–027, C–580–879, C–583–857]

Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 3, 2015, the Department of Commerce (the Department) received antidumping duty (AD) and countervailing duty (CVD) petitions concerning imports of corrosion-resistant steel products (CORE) from India, Italy, the People's Republic of China (PRC), the Republic of Korea, and Taiwan.[1] On July 23,

[1] *See* Petitions for the Imposition of Antidumping and Countervailing Duties Against Corrosion-Resistant Steel Products from India, Italy, the

2015, the Department received timely allegations that critical circumstances exist with respect to imports of the merchandise under investigation.[2] Based on information provided by Petitioners, data placed on the record of these investigations by the mandatory respondents, and data collected by the Department, the Department preliminarily determines that critical circumstances exist for imports of CORE from certain producers and exporters from Italy, the PRC, Korea, and Taiwan.

DATES: *Effective date:* November 5, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

Section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that the Department will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that ''the alleged countervailable subsidy'' is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization, and (B) that there have been massive imports of the subject merchandise over a relatively short period. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect: (A)(i) That there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) that there have been massive imports of the subject merchandise over a relatively short period. Section 19 CFR 351.206 provides that imports must increase by at least 15 percent during the ''relatively short period'' to be considered ''massive'' and defines a ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.[3] The regulations also provide, however, that, if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[4]

Alleged Countervailable Subsidies Are Inconsistent With the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of the five CVD investigations. Specifically, as determined in our initiation checklists, the following subsidy programs, alleged in the Petitions and supported by information reasonably available to Petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement.

- *India:* Four export-contingent duty exemption/remission schemes,[5] four duty and tax exemption programs for ''Export Oriented Units,''[6] the Export Promotion of Capital Goods Scheme,[7] Pre-Shipment and Post-Shipment Export Financing,[8] Market Development Assistance Scheme,[9] Market Access Initiative,[10] Focus Product Scheme,[11] Status Certificate Program,[12] five duty and tax exemption programs for special economic zones,[13] Incremental Exports Incentivisation Scheme,[14] and three duty and tax exemption programs provided by the state of Gujarat for special economic zones[15]
- *Italy:* Several export-contingent preferential financial products provided by the Special Section for Export Credit Insurance[16]
- *The PRC:* Export loans,[17] Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment,[18] Preferential Income Tax Subsidies for Foreign-Invested Enterprises—Export Oriented FIEs,[19] Foreign Trade Development Fund Grants,[20] Export Assistance Grants,[21] Programs to Rebate Antidumping Legal Fees,[22] Subsidies for Development of Famous Export Brands and China World Top Brands,[23] Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands,[24] and Export Interest Subsidies[25]
- *Korea:* Several export-contingent preferential financial products and services provided by the Korean Export-Import Bank Countervailable Subsidy Programs,[26] preferential loans from the Korea Development Bank and Industrial Base Fund,[27] and export financing provided by the Korea Trade Insurance Corporation[28]
- *Taiwan:* Grants for International Development Activities[29]

Therefore, the Department preliminarily determines that there are alleged subsidies in each CVD investigation inconsistent with the SCM agreement.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise. The Department has previously issued an AD order on CORE

People's Republic of China (PRC), the Republic of Korea, and Taiwan, dated June 3, 2015 (the Petitions). The petitioners for these investigations are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc. (Petitioners).

[2] *See* Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations, July 23, 2105 (Critical Circumstances Allegation).

[3] *See* 19 CFR 351.206(i).

[4] *Id.*

[5] *See* India CVD Initiation Checklist, June 23, 2015, at 7–9.

[6] *Id.* at 9–12.

[7] *Id.* at 12.

[8] *Id.* at 13.

[9] *Id.* at 13–14

[10] *Id.* at 14

[11] *Id.* at 14–15.

[12] *Id.* at 16.

[13] *Id.* at 17–20

[14] *Id.* at 23–24.

[15] *Id.* at 32–34.

[16] *See* Italy CVD Initiation Checklist, June 23, 2015, at 15–16.

[17] *See* PRC CVD Initiation Checklist, June 23, 2015, at 8–9.

[18] *Id.* at 18–19.

[19] *Id.* at 22.

[20] *Id.* at 36–37.

[21] *Id.* at 37.

[22] *Id.* at 37–38.

[23] *Id.* at 38.

[24] *Id.* at 39.

[25] *Id.* at 40.

[26] *See* Korea CVD Initiation Checklist, June 23, 2015, at 10–12.

[27] *Id.* at 13–14.

[28] *Id.* at 15–16.

[29] *See* Taiwan CVD Initiation Checklist, June 23, 2015, at 14–15.

from Korea,[30] based on nearly identical HTS categories, as well as AD orders on carbon steel flat products from the PRC.[31] Moreover, there are current AD orders imposed by other World Trade Organization members against certain coated steel products (*i.e.,* carbon steel flat products either clad, plated or coated with zinc, aluminum, or nickel) from Korea, the PRC, and Taiwan.[32] Certain HTS numbers subject to these orders overlap with HTS numbers listed under our current CORE scope. Therefore, there is a history of dumping of subject merchandise exported from Korea, the PRC, and Taiwan.

To determine whether importers knew or should have known that exporters were selling at less than fair value, we typically consider the magnitude of dumping margins, including margins alleged in petitions.[33] The Department has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose.[34] Dumping margins alleged in all five AD petitions are significantly above the 15 to 25 percent threshold: 71.09 percent (India),[35] 123.76 percent (Italy),[36] 80.06 percent (Korea),[37] 120.20 percent (the PRC),[38] and 84.40 percent (Taiwan).[39] Therefore, on that basis, we preliminarily conclude importers knew or should have known exporters in all five countries were selling at less than fair value.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determinations of the International Trade Commission (ITC).[40] If the ITC finds material injury (as opposed to the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. Where, as in this case,[41] the ITC finds only threat of material injury, the Department may consider additional sources of information, such as trade and price statistics or press reports.[42] Petitioners placed several press reports on the record indicating injury. For example: U.S. steel companies are struggling against a combination of lower oil prices, oversupply and excessive imports fed by a strong dollar. Those headwinds have become a perfect storm that could lead to more idled plants and layoffs, and spur a major international trade case against China, which steel makers accuse of undercutting the market with artificially low-priced product. U.S. Steel executives have expressed the great concern about cheap imports. On Thursday, CEO and President Mario Longhi testified before the Congressional Steel Caucus and warned of long-term damage to domestic steel makers from what the industry says is illegal dumping by foreign companies. China's state-subsidized industry continue to pump out steel, even as demand slows at home. That has led to surging exports, particularly to the United States.[43]

In addition, the Department has relied on massive imports and high dumping margins as factors indicating importers knew or should have known that there was likely to be material injury.[44] As noted above, dumping margins alleged in the five AD petitions range from 71.09 percent to 123.76 percent. As discussed below, we have determined imports were massive for certain producers/exporters shipping from Italy, Korea, the PRC, and Taiwan. Therefore, we preliminarily conclude importers knew or should have known that there was likely to be material injury as a result of sales sold at less than fair value, exported from all five countries.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.,* the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.,* the ''comparison period''). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on evidence provided by Petitioners, the Department finds that pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. Specifically, the Department concludes that the factual information provided by Petitioners indicates that by March 2015, importers, exporters or producers had reason to believe that proceedings were likely. Among the documents Petitioners provided to support their claim of so-called ''early knowledge,'' the Department finds the following particularly relevant.

- On March 10, 2015, Steel Market Update acknowledged and responded to an influx of ''recent'' inquiries from

[30] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[31] *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 68 FR 60081 (October 21, 2003) and *Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 59561 (November 29, 2001).

[32] *See Australia—AD/CVD Order on Zinc Coated (Galvanised) Steel and Aluminum Zinc Coated Steel from the PRC, Korea, and Taiwan,* Commonwealth of Australia Gazette, Anti-Dumping Duty Notice No. 2013/66 (August 5, 2013); *Thailand—AD Order on Painted Hot Dip Galvanized Cold Rolled Steel and Painted Hot Dip Cold Rolled Steel Plated or Coated with Aluminum Zinc Alloys and Certain Hot Dip Cold Rolled Steel Plated or Coated with Aluminum Zinc Alloys from the PRC, Korea, and Taiwan:* Royal Thai Gazette, Vol. 130, Special Section 3 (October 1, 2013) (updated re unpainted products, Royal Thai Gazette, Vol. 132, Special Section 32 (September 2, 2015)); *Colombia—AD Order on Galvanized Smooth Sheet from the PRC:* Diario Oficial, No. 49.084 (March 6, 2014); and *Russia—AD Order on Cold-Rolled Flat Steel Products with Polymer Coating from the PRC:* Eurasian Economic Commission, Decision No. 49 (May 24, 2012).

[33] *See, e.g., Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation,* 67 FR 19157, 19158 (April 18, 2002) (unchanged in the final determination).

[34] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972, 31978 (June 11, 1997) (unchanged in the final determination) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672 (July 16, 2004) (unchanged in the final determination).

[35] The Petitions, Volume VI at 5.

[36] *Id.,* Volume IX at 28.

[37] *Id.,* Volume IV at 13.

[38] *Id.,* Volume II at 15.

[39] *Id.,* Volume X at 7.

[40] *See, e.g., Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation,* 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry,* 75 FR 30377 (June 1, 2010).

[41] *See Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan, Investigation Nos. 701–TA–534–538 and 731–TA–1274–1278 (Preliminary),* 80 FR 44151 (July 24, 2015).

[42] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329 (May 6, 1999) at Comment 2.

[43] Critical Circumstances Allegation at Exhibit 8 (article published in the *Pittsburgh Tribune*).

[44] *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 61964, 61967 (November 20, 1997).

importers of cold-rolled steel and CORE steel products ''asking questions about the potential for a trade case or anti-dumping filing by the domestic mills against foreign steel imports.'' [45]

- On March 26, 2015, American Metal Market issued a press release stating that nearly 70 percent of industry participants expected cold-rolled and CORE steel cases to be filed in 2015.[46]
- On March 27, 2015, the *Pittsburgh Tribune* published an article stating that ''domestic steel makers are beginning to take their case to Washington.'' One expert quoted in the article concluded that a trade case appeared ''inevitable.'' [47]
- On March 30, 2015, Barron's published analysis by Credit Suisse concluding U.S. steel industry officials had ''no intention of delay'' and would pursue trade remedies as soon as possible. The article states that the U.S. industry would not pursue safeguard actions, but instead would pursue AD/CVD remedies focused on hot-rolled coil, cold-rolled coil, and CORE steel products.[48]

While additional information presented in Petitioners' exhibits indicate rumors of trade cases had been circulating as far back as 2014,[49] the above statements indicate that by March 2015, these rumors had turned to expectations among steel importers, exporters, and producers that forthcoming petitions were inevitable.

Thus, in order to determine whether there has been a massive surge in imports for each cooperating mandatory respondent, the Department compared the total volume of shipments from March 2015 through September 2015 (all months for which data was available) with the preceding seven-month period of August 2014 through February 2015. For ''all others,'' the Department compared Global Trade Atlas (GTA) data for the period March through August (the last month for which GTA data is currently available) with the proceeding six-month period of September 2014 through February 2015.[50] We first subtracted shipments reported by the cooperating mandatory respondents from the GTA data. For non-cooperating mandatory respondents (*i.e.,* those mandatory respondents that did not respond to our critical circumstances questionnaire or who otherwise indicated their unwillingness to participate in the investigations), we determined, on the basis of adverse facts available,[51] that there has been a massive surge in imports. Accordingly, we preliminarily determined the following producers/exporters had massive surges in imports.[52]

- Italy (C–475–833): ILVA S.p.A. (ILVA)
- Korea (A–580–878): Hyundai Steel Company (Hyundai); ''All Others''
- Korea (C–580–879): ''All Others''
- PRC (A–570–026): the PRC-wide entity; Hebei Iron & Steel Co., Ltd. (Tangshan Branch) (Tangshan); Baoshan Iron & Steel Co., Ltd. (Baoshan)
- PRC (C–570–027): Angang Group Hong Kong Company Ltd. (Angang); Duferco S.A. (Duferco); Handan Iron & Steel Group (Handan); Changshu Everbright Material Technology (Everbright); Baoshan
- Taiwan (A–583–856 and C–583–857): ''All Others''

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of corrosion-resistant steel products shipped by certain producers/exporters. Our findings are summarized as follows.

Country	Case No.	Affirmative preliminary critical circumstances determination	Negative preliminary critical circumstances determination
PRC	A–570–026	the PRC-wide entity; Tangshan; Baoshan	Yieh Phui (China) Technomaterial Co., Ltd. (YPC); All Other producers/exporters entitled to a separate rate.
	C–570–027	Angang, Duferco, Handan, Everbright, Baoshan	YPC; All Other producers/exporters.
Korea	A–580–878	Hyundai; All Other producers/exporters	Dongkuk Steel Mill Co., Ltd. (Dongkuk/Union).
	C–580–879	All Other producers/exporters	Dongbu Steel Co., Ltd. (Dongbu); Dongkuk/Union.
Taiwan	A–583–856	All Other producers/exporters	Yieh Phui Enterprises Co., Ltd. (Yieh Phui); Prosperity Tieh Enterprises Co., Ltd. (Prosperity).
	C–583–857	All Other producers/exporters	Yieh Phui; Prosperity.
India	A–533–863	no companies	Uttam Galva Steels, Ltd. (Uttam); JSW Steel Limited (JSW); All Other producers/exporters.
	C–533–864	no companies	Uttam; JSW; All Other producers/exporters.
Italy	A–475–832	no companies	Acciaieria Arvedi S.p.A. (Arvedi); Marcegaglia S.p.A. (Marcegaglia); All Other producers/exporters.
	C–475–833	ILVA	Arvedi; Marcegaglia; All Other producers/exporters.

[45] *See* Critical Circumstances Allegation at Exhibit 7.

[46] *Id.* at Exhibit 11.

[47] *Id.* at Exhibit 8.

[48] *Id.* at Exhibit 10.

[49] This fact is noted in identical submissions filed on August 3, 2015, on behalf of various respondents in the AD and CVD proceedings for Italy, Korea, and Taiwan. These submissions also claim Petitioners have not demonstrated the need for expedited action, but there is no requirement that such a need be demonstrated. Sections 703(e)(1) and 733(e)(1) of the Act call for prompt action by the Department. The submissions also argue that we cannot reach a preliminary critical circumstances determination when the ITC finds ''threat of injury.'' While it is correct that final measures cannot be applied before an order when the ITC finds ''threat of injury,'' the ITC has not yet issued a final determination. Moreover, as discussed above, the Department has previously issued preliminary affirmative critical circumstances determinations when the ITC has found ''threat of injury.'' Finally, the submissions also claim there is a seasonal increase in shipments at the beginning of the year in anticipation of spring and summer months. It is unclear, however, how such a seasonal increase would affect our calculations (given that our comparison period starts in March, after this seasonal increase would, apparently, have been long underway), and parties provided no suggestions for adjusting the shipment data on the record to account for the alleged seasonal increase.

[50] The Department gathered GTA data under the following harmonized tariff schedule numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

[51] *See* Section 776 of the Act.

[52] *See* respective preliminary critical circumstances memoranda for each proceeding dated concurrently with this **Federal Register** notice.

Final Critical Circumstances Determinations

We will issue final determinations concerning critical circumstances when we issue our final subsidy and less-than-fair-value determinations. All interested parties will have the opportunity to address these determinations in case briefs to be submitted after completion of the preliminary subsidies and less than fair value determinations.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of our determinations.

Suspension of Liquidation

In accordance with sections 703(e)(2), because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates,[53] we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of ''provisional measures'' (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

In accordance with sections 733(e)(2), because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates,[54] we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of ''provisional measures'' (*e.g.,* the date of publication in the **Federal Register** of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.206(c)(2).

Dated: October 29, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–28252 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–DS–P

[53] The preliminary determinations concerning the provision of countervailable subsidies are currently scheduled for November 2, 2015.

[54] The preliminary determinations concerning sales at less than fair value are currently scheduled for December 21, 2015.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–868]

Large Residential Washers From the Republic of Korea: Amended Final Results of the Antidumping Duty Administrative Review; 2012–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is amending the final results of the administrative review of the antidumping duty (AD) order on large residential washers (LRWs) from the Republic of Korea (Korea) to correct a ministerial error. The period of review (POR) is August 3, 2012, through January 31, 2014.

DATES: *Effective Date:* November 5, 2015.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Reza Karamloo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4470, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2015, the Department issued the final results of the administrative review of the AD order on LRWs from Korea.[1] On September 9, 2015, the Department disclosed to interested parties its calculations for the *Final Results.*[2] On September 15, 2015, we received a timely ministerial error allegation from respondent LG Electronics, Inc. (LGE) regarding its margin calculation.[3] We did not receive rebuttal comments from the petitioner.

In the *Final Results,* we made a ministerial error by not excluding from our margin analysis certain U.S. sales with reported dates prior to August 3, 2012, the effective date of suspension of liquidation and the beginning of the POR.[4] To correct the error identified by LGE, we included additional programming language in the margin program.[5]

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Korea. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[6]

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the

[1] *See Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012–2014,* 80 FR 55595 (September 16, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum to the File, ''Final Results Margin Calculation for LGE,'' (September 8, 2015).

[3] *See* Letter from LGE, ''LG Electronics' Request for Correction of Clerical Errors—Large Residential Washers from Korea,'' (September 15, 2015).

[4] *See* Memorandum to Melissa Skinner, Director, AD/CVD Operations, Office II, from David Goldberger and Reza Karamloo, International Trade Compliance Analysts, AD/CVD Operations, Office II, ''Ministerial Error Allegation for the Final Results,'' dated concurrently with this notice (Ministerial Error Memorandum).

[5] *Id.,* at 2–3.

[6] For a complete description of the scope of the order *see* the Issues and Decision Memorandum accompanying the *Final Results.* The HTSUS numbers are revised from the numbers previously stated in the scope.

Secretary considers ministerial.'' We analyzed the ministerial error allegation and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made a ministerial error in identifying U.S. sales to be excluded from our analysis according to the reported entry date.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* with respect to LGE.[7] The revised weighted-average dumping margin for LGE is detailed below.

Amended Final Results of the Review

As a result of correcting this ministerial error, we determine that the following weighted-average margin exists for LGE for the period August 3, 2012, through January 31, 2014:

Manufacturer/Exporter	Weighted-average dumping margin (percent)
LG Electronics, Inc	1.38

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of this administrative review.

For those sales where LGE reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. For those sales where LGE did not report the entered value of its U.S. sales, we calculated importer-specific customer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rate is *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated an importer-specific *ad valorem* ratio based on the estimated entered value. Where an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department will instruct CBP to liquidate these entries without regard to antidumping duties pursuant to 19 CFR 351.106(c)(2).

For Daewoo's and Samsung's U.S. sales, we based the assessment rate assigned to the corresponding entries on the weighted-average dumping margins listed in the *Final Results.*

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[8] If applicable, this clarification will apply to entries of subject merchandise during the POR produced by LGE, for which the company did not know that its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate these entries at the all-others rate established in the less-than fair-value (LTFV) investigation, 11.80 percent,[9] if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for LGE will be equal to the weighted-average dumping margin established in the amended final results of this administrative review, as shown above; (2) the cash deposit rates for Daewoo and Samsung will continue to be equal to the weighted-average dumping margins established in the *Final Results;* (3) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will continue to be 11.80 percent, the all-others rate determined in the LTFV investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice pursuant to 19 CFR 351.224(b).

These amended final results of administrative review are issued and published in accordance with sections 751(h) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: October 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–28249 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Ministerial Error Memorandum. The weighted-average dumping margins for Daewoo Electronics Corporation (Daewoo) and Samsung Electronics Co., Ltd. (Samsung) in the *Final Results* have not changed.

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[9] *See Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013) (*AD Order*).

[10] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842]

Large Residential Washers From Mexico: Amended Final Results of the Antidumping Duty Administrative Review; 2012–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is amending the final results of the administrative review of the antidumping duty (AD) order on large residential washers (LRWs) from Mexico to correct ministerial errors. The period of review (POR) is August 3, 2012, through January 31, 2014.

DATES: *Effective date:* November 5, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2015, the Department issued the final results of the administrative review of the AD order on LRWs from Mexico.[1] On September 10, 2015, the Department disclosed to interested parties its calculations for the *Final Results.*[2] On September 15, 2015, we received a timely ministerial error allegation from the respondent Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux) regarding its margin calculation.[3] On September 21, 2015, the petitioner filed comments agreeing with this allegation.[4]

Based on our analysis of the allegation, we determined that we made two ministerial errors with respect to currency conversions related to certain movement expenses incurred on third country sales.[5] As explained in the Ministerial Error Decision Memorandum, correction of these errors changes the results of our differential pricing analysis such that we determined it appropriate to apply the mixed alternative method in making U.S. price and normal value comparisons in calculating the amended weighted-average dumping margin for Electrolux.

In the *Final Results,* we did not address certain comments regarding differential pricing and zeroing raised in the case brief submitted by Electrolux, noting that those issues were moot because the Department continued to apply (since the preliminary results) the standard A-to-A method to calculate Electrolux's weighted-average dumping margin.[6] However, the correction of the ministerial errors changed the results of our differential pricing analysis such that we are no longer applying the A-to-A method in calculating Electrolux's final amended dumping margin. As a result, the differential pricing and zeroing issues raised by Electrolux are no longer moot and we addressed them in a separate memorandum accompanying this notice. *See* the Issues and Decision Memorandum[7] which is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty (CVD) Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[8]

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' As discussed above, we analyzed the ministerial error allegation and determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made ministerial errors in our calculation of Electrolux's margin in the *Final Results* due to an inadvertent currency assignment affecting certain movement expenses associated with third country sales.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* with respect to Electrolux.[9] The revised weighted-average dumping margin for Electrolux is detailed below.

Amended Final Results of the Review

As a result of correcting this ministerial error, we determine that the following weighted-average dumping margin exists for the period August 3, 2012, through January 31, 2014:

Manufacturer/Exporter	Weighted-average dumping margin (percent)
Electrolux Home Products Corp. NV/Electrolux Home Products de Mexico, S.A. de C.V	6.22

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), the

[1] *See Large Residential Washers From Mexico: Final Results of the Antidumping Duty Administrative Review; 2012–2014,* 80 FR 55335 (September 15, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum (Final Results I&D Memorandum).

[2] *See* ''Final Results Calculation Memorandum for Electrolux,'' dated September 8, 2015.

[3] *See* ''Large Residential Washers from Mexico: Ministerial Error Comments,'' dated September 15, 2015.

[4] *See* ''Large Residential Washers from Mexico: Petitioner's Reply To Electrolux's Ministerial Error Submission,'' dated September 22, 2015.

[5] *See* Memorandum from Brian Smith, Team Leader, to Melissa Skinner, Director, Office II, ''2012–2014 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico: Ministerial Error Allegation for the Amended Final Results,'' dated concurrently with this notice (Ministerial Error Decision Memorandum).

[6] *See* Final Results I&D Memorandum at Comments 3–5.

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Brian Smith and Reza Karamloo, ''Issues and Decision Memorandum for the Amended Final Results of the Antidumping Duty Administrative Review of Large Residential Washers from Mexico,'' dated concurrently with and adopted by this notice (Issues and Decision Memorandum).

[8] For a complete description of the scope of the order, *see* the Final Results I&D Memorandum.

[9] *See* Ministerial Error Decision Memorandum.

Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 41 days after publication of the amended final results of this administrative review.

For Electrolux, the Department calculated *ad valorem* importer-specific assessment rates equal to the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales. Where an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department will instruct CBP to liquidate these entries without regard to antidumping duties pursuant to 19 CFR 351.106(c)(2).

For entries of subject merchandise during the POR produced by Electrolux which it did not know were destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be equal to the weighted-average dumping margin established in the amended final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 36.52 percent, the all-others rate determined in the LTFV investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice pursuant to 19 CFR 351.224(b).

These amended final results of administrative review are issued and published in accordance with sections 751(h) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: October 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–28248 Filed 11–4–15; 8:45 a.m.]

BILLING CODE 3510–DS–P

[10] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013) (*AD Order*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') order on barium chloride from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* November 5, 2015.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1984, the Department published the final determination in the antidumping duty investigation of barium chloride from the PRC.[1] On October 17, 1984, the Department issued an antidumping duty order on imports of barium chloride from the PRC.[2]

On May 1, 2015, the Department initiated the fourth five-year (''sunset'') review of the AD order on barium chloride from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[3] As a result of its review, the Department determined that revocation of the antidumping duty order on barium chloride from the PRC would likely lead to a continuation or recurrence of dumping and, therefore,

[1] *See Final Determination of Sales at Less Than Fair Value; Barium Chloride From the People's Republic of China,* 49 FR 33916 (August 27, 1984) (''*Final Determination*'').

[2] *See Antidumping Duty Order; Barium Chloride From the People's Republic of China,* 49 FR 40635 (October 17, 1984) (''*Order*'').

[3] *See Initiation of Five-Year (''Sunset'') Review,* 80 FR 24900 (May 1, 2015).

notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[4] On October 30, 2015, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on barium chloride from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by the order is barium chloride, a chemical compound having the formulas BaCl2 or BaCl2–2H2O, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[6] Although the HTSUS item number is provided for convenience and for U.S. Customs and Border Protection purposes, the written description remains dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on barium chloride from the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation. This five-year (''sunset'') review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 30, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–28250 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Barium Chloride from the People's Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order,* 80 FR 36973 (June 29, 2015) and accompanying Issues and Decision Memorandum.

[5] *See Barium Chloride From China: Determination,* 80 FR 66935 (October 30, 2015); *see also* Barium Chloride from China (Inv. No. 731–TA–149 (Fourth Review), USITC Publication 4574 (October 2015)).

[6] The scope reflects the HTSUS item number currently in effect.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE268

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southwest Fisheries Science Center Fisheries Research

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

ACTION: Notice of issuance of Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that Letters of Authorization (LOA) have been issued to the NMFS Southwest Fisheries Science Center (SWFSC) for the take of marine mammals incidental to fisheries research conducted in multiple specified geographical regions.

DATES: Effective from October 30, 2015, through October 29, 2020.

ADDRESSES: The LOAs and supporting documentation are available on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 25, 2013, we received an adequate and complete request from SWFSC for authorization to take marine mammals incidental to fisheries research activities. On February 13, 2015 (80 FR 8166), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the SWFSC request for thirty days. The final rule was published in the **Federal Register** on September 30, 2015 (80 FR 58982). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during fisheries research activities in three separate specified geographic regions.

SWFSC conducts fisheries research using pelagic trawl gear used at various levels in the water column, pelagic longlines with multiple hooks, bottom-contact trawls, and other gear. If a marine mammal interacts with gear deployed by SWFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. We pooled the estimated number of incidents of take resulting from gear interactions and assessed the potential impacts accordingly. SWFSC also uses various active acoustic devices in the conduct of fisheries research, and use of

these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on ice may also occur, in the Antarctic only, as a result of visual disturbance from vessels conducting SWFSC research.

The SWFSC conducts fisheries research surveys in the California Current Ecosystem (CCE), the Eastern Tropical Pacific (ETP), and the Antarctic Marine Living Resources Ecosystem (AMLR). As required by the MMPA, SWFSC's request was considered separately for each specified geographical region, and three separate LOAs have been issued. In the CCE, SWFSC is authorized to take individuals of seventeen species by Level A harassment, serious injury, or mortality (M/SI + Level A) and of 34 species by Level B harassment. In the ETP, SWFSC is authorized to take individuals of eleven species by M/SI + Level A and of 31 species by Level B harassment. In the AMLR, SWFSC is authorized to take individuals of seventeen species by Level B harassment. No takes by M/SI + Level A are anticipated in the AMLR.

Authorization

We have issued LOAs to SWFSC authorizing the take of marine mammals incidental to fishery research activities, as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Implementation of a ''move-on'' rule in certain circumstances that is expected to reduce the potential for physical interaction with marine mammals; (2) use of a marine mammal excluder device in certain trawl nets; and (3) use of acoustic deterrent devices on certain trawl nets. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The SWFSC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: November 2, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–28221 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE244

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2016 Research Fishery

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

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2016 shark research fishery from commercial shark fishermen with directed or incidental shark limited access permits. The shark research fishery allows for the collection of fishery-dependent and biological data for future stock assessments and to meet the research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land other large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered.

DATES: Shark Research Fishery Applications must be received no later than 5 p.m., local time, on December 7, 2015.

ADDRESSES: Please submit completed applications to the HMS Management Division at:

- *Mail:* Attn: Guý DuBeck, HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* (301) 713–1917.
- *Email: NMFS.Research.Fishery@noaa.gov.*

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, call (301) 427–8503 (phone), or fax a request to (301) 713–1917. Copies of the Shark Research Fishery Application are also available at the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm.* Additionally, please be advised that your application may be released under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Guý DuBeck, at (301) 427–8503 (phone) or (301) 713–1917 (fax) or Delisse Ortiz at 240–681–9037.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The shark research fishery was established, in part, to maintain time series data for stock assessments and to meet NMFS' research objectives. Since the shark research fishery was established in 2008, the research fishery has allowed for: The collection of fishery-dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks and collection of hook-timer and pop-up satellite archival tag (PSAT) information to determine at-vessel and post-release mortality of dusky sharks; and collection of sharks to determine the weight conversion factor from dressed weight to whole weight.

The shark research fishery allows selected commercial fishermen the opportunity to earn revenue from selling additional sharks, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. The base quota is 90.7 metric tons (mt) dressed weight (dw), although this number may be reduced in the event of overharvests, if any. The selected shark research fishery permittees will also be allowed to land other LCS, SCS, and pelagic sharks per any restrictions established on their shark research fishery permit. Generally, the shark research fishery permits are valid only for the calendar year for which they are issued.

The specific 2016 trip limits and number of trips per month will depend on the availability of funding, number of selected vessels, the availability of observers, the available quota, and the objectives of the research fishery and will be included in the permit terms at time of issuance. The number of participants in the research fishery

changes each year. In 2015, seven fishermen were chosen to participate. From 2008 through 2015, there has been an average of seven participants each year with the range from five to eleven. The trip limits and the number of trips taken per month have changed each year the research fishery has been active. Participants may also be limited on the amount of gear they can deploy on a given set (*e.g.,* number of hooks and sets, soak times, length of longline).

In the beginning of the 2015 fishing season, NMFS split the sandbar and LCS research fishery quotas equally among selected participants, with each vessel allocated 13.3 mt dw of sandbar shark research fishery quota and 5.7 mt dw of other LCS research fishery quota. On August 18, 2015, NMFS implemented Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50074; Amendment 6) which, among other things, established a new base annual quota for the sandbar shark research fishery as 90.7 mt dw (199,943 lb dw). To account for the lower sandbar shark quota, NMFS revised the equal allocation of every participating vessel in the shark research fishery to 80 percent of their current allocation minus their landings up until Amendment 6 was implemented. NMFS also established a regional dusky bycatch limit where once three or more dusky sharks were caught dead in any of five designated regions across the Gulf of Mexico and Atlantic through the entire year, any shark research fishery permit holder in that region was not able to soak their gear for longer than 3 hours. If, after the change in soak time, there were three or more additional dusky shark interactions (alive or dead) observed, shark research fishery permit holders were not able to make a trip in that region for the remainder of the year, unless otherwise permitted by NMFS. There were slightly different measures established for shark research fishery participants in the mid-Atlantic shark closed area in order to allow NMFS observers to place satellite archival tags on dusky sharks and collect other scientific information on dusky sharks while also minimizing any dusky shark mortality.

Participants were also required to keep any dead sharks, unless they were a prohibited species, in which case they were required to release them. If the regional non-blacknose SCS, blacknose, and/or pelagic shark management group quotas were closed, then the shark research fishery permit holder fishing in the closed region had to discard all of the species from the closed management groups regardless of condition. Any sharks, except prohibited species or closed management groups (*i.e.,* SCS or pelagic sharks), caught and brought to the vessel alive could have been released alive or landed. In addition, participants were restricted by the number of longline sets as well as the number of hooks they could deploy and have on board the vessel. The vessels participating in the shark research fishery fished an average of one trip per month.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application by the deadline noted above (see **DATES**) showing that the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, the research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center Narragansett Laboratory, the Southeast Regional Office Protected Resources Division, and the HMS Management Division. The research objectives for 2016 are based on various documents, including the 2012 Biological Opinion for the Continued Authorization of the Atlantic Shark Fisheries and the Federal Authorization of a Smoothhound Fishery, the 2010/2011 U.S. South Atlantic blacknose, U.S Gulf of Mexico blacknose, sandbar, and dusky sharks stock assessments, and the 2012 U.S. Gulf of Mexico blacktip shark stock assessment. The 2016 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar and other sharks throughout the calendar year for species-specific stock assessments;
- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue on-going tagging shark programs for identification of migration corridors and stock structure using dart and/or spaghetti tags;
- Maintain time-series of abundance from previously derived indices for the shark bottom longline observer program;
- Sample fin sets (*e.g.,* dorsal, pectoral) from prioritized species to further develop fin identification guides;
- Acquire fin-clip samples of all shark and other species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth, consistent with the requirements listed in the take permit issued under Section 10 of the Endangered Species Act to the SEFSC observer program;
- Attach satellite archival tags to prohibited dusky and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, blacktip, and other sharks using hook-timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields;
- Examine the size distribution of sandbar and other sharks captured throughout the fishery including in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31; and
- Develop allometric and weight relationships of selected species of sharks (*e.g.,* hammerhead, sandbar, blacktip shark).

Selection Criteria

Shark Research Fishery Permit Applications will be accepted only from commercial shark fishermen who hold a current directed or incidental shark limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed to meet the research objectives for this year, NMFS will give priority to directed permit holders as recommended by the shark board. As such, qualified incidental permit holders will be selected only if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: Type of commercial shark permit possessed; past participation and availability in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per 50 CFR 635.7; past compliance with HMS regulations at 50 CFR part 635; past and present availability to participate in the shark research fishery year-round; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. Preference will be given to those applicants who are willing and available to fish year-round and who affirmatively state that they

intend to do so, in order to ensure the timely and accurate data collection NMFS needs to meet this year's research objectives. An applicant who has been charged criminally or civilly (*e.g.,* issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous 2 years for any HMS fishery, but failed to contact NMFS to arrange the placement of an observer as required per 50 CFR 635.7, will not be considered for participation in the 2016 shark research fishery. Applicants who were selected to carry an observer in the previous 2 years for any HMS fishery and failed to comply with all the observer regulations per 50 CFR 635.7 will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected and thus did not require an observer. Applicants who do not possess a valid USCG safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous 2 years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating 2 subsequent years of compliance with observer regulations at 50 CFR 635.7.

Selection Process

The HMS Management Division will review all submitted applications and develop a list of qualified applicants from those applications that are deemed complete. A qualified applicant is an applicant that has submitted a complete application by the deadline (see **DATES**) and has met the selection criteria listed above. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2016. The HMS Management Division will provide the list of qualified applicants without identifying information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of observers, the availability of qualified applicants, and the available quota for a given year, will randomly select qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. The shark research fishery permits will be valid only in calendar year 2016. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. NMFS held mandatory captain's meetings before observers were placed on vessels in 2013 (78 FR 14515; March 6, 2013), 2014 (79 FR 12155; March 4, 2014), and 2015 (80 FR 3221; January 22, 2015) and expects to hold one again in 2016. Once the fishery starts, the shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Shark research fishery permit holders must carry a NMFS-approved observer in order to land sandbar sharks. Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in 50 CFR 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2016 shark research fishery, the research objectives set forth by the shark board, the extent of other restrictions placed on the vessel, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land LCS, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer.

NMFS annually invites commercial shark permit holders (directed and incidental) to submit an application to participate in the shark research fishery. Permit applications can be found on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm* or by calling (301) 427–8503. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information by the deadline (see **DATES**), and NMFS' review of applicant information as outlined above. The 2016 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: November 2, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–28257 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE299

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill approximately one-third (11) of the seats on the HMS AP for a 3-year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations are considered for membership on the HMS AP.

DATES: Nominations must be received on or before December 7, 2015.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: ''HMS AP Nominations.''
- *Mail:* Margo Schulze-Haugen, Highly Migratory Species Management Division, NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell at (301) 427–8503.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided that the Secretary may establish Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for any highly migratory species fishery that is under the Secretary's authority. NMFS has consulted with the HMS AP on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the 2006 Consolidated HMS FMP (October 2006); Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, 9, and 10 to the 2006 Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014, and March and September 2015); among other relevant fishery management issues.

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the nominee and a description of his/her interest in HMS or HMS fisheries, or in particular species of sharks, swordfish, tunas, or billfish;

2. Contact information, including mailing address, phone, and email of the nominee;

3. A statement of background and/or qualifications;

4. A written commitment that the nominee shall actively participate in good faith, and consistent with ethics obligations, in the meetings and tasks of the HMS AP; and

5. A list of outreach resources that the nominee has at his/her disposal to communicate HMS issues to various interest groups.

Qualifications for HMS AP Membership

Qualification for membership includes one or more of the following: (1) Experience in HMS recreational fisheries; (2) experience in HMS commercial fisheries; (3) experience in fishery-related industries (*e.g.,* marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries, or environmental, governmental, or academic interests dealing with HMS.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2016 and expiring December 2018.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, academic/scientific interests, and the environmental/non-governmental organization community, who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a 3-year term with approximately one-third of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 3 academic, 3 commercial, 4 recreational organization, and 1 environmental organization vacancies by December 31, 2015. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the AP. Table 1 includes the current representation on the HMS AP by sector, region, and species with terms that are expiring identified in bold. It is not meant to indicate that NMFS will only consider persons who have expertise in the species or fishing regions that are listed. Rather, NMFS will aim toward having as diverse and balanced an AP as possible.

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES

[Terms that are expiring or for whom current members are stepping down are in bold. NMFS tries to maintain diversity and balance in representation among fishing regions and species.]

Sector	Fishing region	Species	Date appointed	Date term expires
Academic	All	Tuna	1/1/2013	12/31/2015
Academic	Southeast/Gulf of Mexico	Shark	1/1/2013	12/31/2015
Academic	Southeast	Swordfish/HMS	1/1/2013	12/31/2015
Academic	All	Swordfish/Tuna	1/1/2015	12/31/2017
Commercial	Southeast	Shark	1/1/2013	12/31/2015
Commercial	Southeast	Swordfish/Tuna	1/1/2013	12/31/2015
Commercial	Northeast	Tuna	1/1/2014	12/31/2016
Commercial	Mid-Atlantic	HMS/Shark	1/1/2014	12/31/2016
Commercial	Southeast	Swordfish	1/1/2014	12/31/2016
Commercial	Gulf of Mexico	Shark	1/1/2014	12/31/2016
Commercial	Gulf of Mexico	Shark	1/1/2014	12/31/2016
Commercial	MidAtlantic	HMS	1/1/2015	12/31/2017
Commercial	Northeast	Tuna/Swordfish	1/1/2015	12/31/2017
Commercial	Gulf of Mexico	Tuna/Swordfish	1/1/2015	12/31/2017
Commercial	Northeast	Tuna	1/1/2015	12/31/2017
Commercial	Northeast	Tuna	1/1/2015	12/31/2017
Environmental	All	Tuna	1/1/2014	12/31/2016
Environmental	All	Tuna	1/1/2014	12/31/2016
Environmental	All	Shark	1/1/2015	12/31/2017
Environmental	All	HMS	1/1/2015	12/31/2017
Recreational	Northeast	Tuna/Shark	1/1/2013	12/31/2015

TABLE 1—CURRENT REPRESENTATION ON THE HMS AP BY SECTOR, REGION, AND SPECIES—Continued

[Terms that are expiring or for whom current members are stepping down are in bold. NMFS tries to maintain diversity and balance in representation among fishing regions and species.]

Sector	Fishing region	Species	Date appointed	Date term expires
Recreational	Southeast	Swordfish	1/1/2013	12/31/2015
Recreational	Northeast	HMS	1/1/2013	12/31/2015
Recreational	Southeast	HMS	1/1/2013	12/31/2015
Recreational	Northeast	HMS	1/1/2013	12/31/2016
Recreational	Northeast	Tuna	1/1/2014	12/31/2016
Recreational	Mid-Atlantic	HMS	1/1/2014	12/31/2016
Recreational	Southeast	Billfish	1/1/2014	12/31/2016
Recreational	Gulf of Mexico	HMS	1/1/2014	12/31/2016
Recreational	Gulf of Mexico/Southeast	Billfish	1/1/2015	12/31/2017
Recreational	Mid-Atlantic	Shark	1/1/2015	12/31/2017
Recreational	Mid-Atlantic	Tuna	1/1/2015	12/31/2017

The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year—once in the spring, and once in the fall. The meetings may be held in conjunction with public hearings.

Dated: November 2, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–28263 Filed 11–4–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0122]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS C01, entitled ''Enterprise Support Portal (ESP)'' to assist OSD Components in organizational management tasks, manpower-related tasks, and general administrative tasks related to employees by retrieving information from the authoritative sources and storing administrative information within the Enterprise Support Portal. To process network/system account requests, IT service/helpdesk requests, and facilities requests.

DATES: Comments will be accepted on or before December 7, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/*. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 30, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 30, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS C01

SYSTEM NAME:

Enterprise Support Portal (ESP) (March 5, 2013, 78 FR 14275)

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contain herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the national Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component 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 the Component 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 the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx''*

* * * * *

[FR Doc. 2015–28139 Filed 11–4–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0121]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS P50, entitled ''iCompass, Learning Management System (LMS)'' to manage and administer a Learning Management System (LMS) for training and development programs; to identify individual training needs; for the purpose of reporting, tracking, assessing and monitoring training events, and DoD FM certifications.

DATES: Comments will be accepted on or before December 7, 2015. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 30, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 30, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P50

SYSTEM NAME:

iCompass, Learning Management System (LMS) (July 23, 2013, 78 FR 44100)

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Civilians, military members, and contractors assigned to the following Office of the Secretary of Defense (OSD) offices: Acquisition Technology and Logistics; U.S. Court of Appeals for Armed Forces (CAAF); DoD Comptroller Office; Deputy Chief Management Officer; Office of Military Commissions; Defense Legal Services Agency/Defense Office of Hearings and Appeals; Defense Security Cooperation Agency (DSCA); Defense Test Resource Management Center (DTRMC); Defense Technology Security Administration (DTSA); Intelligence Oversight; Office of the Assistant Secretary of Defense (OASD) Legislative Affairs; Net Assessment; DoD Chief Information Office; Office of Economic Adjustment; DoD Office of General Counsel; OSD Operation Test & Evaluation; Office of the Under Secretary of Defense (OUSD) Intelligence; Cost Assessment and Program Evaluation; Pentagon Force Protection Agency; OUSD Policy; Department of Defense Prisoner of War/Missing in Action Accounting Agency; Personnel and Readiness; Assistant to the Secretary of Defense for Public Affairs; White House Military Office; Washington Headquarters Services (WHS); WHS Federal Voting Assistance Program; WHS Welfare & Recreation Association; and Military and DoD civilian financial managers.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, DoD identification (DoD ID) number, position title, work phone number, work email address, pay plan, series, grade, organization, supervisor, hire date, course name and course date and time of completed trainings, educational level of civilian employees, and Financial Management (FM) certification level.''

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. Chapter 41, Government Employees Training Act; 5 CFR part 410, Office of Personnel Management-Training; DoDD 5105.53, Director of Administration and Management (DA&M); DoDD 5110.4, Washington Headquarters Services (WHS); and DoDI 1300.26, Operation of the DoD Financial Management Certification Program.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

LAW ENFORCEMENT ROUTINE USE:

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

CONGRESSIONAL INQUIRIES DISCLOSURE ROUTINE USE:

Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

DATA BREACH REMEDIATION PURPOSES ROUTINE USE:

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component 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 the Component 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 the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx''*

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager, Washington Headquarters Services, Human Resource Directorate (HRD)/Transparency and Tools Division (TTD), 4800 Mark Center Drive, Alexandria, VA 22350–3200.''

* * * * *

[FR Doc. 2015–28192 Filed 11–4–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on December 7, 2015, will include discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishment proceedings involving midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this

reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on December 7, 2015, from 8:30 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on December 7, 2015, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

(Authority: 5 U.S.C. 552b)

Dated: October 29, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–28186 Filed 11–4–15; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 80 FR 62524 (October 16, 2015).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m.–12:15 p.m., November 10, 2015.

CHANGES IN THE MEETING: On page 62524, in the second column, change the **DATES** caption to read: ''Time and Date of Meeting: 1 p.m.–4:15 p.m., November 23, 2015.'' Additionally, in the second column, in the **SUPPLEMENTARY INFORMATION** caption, at the 11th line of the ''Matters to be Considered'' section, after the word ''entitled,'' remove the phrase ''DNFSB Work Plans and Staffing Plan for Fiscal Year 2016'' and add in its place the phrase ''DNFSB Office of the Technical Director Fiscal Year 2016 Work Plan''.

CONTACT PERSON FOR MORE INFORMATION: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 2, 2015.

Joyce L. Connery,

Chairman.

[FR Doc. 2015–28288 Filed 11–3–15; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2985–017; ER10–3049–018; ER10–3051–018.
Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.
Description: Notice of Change in Status of the Champion Utilities.
Filed Date: 10/29/15.
Accession Number: 20151029–5444.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–90–000.
Applicants: Golden Hills Interconnection, LLC.
Description: Clarification to October 19, 2015 Golden Hills Interconnection, LLC tariff filing under ER16–90.
Filed Date: 10/28/15.
Accession Number: 20151028–5399.
Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–131–000.
Applicants: Heber Geothermal Company LLC.
Description: Amendment to October 21, 2015 Heber Geothermal Company LLC tariff filing.
Filed Date: 10/29/15.
Accession Number: 20151029–5307.
Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–164–000.
Applicants: Wisconsin Power and Light Company.
Description: Section 205(d) Rate Filing: WPL Changes in Depreciation & Amortization for Wholesale Production Service to be effective 12/31/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5433.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–165–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: Revisions to Clarify Treatment of Point-To-Point Transmission Service Revenues to be effective 1/1/2016.
Filed Date: 10/29/15.
Accession Number: 20151029–5442.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–166–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, Inc.
Description: Section 205(d) Rate Filing: 2015–10–29_EAI–AECC Amended JPZ Agreement to be effective 1/1/2016.
Filed Date: 10/29/15.
Accession Number: 20151029–5445.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–167–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Part 1 of Two-Part Filing of Demand Response Changes to be effective 12/31/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5473.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–168–000.
Applicants: New York Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: NYISO 205 filing re: physical withholding & fuel costs in reference levels to be effective 12/28/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5482.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–169–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Part 2 of Two-Part Filing of Demand Response Changes to be effective 6/1/2016.
Filed Date: 10/29/15.
Accession Number: 20151029–5495.
Comments Due: 5 p.m. ET 11/19/15.

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: October 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28207 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–29–000]

Dominion Carolina Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Transco to Charleston Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Transco to Charleston Project involving construction and operation of facilities by Dominion Carolina Gas Transmission, LLC (DCG) in Aiken, Charleston, Dillon, Dorchester, Greenwood, Laurens, Newberry, and Spartanburg Counties, South Carolina. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 30, 2015.

If you sent comments on this project to the Commission before the opening of this docket on September 2, 2015, you will need to file those comments in Docket No. PF15–29–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–29–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping meetings its staff will conduct in the project area, scheduled as follows.

Date and time	Location
Wednesday, November 18, 2015, 4–7 p.m.	Spartanburg Community College—Tyger River Campus, 1875 East Main Street, Duncan, SC 29334.
Thursday, November 19, 2015, 4–7 p.m.	Family YMCA of Greater Laurens, 410 Anderson Drive, Laurens, SC 29360.

You may attend at any time during the scoping meeting. There will not be a formal presentation by Commission staff, but you will be provided information about the FERC process. Commission staff will be available to take verbal comments. Representatives of DCG will be present to answer questions about its planned project.

Comments will be recorded by a stenographer and transcripts will be placed into the project docket and made available for public viewing on FERC's eLibrary system (see page 7 ''Additional Information'' for instructions on using eLibrary). We believe it is important to note that verbal comments hold the same weight as written or electronically

submitted comments. If a significant number of people are interested in providing verbal comments, a time limit of 3 to 5 minutes may be implemented for each commenter to ensure all those wishing to comment have the opportunity to do so within the designated meeting time. Time limits will be strictly enforced if they are implemented.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Planned Project

The planned project would provide 80,000 dekatherms of natural gas per day of firm transportation service that has been fully subscribed by three customers.

The Transco to Charleston Project would consist of the following facilities:

- Approximately 55 miles of 12-inch-diameter pipeline in Spartanburg, Laurens, Newberry, and Greenwood Counties (Moore to Chappells pipeline);
- approximately 5 miles of 4-inch-diameter pipeline in Dillon County (Dillon pipeline);
- installation of two new 1,400-horsepower (hp) compressor units at the existing Moore Compressor Station in Spartanburg County;
- construction of a new 3,150-hp compressor station (Dorchester Compressor Station) in Dorchester County;
- conversion of an existing 1,050-hp compressor unit from standby to base load at the existing Southern Compressor Station in Aiken County;
- upgrades to the existing Charleston Town Border Station in Charleston County; and
- associated pipeline support facilities (metering and regulating stations, launcher and receiver assemblies, valves, and pipeline interconnects).

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the planned facilities would disturb about 781.6 acres of land for the pipelines and 28.9 acres of land for the aboveground facilities. Following construction, DCG would maintain about 488.0 acres for permanent operation of the project's pipelines and 12.9 acres for the aboveground facilities; the remaining acreage would be restored and revert to former uses. About 6 percent of the planned Moore to Chappells pipeline route and 28 percent of the Dillon pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the State Historic Preservation Office as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once DCG files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF15–29). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28204 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13135–004]

City of Watervliet; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* License for Major Project-Existing Dam.

b. *Project No.:* P–13135–004.

c. *Date filed:* August 26, 2014.

d. *Applicant:* City of Watervliet, New York.

e. *Name of Project:* Delta Hydroelectric Project.

f. *Location:* On the Mohawk River, in the City of Rome, Oneida County, NY. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael P. Manning, Mayor, City of Watervliet, City Hall, Watervliet, NY 12189, Phone: 518–270–3815, Email: *mikemanning@watervliet.com;* or Mark Gleason, General Manager, City of Watervliet, City Hall, Watervliet, NY 12189, Phone: 518–270–3800x122, Email: *mgleason@watervliet.com;* or Wendy Jo Carey, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205, Phone: 518–456–7712x401, Email: *wendy@albanyengineering.com.*

i. *FERC Contact:* Brandi Sangunett, Phone: (202) 502–8393, Email: *brandi.sangunett@ferc.gov.*

j. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13135–004.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would consist of: (1) The existing 1,016-foot-long, 76-foot-high Delta dam, owned by the New York State Canal Corporation; (2) an existing impoundment having a surface area of 2,700 acres and a storage capacity of 63,200 acre-feet at the spillway crest elevation of 551.37 feet North American Vertical Datum of 1988; (3) a new 40-foot-diameter cylindrical powerhouse containing one turbine-generator unit with a total installed capacity of 7.4 megawatts; (4) a new 15,000-foot-long, 34.5-kilovolt underground transmission line; and (5) appurtenant facilities. The project would generate about 14,100 megawatt-hours of electricity annually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available

for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28213 Filed 11–4–15; 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: EC16–21–000.
Applicants: Sandstone Solar LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Sandstone Solar LLC.
Filed Date: 10/29/15.
Accession Number: 20151029–5611.
Comments Due: 5 p.m. ET 11/19/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2267–001.
Applicants: Chevron Power Holdings Inc.
Description: Notice of Non-Material Change in Status of Chevron Power Holdings Inc.
Filed Date: 10/30/15.
Accession Number: 20151030–5206.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–167–001.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Tariff Amendment: Part 2 of Two-Part Filing of Demand Response Changes to be effective 6/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5185.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–170–000.
Applicants: Champion Energy Services, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 10/30/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5523.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–171–000.
Applicants: Champion Energy Marketing LLC.
Description: § 205(d) Rate Filing: Market-Based Tariff Revisions to be effective 10/30/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5527.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–172–000.
Applicants: Champion Energy, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 10/30/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5533.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–173–000.
Applicants: Black Hills/Colorado Electric Utility Co.
Description: Compliance filing: Corrections to OATT Table of Contents to be effective 12/29/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5575.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–174–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2016 RSBAA Update Filing to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5000.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–175–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2016 TRBAA Update Filing to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5001.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–176–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2016 ETC Reliability Service Rate Update to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5007.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–177–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: RCID NITSA Amendment OATT SA No. 147 to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5083.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–178–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2015–10–30_Joint Dispatch Svc-Rnd 2-Filing to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5145.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–179–000.
Applicants: Northern States Power Company, a Minnesota corporation.

Description: Notice of Cancellation of Transmission Service Agreement, Rate Schedule 512 of Northern States Power Company, a Minnesota corporation.

Filed Date: 10/30/15.

Accession Number: 20151030–5156.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–180–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2015–10–30_JDA to be effective 1/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030–5157.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–181–000.

Applicants: Northern States Power Company (Minnesota), Northern States Power Company, a Minnesota corporation.

Description: Notice of Cancellation of Facilities Agreement, Rate Schedule 512 of Northern States Power Company, a Minnesota corporation.

Filed Date: 10/30/15.

Accession Number: 20151030–5159.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–182–000.

Applicants: Cameron Ridge II, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 12/31/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5161.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–183–000.

Applicants: Midcontinent Independent System Operator.

Description: § 205(d) Rate Filing: 2015–10–30_SA 1375 ATC-White Pine 3rd Rev GIA (J143) to be effective 10/31/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5196.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–184–000.

Applicants: DTE Electric Company.

Description: § 205(d) Rate Filing: DTE Electric Reactive Revenue for Dean Facility to be effective 10/1/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5199.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–185–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 flng—Increase elgblty spcl mrkt rls gnrtors srvng NYC steam dstrbtn systm to be effective 12/29/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5205.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–186–000; ER16–187–000; ER16–188–000; ER16–189–000; ER16–190–000; ER16–191–000.

Applicants: Coalinga Cogeneration Company, Kern River Cogeneration Company, Mid-Set Cogeneration Company, Salinas River Cogeneration Company, Sargent Canyon Cogeneration Company, Sycamore Cogeneration Company.

Description: Notice of Cancellation of Market-Based Rate Tariffs filed by Chevron Power Holdings Inc. on behalf of the Chevron Partnerships.

Filed Date: 10/30/15.

Accession Number: 20151030–5208.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–192–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Oct. 30, 2015 Membership Filing to be effective 11/1/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5218.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–193–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: WECC Unscheduled Flow Mitigation Plan Rev 2 to be effective 1/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030–5234.

Comments Due: 5 p.m. ET 11/20/15.

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: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28208 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Beverly Lock and Dam Water Power	Project No. 13404–002
Devola Lock and Dam Water Power Project	Project No. 13405–002
Malta/McConnelsville Lock and Dam Water Power Project	Project No. 13406–002
Lowell Lock and Dam Water Power Project	Project No. 13407–002
Philo Lock and Dam Water Power Project	Project No. 13408–002
Rokeby Lock and Dam Water Power Project	Project No. 13411–002

On September 10, 2015, the Federal Energy Regulatory Commission (Commission) issued notice of a proposed restricted service list for the preparation of a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at each of the following proposed projects: (1) Beverly Lock & Dam Water Power Project No. 13404; (2) Devola Lock & Dam Water Power Project No. 13405; (3) Malta Lock & Dam Water Power Project No. 13406; (4) Lowell Lock & Dam Water Power Project No. 13407; (5) Philo Lock & Dam Water Power Project No. 13408; (6) and Rokeby Lock & Dam Water Power Project No. 13411. Rule 2010(d)(1) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2010(d)(1) (2014), provides for the establishment of such a list for a particular phase or issue in a proceeding to eliminate unnecessary expense or improve administrative efficiency. Under Rule 385.2010(d)(4), persons on the official service list are to be given notice of any proposal to establish a restricted service list and an opportunity to show why they should also be included on the restricted service list or why a restricted service list should not be established.

On October 29, 2015, Valincia Darby, Regional Environmental Protection Assistant for the Department of the Interior, requested to be added to the restricted service list and be included as a consulting party in the section 106 of

the National Historic Preservation Act consultation process so that she may stay apprised and provide project input.

Under Rule 385.2010(d)(2), any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the phase or issue in the proceeding for which the list is established. Valincia Darby has identified an interest in issues relating to the management of historic properties at the Beverly Lock and Dam Water Power Project, Devola Lock and Dam Water Power Project, Malta/McConnelsville Lock and Dam Water Power Project, Lowell Lock and Dam Water Power Project, Philo Lock and Dam Water Power Project, and Rokeby Lock and Dam Water Power Project. Therefore, she and her representatives will be added to the restrictive service list.

Accordingly, the restricted service list issued on September 10, 2015, for Projects Nos. 13404, 13405, 12406, 13407, 13408, and 13411 is revised to add the following person: Valincia Darby or representative, Regional Environmental Protection Assistant, Department of the Interior, OEPC, 200 Chestnut Street, Rm 244, Philadelphia, PA 19106.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28202 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Teleconference

	Project Nos.
Clean River Power MR–3, LLC.	P–13404–002
Clean River Power MR–1, LLC.	P–13405–002
Clean River Power MR–5, LLC.	P–13406–002
Clean River Power MR–2, LLC.	P–13407–002
Clean River Power MR–7, LLC.	P–13408–002
Clean River Power MR–6, LLC.	P–13411–002

a. Project Names and Numbers: Beverly Lock and Dam Water Power Project No. 13404, Devola Lock and Dam Water Power Project No. 13405, Malta/McConnelsville Lock and Dam Water Power Project No. 13406, Lowell Lock and Dam Water Power Project No. 13407, Philo Lock and Dam Water Power Project No. 13408, and Rokeby Lock and Dam Water Power Project No. 13411 (Muskingum River Projects).

b. Date and Time of Meeting: Thursday, November 19, 2015 at 1:00 p.m. (Eastern Standard Time).

c. *FERC Contact:* Aaron Liberty, Phone: (202) 502–6862, Email: *aaron.liberty@ferc.gov.*

d. Purpose of Meeting: To discuss the U.S. Fish and Wildlife Service's (FWS) responses to Commission staff's determinations of effect for federally listed species described in the Multi-Project Environmental Assessment for Hydropower License, for the proposed Muskingum River Projects, issued on August 27, 2015, and Commission staff's letter to the FWS, issued on October 16, 2015.

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Aaron Liberty at (202) 502–6862 by Tuesday, November 12, 2015, to RSVP and to receive specific instructions on how to participate.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28203 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1630–005; ER15–1375–001; ER15–2602–001; ER10–1967–008; ER10–1968–008; ER10–2720–010; ER11–4428–010; ER12–1880–009; ER12–895–008; ER14–21–004; ER11–4462–013; ER10–1970–008; ER11–4677–008; ER10–1972–008; ER10–1971–022; ER10–1973–007; ER10–1951–010; ER10–1974–017; ER10–1975–018; ER12–2444–007; ER10–1976–007; ER10–1983–008; ER10–1984–008; ER14–2710–005; ER15–58–003; ER11–2365–007; ER10–1985–007; ER10–1986–008, ER12–676–007, ER13–2461–003; ER11–2192–008; ER14–2708–006; ER14–2709–005; ER15–30–003; ER15–2243–001; ER15–1016–001; ER10–1989–007; ER15–2134–001; ER10–1990–008; ER13–2474–004; ER10–1991–008; ER12–1660–008; ER13–2458–002; ER11–4678–008, ER10–1993–008; ER10–1994–007; ER10–2078–009, ER10–1995–007; ER12–631–008.

Applicants: Mantua Creek Solar, LLC, McCoy Solar, LLC, Meyersdale Storage, LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Mountain View Solar, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Red Mesa Wind, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Sky River LLC Sky River Asset Holdings, LLC, Somerset Windpower, LLC, Steele Flats Wind Project, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: Notice of Change in Status of the NextEra Energy Companies [Part 2 of 2].

Filed Date: 10/28/15.

Accession Number: 20151028–5392.

Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER16–61–001.

Applicants: Seville Solar One LLC.

Description: Tariff Amendment: Amendment to MBR Application to be effective 10/13/2015.

Filed Date: 10/29/15.

Accession Number: 20151029–5356.

Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–63–001.

Applicants: Seville Solar Two, LLC.

Description: Tariff Amendment: Amendment to MBR Application to be effective 10/13/2015.

Filed Date: 10/29/15.

Accession Number: 20151029–5359.

Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–64–001.

Applicants: Tallbear Seville LLC.

Description: Tariff Amendment: Amendment to MBR Application to be effective 10/13/2015.

Filed Date: 10/29/15.
Accession Number: 20151029–5360.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–141–001.
Applicants: Conetoe II Solar, LLC.
Description: Tariff Amendment: Amendment to MBR Application to be effective 10/26/2015.
Filed Date: 10/29/15.
Accession Number: 20151029–5362.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–162–000.
Applicants: Southwest Power Pool, Inc.
Description: Petition of Southwest Power Pool, Inc. for Tariff Waiver.
Filed Date: 10/28/15.
Accession Number: 20151028–5409.
Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER16–163–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: Revisions to Update Definitions for Transmission Provider and Tariff to be effective 1/1/2016.
Filed Date: 10/29/15.
Accession Number: 20151029–5289.
Comments Due: 5 p.m. ET 11/19/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–3–000.
Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, 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, Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Cannon Falls LLC, Invenergy Nelson 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, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC.
Description: Quarterly Land Acquisition Report of Beech Ridge Energy LLC, et al.
Filed Date: 10/29/15.
Accession Number: 20151029–5277.
Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: LA15–3–000.
Applicants: Virginia Electric and Power Company, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Manchester Street, Inc., Dominion Retail, Inc., Fairless Energy, LLC, NedPower Mt. Storm, LLC, Fowler Ridge Wind Farm, LLC, Dominion Bridgeport Fuel Cell, LLC, RE Columbia Two LLC, RE Camelot LLC, Selmer Farm, LLC, Mulberry Farm, LLC, CID Solar, LLC, Cottonwood Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Pavant Solar LLC.
Description: Quarterly Land Acquisition Report of Dominion Resources Services, Inc. on behalf of the Dominion Affiliates.
Filed Date: 10/29/15.
Accession Number: 20151029–5283.
Comments Due: 5 p.m. ET 11/19/15.

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: October 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28206 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–7–000]

City of Osceola, Arkansas v. Entergy Arkansas, Inc. and Entergy Services, Inc., Notice of Complaint

Take notice that on October 29, 2015, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(h) and section 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, City of Osceola Arkansas (Osceola or Complainant) filed a complaint against Entergy Arkansas, Inc. (EAI) and Entergy Services, Inc. (collectively Respondents). In the Complaint Osceola seeks an order and asserts that the Commission should compel Respondent to adhere to the rates, terms and conditions of the Power Coordination, Interchange and Transmission Service Agreement between EAI and Osceola. Complainant contends that EAI charged Osceola in violation of that agreement and in violation of the filed rate doctrine, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of corporate officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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 November 30, 2015.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28210 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1831–001.
Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.
Description: Compliance filing: Dominion's compliance filing revising H–16A methodology of calculating ADIT to be effective 5/1/2014.
Filed Date: 10/30/15.
Accession Number: 20151030–5284.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–411–003.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Rate Schedule No. 274—Planning Participation Agreement to be effective 1/1/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5275.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–680–001.
Applicants: PacifiCorp.
Description: Compliance filing: Idaho Power Asset Exchange Compliance Filing (Agreements) to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5310.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–681–001.
Applicants: PacifiCorp.
Description: Compliance filing: Idaho Power Asset Exchange Compliance Filing (Cancellations) to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5312.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–683–001.
Applicants: Idaho Power Company.
Description: Compliance filing: Legacy Agreements Replacement Transaction—Closing Compliance Filing to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5324.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–686–001.
Applicants: Idaho Power Company.
Description: Compliance filing: Legacy Transaction Cancellations—Closing Compliance Filing to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5386.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–1133–001.
Applicants: Idaho Power Company.
Description: Compliance filing: PAC LTF BORA–LGBP Service Agreement—Closing Compliance Filing to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5394.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER15–1595–001.
Applicants: Idaho Power Company.
Description: Compliance filing: PAC LTF BORA–ENPR/LGBP Service Agreements—Closing Compliance Filing to be effective 10/30/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5397.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–194–000.
Applicants: Startrans IO, LLC.
Description: Section 205(d) Rate Filing: Rate Change to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5250.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–195–000.
Applicants: Public Service Company of Colorado.
Description: Section 205(d) Rate Filing: 2015–10–30_NSP-StJms-Tran to Load-592–0.0.0-Filing to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5252.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–196–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 2804 Basin and WAPA–UGPR Meter Agent Agreement Cancellation to be effective 10/1/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5269.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–197–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2015–10–30_MISO TOs Attachment O ADIT Filing to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5274.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–198–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3118 Northern States Power and Basin Electric Meter Agent Agreement to be effective 10/1/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5277.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–199–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Rate Schedule No. 274—Planning Participation Agreement to be effective 10/1/2015.
Filed Date: 10/30/15.
Accession Number: 20151030–5279.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–200–000.
Applicants: Duke Energy Indiana, Inc.
Description: Section 205(d) Rate Filing: Reactive Rate Filing for MISO to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5280.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–201–000.
Applicants: Duke Energy Indiana, Inc.
Description: Section 205(d) Rate Filing: Reactive Rate for Madison (PJM) to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5285.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–202–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Service Agreement No. 347—Tohono O'odham to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5290.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–203–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Section 205(d) Rate Filing: DEC–DEP PTP TSA to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5296.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–204–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: Tri-State Generation and Transmission Association Formula Rate to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5302.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–205–000.
Applicants: DATC Path 15, LLC.
Description: Section 205(d) Rate Filing: Revised Appendix I 2016 to be effective 1/1/2016.
Filed Date: 10/30/15.
Accession Number: 20151030–5319.
Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–206–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: Section 205(d) Rate Filing: 2015–10–30_SA 2862 ITC Midwest-WPL Facilities Service

Agreement (G870) to be effective 11/1/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5345.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–207–000.

Applicants: Dynegy Oakland, LLC.

Description: Section 205(d) Rate Filing: Annual RMR Section 205 Filing and RMR Schedule F Informational Filing to be effective 1/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030–5346.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–208–000.

Applicants: Midcontinent Independent System Operator, Inc., International Transmission Company, ITC Midwest LLC, Michigan Electric Transmission Company, LLC.

Description: Section 205(d) Rate Filing: 2015–10–30_ITC, ITCM, METC Attachment O Revisions to be effective 1/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030–5396.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–209–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: Central Power Electric Cooperative Formula Rate to be effective 1/1/2016.

Filed Date: 10/30/15.

Accession Number: 20151030–5424.

Comments Due: 5 p.m. ET 11/20/15.

Docket Numbers: ER16–210–000.

Applicants: Idaho Power Company.

Description: Section 205(d) Rate Filing: IPC–PAC JOOA Amendment and Exhibit G to be effective 10/30/2015.

Filed Date: 10/30/15.

Accession Number: 20151030–5425.

Comments Due: 5 p.m. ET 11/20/15.

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: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28209 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

October 29, 2015.

	Docket Nos.
PJM Interconnection, L.L.C	ER15–1344–001, ER15–1344–002
PJM Interconnection, L.L.C Potomac Electric Power Company.	ER15–1387–001

As announced in the Notice of Technical Conference issued on October 8, 2015, the Federal Energy Regulatory Commission Staff will hold a technical conference on November 12, 2015, at the Commission's headquarters at 888 First Street NE., Washington, DC 20426 between 10:00 a.m. and 4:00 p.m. (Eastern Time). The purpose of the technical conference is to understand PJM's application of its Order No. 1000-compliant [1] transmission planning process to local transmission facilities, including, but not limited to, the process PJM and the PJM Transmission Owners use to identify local transmission needs and to solicit proposed solutions to identified local transmission needs (such as opening proposal windows),[2] and the process PJM uses to determine whether a transmission solution to an identified local transmission need should be selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solution.

The Commission's orders on PJM's compliance with the local transmission planning requirements of both Order No. 890 [3] and Order No. 1000 and the issue of how PJM and the PJM Transmission Owners conduct local transmission planning will serve to frame this conference. Participants should review and be prepared to discuss the issue of local transmission planning in the context of these previous orders.[4]

In its Order No. 1000 compliance proceedings, PJM stated that individual PJM Transmission Owners do not conduct separate local transmission planning and that local transmission and regional transmission planning are fully integrated in PJM's regional transmission planning process.[5] PJM also stated that, ''through its established regional transmission planning process that fully merges local and regional planning, PJM *evaluates both local and regional planning criteria.*'' [6] PJM explained that transmission owners in the PJM region bring their current local planning information, including all criteria, assumptions, and models used, to the Subregional RTEP Committees,[7] where it is reviewed by the Subregional RTEP Committees to develop and finalize Local Plans that are coordinated with the PJM regional transmission planning process.[8] PJM stated that Local Plans are a product of the Subregional

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132, *order on reh'g,* Order No. 1000–B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

[2] As discussed in the order establishing the technical conference, Dominion Resources Services' revisions to its individual transmission planning criteria will not be discussed at the technical conference. *PJM Interconnection, L.L.C.,* 152 FERC ¶ 61,197, at P15 (2015).

[3] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[4] *See PJM Interconnection, L.L.C.,* 123 FERC ¶ 61,163, at PP 121–143 (2008); *PJM Interconnection, L.L.C.,* 127 FERC ¶ 61,166, at PP 21–31 (2009); and *PJM Interconnection, L.L.C.,* 130 FERC ¶ 61,167, at PP 10–16 (2010) (addressing the local transmission planning requirements of Order No. 890) and *PJM Interconnection, L.L.C.,* 142 FERC ¶ 61,214, at PP 121–123 (2013); *PJM Interconnection, L.L.C.,* 147 FERC ¶ 61,128, at PP 72–83 (2014); *PJM Interconnection, L.L.C.,* 150 FERC ¶ 61,038, at PP 18–46 (2015); and *PJM Interconnection, L.L.C.,* 151 FERC ¶ 61,250, at PP 12–22 (2015) (addressing the local transmission planning requirements of Order No. 1000).

[5] *See, e.g., PJM Interconnection, L.L.C.,* 147 FERC ¶ 61,128, at P 73 (2014) and *PJM Interconnection, L.L.C.,* 150 FERC ¶ 61,038, at P 34 (2015).

[6] PJM July 22, 2013 Second Round Order No. 1000 Regional Compliance Filing Docket No. ER13–198–002, at 17 (emphasis in original). *See also* Operating Agreement, Schedule 6, § 1.2(e) (''The Regional Transmission Expansion Plan planning criteria shall include, Office of the Interconnection planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and the individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715.'').

[7] *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3 (e) (Establishment of Committees).

[8] PJM July 14, 2014 Third Round Regional Compliance Filing, Docket No. ER13–198–004 at 4 and PJM Third Round Regional Compliance Order, 150 FERC ¶ 61,038 at P 20.

RTEP Committees rather than independently existing local plans presented by the transmission owner to the Subregional RTEP Committees for review. Also, PJM explained that it is the Subregional RTEP Committees, rather than an individual transmission owner, that incorporates feedback into the Local Plan.[9] In addition, PJM stated, Local Plans that the Subregional RTEP Committees develop include Supplemental Projects [10] as identified by the PJM Transmission Owners within their zones, and Subregional RTEP Projects [11] developed to comply with all applicable reliability criteria, including the local transmission owners planning criteria, or based on market efficiency analysis and in consideration of Public Policy Requirements.[12]

Dayton Power and Light Company (Dayton) and the PJM Transmission Owners also addressed the PJM local transmission planning process in their rehearing requests submitted in Docket No. ER15–1387–001 proceeding. Dayton stated that local transmission projects are included as part of PJM's annual regional transmission planning process, but not because PJM has had any significant role in their design or planning, as local transmission projects are designed and developed by the local transmission owner.[13] Dayton stated that transmission local owner planning criteria and transmission plans are presented at the Subregional RTEP Committees and at the PJM Transmission Expansion Advisory Committee, but those presentations are made as informational items and are not presented for approval by those committees.[14] Dayton also stated that the only relationship between local transmission projects and the PJM regional transmission planning process is to inform PJM on what is being built by the local transmission owner under the transmission owner local planning criteria in order to model flows and assess system reliability. Dayton stated therefore, that PJM does not select the local transmission project as the most cost-effective way to meet the transmission owner local planning criteria for cost allocation purposes, but rather the project is proposed to PJM by the local transmission owner. Dayton stated it acknowledges that the local transmission project is reviewed by committees within PJM and ultimately by the PJM Board, but stated that such review is not for purposes of determining whether the project is needed regionally or provides some regional reliability benefit.[15]

PJM Transmission Owners stated that all transmission projects proposed and considered in the PJM regional transmission plan are not necessarily selected for the purposes of regional cost allocation and are included in the RTEP to address various issues and needs, some local and some regional.[16] The PJM Transmission Owners stated that local transmission projects are included in the PJM regional transmission plan only to ensure they are considered in the overall PJM planning process for purposes of determining if the projects modify power flows and create reliability concerns, and whether the criteria driving a local transmission project are better addressed through a project that is more regional in scope.[17]

Given the background provided herein, participants should be prepared to discuss the following:

1. The process through which local transmission planning is conducted, from the identification of transmission needs through the selection of transmission projects.

a. How do PJM and the PJM Transmission Owners define the terms transmission owner local planning criteria, local transmission need, and local transmission project?

b. How and when are local transmission needs identified? How and when can stakeholders comment on the identified local transmission needs?

c. How do the local transmission planning and regional transmission planning processes in PJM interact? Are there two distinct, separate processes, or are they one in the same? If there are two separate processes, at what point are the transmission owner local planning criteria and/or transmission project proposals to address those local planning criteria incorporated into the regional transmission planning process? How does PJM decide which local transmission needs are integrated into the PJM regional transmission planning process?

d. What is the relationship between the transmission needs proposed in the Subregional RTEP Committees' Local Plans with the transmission needs incorporated into the regional transmission planning process?

e. What method is used to disclose to stakeholders the criteria, assumptions, and data that underlie local transmission planning? How and when can stakeholders provide input and offer suggested transmission projects to address local transmission needs?

f. How and when do individual PJM Transmission Owners identify transmission projects meant to address local transmission needs?

g. What analysis does PJM perform on transmission projects proposed by PJM Transmission Owners and proposed by stakeholders to address local transmission needs?

h. What is PJM's role in developing, evaluating, and selecting transmission project proposals to address transmission owner local planning criteria? What are the PJM Transmission Owners' roles in developing, evaluating, and selecting these proposals?

i. Is the process through which PJM and the PJM Transmission Owners develop, evaluate, and select transmission project proposals to address transmission owner local planning criteria different from the process through which they develop, evaluate, and select transmission project proposals to address NERC or Regional Entity reliability standards?

j. What defined categories of transmission facilities are currently included in a PJM RTEP? Are there any defined categories of transmission projects currently included in the PJM RTEP that PJM does not consider to be selected in the regional transmission plan for purposes of cost allocation? If

[9] PJM Third Round Regional Compliance Order, 150 FERC ¶ 61,038 at PP 34, 36–37. In addition, PJM stated that the Subregional RTEP Committees have served as an open stakeholder forum through which transmission owners integrate their local transmission planning under PJM's open and coordinated regional transmission planning process for all transmission facilities below 230 kV. PJM July 14, 2014 Third Round Regional Compliance Filing, Docket No. ER13–198–004 at 4.

[10] A Supplemental Project is a transmission expansion or enhancement that is not required for compliance with PJM's criteria for system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection. PJM, Intra-PJM Tariffs, Definitions (S–T), § 1.42A.02 (Supplemental Project). PJM has also stated that the Supplemental Project category of transmission projects was created to allow PJM to evaluate local transmission owner planning standards and criteria to determine if local reinforcements are needed to optimally meet the local transmission owner planning criteria and to determine whether reinforcements may be categorized as PJM RTEP baseline or as Supplemental Projects. PJM Oct. 25, 2012 First Order No. 1000 Regional Compliance Filing, Docket No. ER12–198–000, at n.129.

[11] ''Subregional RTEP Project'' shall mean a transmission expansion or enhancement rated below 230 kV which is required for compliance with the following PJM criteria: System reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection. PJM Operating Agreement, § 1.42A.01 (Subregional RTEP Project).

[12] PJM Operating Agreement, (Local Plan) § 1.18A.

[13] Dayton Rehearing Request, Docket No. ER15–1387–001, at 5.

[14] Dayton Rehearing Request, Docket No. ER15–1387–001, at 2–3.

[15] Dayton Rehearing Request, Docket No. ER15–1387–001, at 4 (emphasis in original).

[16] PJM Transmission Owners Rehearing Request, Docket No. ER15–1387–001, at 11–12.

[17] PJM Transmission Owners Rehearing Request, Docket No. ER15–1387–001, at 10.

so, are these transmission projects eligible to use PJM's regional cost allocation method?

2. The process through which Supplemental Projects become transmission projects eligible for selection in the regional transmission plan for purposes of cost allocation.

a. If a Supplemental Project is transitioned into a Required Transmission Enhancement that is eligible for regional cost allocation in PJM's RTEP, does it undergo the same analysis as a transmission project first proposed as a Subregional RTEP Project?

b. How are Supplemental Projects distinguished from transmission projects that address transmission owner local planning criteria?

3. The proposal window process for transmission project proposals intended to address transmission owner local planning criteria.

a. Except for Immediate-need Reliability Projects, does PJM currently open proposal windows for all transmission needs identified in its regional transmission planning process, including those needs that arise as a result of local transmission needs and transmission owner local planning criteria?

b. If PJM does not currently open proposal windows for all transmission needs identified in PJM's regional transmission planning process, how does PJM determine whether to open a proposal window for a given transmission need?

c. If a PJM Transmission Owner proposes an upgrade to its existing transmission facilities to address a local transmission need, does PJM open a proposal window to solicit other possible solutions to address the local transmission need that would be addressed by the upgrade?

d. If a PJM Transmission Owner proposes a new 500 kV transmission facility to address a local transmission need, does PJM currently open a proposal window to solicit other possible solutions to address the local transmission need that would be addressed by PJM Transmission Owner's proposed new 500 kV transmission facility?

The technical conference will be led by Commission staff, and is open to the public. Pre-registration through the Commission's Web site (*https://www.ferc.gov/whats-new/registration/11-10-15-form.asp*) is encouraged but not required. The conference will include discussions responding to Commission staff's questions led by PJM and the PJM Transmission Owners, with opportunity for questions and comments during those discussions for participating parties. The specific agenda and procedures to be followed at the conference will be announced by staff at the opening of the conference.

The technical conference will not be transcribed. However, there will be a free audio cast of the conference. Anyone wishing to listen to the meeting should send an email to Sarah McKinley at *sarah.mckinley@ferc.gov* by November 3, 2015, to request call-in information. Please reference ''call information for ER15–1344/1387 technical conference'' in the subject line of the email. The call-in information will be provided prior to the meeting. Persons listening to the technical conference may participate by submitting questions, either prior to or during the technical conference, by emailing *RTEPconference@ferc.gov.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

Following the technical conference, the Commission will consider post-technical conference comments submitted on or before December 10, 2015. Reply comments will be due on or before January 7, 2016. The written comments will be included in the formal record of the proceeding, which, together with the record developed to date, will form the basis for further Commission action.

For more information about this technical conference, please contact Katherine Scott, 202–502–6495, *katherine.scott@ferc.gov,* regarding Docket Nos. ER15–1344–001 and ER15–1344–002; Nicole Buell, 202–502–6846, *nicole.buell@ferc.gov,* regarding Docket No. ER15–1387–001; or Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov,* regarding logistical issues.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–28157 Filed 11–4–15; 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 exempt wholesale generator filings:

Docket Numbers: EG16–14–000.

Applicants: Utah Red Hills Renewable Park, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Utah Red Hills Renewable Park, LLC.

Filed Date: 10/29/15.

Accession Number: 20151029–5259.

Comments Due: 5 p.m. ET 11/19/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1883–001; ER15–1418–001; ER10–1836–008; ER10–2005–008; ER11–26–008; ER10–1838–008; ER10–2551–007; ER10–1915–007; ER12–569–009; ER15–1925–001; ER10–1841–008; ER13–712–009; ER10–1843–008; ER10–1844–008; ER10–1845–008; ER10–1846–007; ER13–1991–005; ER13–1992–005; ER10–1847–007; ER10–1849–008; ER11–2037–008; ER13–752–007; ER12–2227–008; ER10–1851–006; ER10–1852–012; ER10–1855–007; ER10–1856–007; ER10–1857–007; ER10–1887–008; ER10–1890–007; ER10–1897–008; ER10–1899–008; ER10–1902–008; ER10–1903–008; ER11–2160–007; ER10–1905–008; ER10–1906–006; ER10–1907–008; ER10–1918–008; ER10–1920–010; ER10–1925–008; ER10–1927–008; ER10–1928–010; ER11–2642–008; ER10–1930–006; ER10–1931–007; ER10–1932–007; ER10–1935–007; ER10–1950–008; ER13–2112–003; ER15–2101–002; ER10–1952–008; ER15–2601–001; ER11–3635–007; ER10–2006–009; ER10–1961–008; ER12–1228–010; ER10–1962–007; ER10–1963–007; ER10–1964–008; ER10–1965–008; ER12–2226–006; ER12–2225–006; ER14–2138–003; ER10–1966–007; ER14–2707–005.

Applicants: Adelanto Solar, LLC, Adelanto Solar II, LLC, Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Breckinridge Wind Project, LLC, Butler Ridge Wind Energy Center, LLC, Cimarron Wind Energy, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, Diablo Winds, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Burleigh County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock

County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Garden Wind, LLC, Genesis Solar, LLC, Golden West Power Partners, LLC, Gray County Wind Energy, LLC, Green Mountain Storage, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Logan Wind Energy LLC, Mammoth Plains Wind Project, LLC.

Description: Notice of Change in Status of the NextEra Energy Companies [Part 1 of 2].

Filed Date: 10/28/15.

Accession Number: 20151028–5364.

Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER16–143–001.

Applicants: Citizens Sunrise Transmission LLC.

Description: Tariff Amendment: Amendment to TRBAA Filing to be effective 1/1/2016.

Filed Date: 10/28/15.

Accession Number: 20151028–5323.

Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER16–158–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment AE Regarding Pricing in the Context of Ramp Constraints to be effective 12/27/2015.

Filed Date: 10/28/15.

Accession Number: 20151028–5357.

Comments Due: 5 p.m. ET 11/18/15.

Docket Numbers: ER16–159–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Removal of NEPOOL Review Board to be effective 1/1/2016.

Filed Date: 10/29/15.

Accession Number: 20151029–5108.

Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–160–000.

Applicants: New-Indy Ontario LLC.

Description: Baseline eTariff Filing: Application for MBR to be effective 1/1/2016.

Filed Date: 10/29/15.

Accession Number: 20151029–5185.

Comments Due: 5 p.m. ET 11/19/15.

Docket Numbers: ER16–161–000.

Applicants: New-Indy Oxnard LLC.

Description: Baseline eTariff Filing: Application for MBR to be effective 1/1/2016.

Filed Date: 10/29/15.

Accession Number: 20151029–5187.

Comments Due: 5 p.m. ET 11/19/15.

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: October 29, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28205 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–12–000]

Commission Information Collection Activities (FERC–725); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725 [Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards]. The Commission previously issued a Notice in the **Federal Register** (80 FR 50846, 8/21/2015) requesting public comments. The Commission received no comments on the FERC–725 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due December 7, 2015.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0225 or collection number (FERC–725), should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC15–12–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards.

*OMB Control No.:*1902–0225.

Type of Request: Three-year extension of the FERC–725 information collection requirements with no changes to the current reporting requirements.

Abstract: The FERC–725 information collection contains the following information collection elements:

- *Self Assessment and Electric Reliability Organization (ERO) Application:* The Commission requires the ERO to submit to FERC a performance assessment report every five years. The next assessment is due in 2019. Each Regional Entity submits a performance assessment report to the

ERO. Submitting an application to become an ERO is also part of this collection.[1]

• *Reliability Assessments:* 18 CFR 39.11 requires the ERO to assess the reliability and adequacy of the Bulk-Power System in North America. Subsequently, the ERO must report to the Commission on its findings. Regional entities perform similar assessments within individual regions. Currently, the ERO submits to FERC three assessments each year: Long term, winter, and summer. In addition, NERC also submits various other assessments as needed.

• *Reliability Standards Development:* Under section 215 of the Federal Power Act (FPA), the ERO is charged with developing Reliability Standards. Regional Entities may also develop regional specific standards. Reliability Standards are one of the three principal mechanisms provided to FERC to ensure reliability on the Bulk-Power System.

• *Reliability Compliance:* Reliability Standards are mandatory and enforceable upon approval by FERC. In addition to the specific information collection requirements contained in each Reliability Standard (cleared under other information collections), there are general compliance, monitoring and enforcement information collection requirements imposed on applicable entities. Audits, spot checks, self-certifications, exception data submittals, violation reporting, and mitigation plan confirmation are included in this area.

• *Stakeholder Survey:* The ERO uses a stakeholder survey to solicit feedback from registered entities[2] in preparation for its three year and five year self-performance assessment. The Commission assumes that the ERO will perform another survey prior to the 2019 self- assessment.

• *Other Reporting:* This category refers to all other reporting requirements imposed on the ERO or regional entities in order to comply with the Commission's regulations. For example, FERC may require NERC to submit a special reliability assessment. This category is mentioned to capture these types of one-time filings required of NERC or the Regions.

The Commission implements its responsibilities through 18 CFR part 39. Without the FERC–725 information, the Commission, ERO, and Regional Entities will not have the data needed to determine whether sufficient and appropriate measures are being taken to ensure the reliability of the nation's electric grid.

Type of Respondents: ERO and regional entities.

Estimate of Annual Burden:[3] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–725: CERTIFICATION OF THE ERO; PROCEDURES FOR ELECTRIC RELIABILITY STANDARDS

Type of respondent	Type of reporting requirement	Number of respondents (A)	Number of responses per respondent (B)[4]	Total number of responses (A) × (B) = (C)	Average burden hours and cost per response (D)	Estimated total annual burden and cost (C) × (D)
Electric Reliability Organization (ERO)[1].	Self-Assessment	1	.2	.2	7,800 [5] $574,704	1,560 $114,941
	Reliability Assessments.		5.5	5.5	15,600 [5] $1,149,408	85,800 $6,321,744
	Reliability Compliance.		2	2	12,480 [5] $919,526	24,960 $1,839,053
	Standards Development.		1	1	28,080 [6] $1,865,916	28,080 $1,865,916
	Other Reporting		1	1	2,080 [7] $270,130	2,080 $270,130
Regional Entities	Self-Assessment	8	.2	1.6	16,640 [6] $1,105,728	26,624 $1,769,164
	Reliability Assessments.		1	8	15,600 [6] $1,036,620	124,800 $8,292,960
	Reliability Compliance.		1	8	40,560 [5] $2,988,461	324,480 $23,907,688
	Standards Development.		1	8	2,340 [6] $155,493	18,720 $1,243,944
	Other Reporting		1	8	1,040 [7] $135,065	8,320 $1,080,520
Registered Entities	Stakeholder Survey	estimated 1,446.	.2	289	8 [5] $589	2,312 $170,221
	Reliability Compliance.		1	1,446	400 [5] $29,472	578,400 $42,616,512

[1] The Commission does not expect any new ERO applications to be submitted in the next five years and is not including any burden for this requirement in the burden estimate. FERC still seeks to renew the regulations pertaining to a new ERO application under this renewal but is expecting the burden to be zero for the foreseeable future. 18 CFR 39.3 contains the regulation pertaining to ERO applications.

[2] A ''registered entity'' is an entity that is registered with the ERO. All Bulk-Power System owners, operators and users are required to register with the ERO. Registration is the basis for determining the Reliability Standards with which an entity must comply. See *http://www.nerc.com/page.php?cid=3%7C25* for more details.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] In all instances below where the number of responses per respondent is ''1'' the Commission acknowledges that actual number of responses varies and cannot be estimated clearly.

[5] Uses the weighted hourly average wage (salary plus benefits) for electrical engineers and lawyers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $91.82/hour. The weighted average used the following calculation: [(0.20) * ($129.87) + (0.60) * ($66.45) + (0.2) * ($39.18)] = $73.68. $129.87/hour is the wage for lawyers. $66.45/hour is the wage for engineers. $39.17/hour is the wage for office and administrative support. Occupation codes are 23–0000, 17–2071, and 43–0000 respectively.

FERC–725: CERTIFICATION OF THE ERO; PROCEDURES FOR ELECTRIC RELIABILITY STANDARDS—Continued

Type of respondent	Type of reporting requirement	Number of respondents (A)	Number of responses per respondent (B) [4]	Total number of responses (A) × (B) = (C)	Average burden hours and cost per response (D)	Estimated total annual burden and cost (C) × (D)
Subtotals:						
ERO	N/A					* 142,480
Regional						* 502,944
Registered						* 580,712
Total Burden Hours						1,226,136 *
Total Cost						$89,492,791

* hrs.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28211 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12962–002]

Newburgh Hydro, LLC; Notice of Technical Conference

On Tuesday, November 17, 2015, Commission staff will hold a technical conference to discuss the concerns of Alcoa Inc. and Alcoa Power Generating Inc. related to navigation at Newburgh Hydro, LLC's proposed Newburgh Hydroelectric Project No. 12962.

The technical conference will begin at 2:00 p.m. Eastern Standard Time. The conference will be held at the Federal Energy Regulatory Commission headquarters building located at 888 1st Street NE., Washington, DC, and will include teleconference capabilities.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference, but a summary of the meeting will be prepared for the project record. If you are interested in participating in the meeting you must contact Emily Carter at (202) 502–6512 or *emily.carter@ferc.gov* by November 12, 2015 to receive specific instructions on how to participate.

Dated: October 30, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–28212 Filed 11–4–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0333; FRL–9936–53–OAR]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for the Greenhouse Gas Reporting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information collection request renewal.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that Environmental Protection Agency is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2016. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be received on or before January 4, 2016.

Public Hearing. The EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by November 12, 2015. If requested, the hearing will be conducted on November 20, 2015, in the Washington, DC area. The EPA will provide further information about the hearing on the Greenhouse Gas Reporting Program Web site, *http://www.epa.gov/ghgreporting/index.html* if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0333 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2014–0831 or RIN No. 2060–AS37 in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 28221T, Attention Docket ID No. EPA–HQ–OAR–2012–0333, 1200 Pennsylvania Avenue NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

[6] Uses the hourly average wage (salary plus benefits) for electrical engineers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $66.45/hour. Occupation code is 17–2071.

[7] Uses the hourly average wage (salary plus benefits) for lawyers obtained from the Bureau of Labor Statistics (data for May 2014, posted on 4/1/2015 at *http://www.bls.gov/oes/current/naics2_22.htm*): $129.87/hour. Occupation code is 23–0000.

• *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are accepted only during the normal hours of operation of the Docket Center, and special arrangements should be made for deliveries of boxed information.

For additional information on submitting comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Program Web site, *http://www.epa.gov/ghgreporting/index.html.* To submit a question, select Help Center, followed by ''Contact Us.''

SUPPLEMENTARY INFORMATION:

Additional Information on Submitting Comments: To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone (202) 343–9263, email address: *GHGReportingRule@epa.gov.*

Instructions: Direct your comments to Docket ID No. 2012–0333 Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for the Greenhouse Gas Reporting Program; EPA ICR. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Should you choose to submit information that you claim to be CBI, clearly mark the part or all of the information that you claim to be CBI. For information that you claim to be CBI in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2012–0333. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/ghgreporting/index.html.*

How can I access the docket and/or submit comments? The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0333, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the EPA Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is (202) 566–1744, and the telephone number for the EPA Air and Radiation Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in? Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the

paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA? You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to? [Docket ID No. EPA–HQ–OAR–2012–0333.]

Affected entities: Entities potentially affected by this action are suppliers of certain products that will emit GHG when released, combusted, or oxidized, motor vehicle and engine manufacturers, including aircraft engine manufacturers; facilities in certain industrial categories that emit greenhouse gases; and facilities that emit 25,000 metric tons or more of carbon dioxide equivalent (CO_2 e) per year.

Title: Information Collection Request for the Greenhouse Gas Reporting Program.

ICR number: EPA ICR No. 2300.17

ICR status: This ICR is currently scheduled to expire on May 31, 2016. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In response to the FY2008 Consolidated Appropriations Act (H.R. 2764; Pub. L. 110–161) and under authority of the Clean Air Act, the EPA finalized the Mandatory Reporting of Greenhouse Gases Rule (GHG Reporting Rule) (74 FR 56260; October 30, 2009). The GHG Reporting Rule, which became effective on December 29, 2009, establishes reporting requirements for certain large facilities and suppliers. It does not require control of greenhouse gases. Instead, it requires that sources emitting above certain threshold levels of (CO_2 e) monitor and report emissions.

Subsequent rules have promulgated requirements for additional facilities, suppliers, and mobile sources; provided clarification and corrections to existing requirements; finalized confidentiality business information (CBI) determinations, amended recordkeeping requirements, and implemented an alternative verification approach. Collectively, the GHG Reporting Rule and its associated rulemakings are referred to as the Greenhouse Gas Reporting Program (GHGRP).

The purpose for this ICR is to renew and revise the GHG Reporting Rule ICR to update and consolidate the burdens and costs imposed by all of the current ICRs under the GHGRP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the EPA's estimate, which is only briefly summarized here:

1. Estimated total number of potential respondents: 9,899.
2. Frequency of response: Annual, quarterly.
3. Estimated total average number of responses for each respondent: 72.
4. Estimated total annual burden hours: 903,871 hours. This includes estimated total respondent hours of 878,911 hours and estimated total EPA hours of 24,960 hours.
5. Estimated total annual costs: $113,837,441. This includes an estimated cost of $38,477,161 for capital investment as well as maintenance and operational costs, an estimated respondent burden cost of $63,360,249, and an estimated EPA cost of $12,000,030.

Are there changes in the estimates from the last approval? There is a decrease of 102,121 hours in the total estimated respondent burden compared with that identified in the last ICR renewal. This change in burden reflects an adjustment in the number of respondents from projected to actual, an adjustment of labor rates and capital costs to reflect 2013 dollars, a re-evaluation of the activities and costs associated with Subparts W and RR, and the addition of new segments and new reporters under Subpart W.

What is the next step in the process for this ICR? The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 28, 2015.

Paul M. Gunning,

Director, Climate Change Division, Office of Air and Radiation.

[FR Doc. 2015–28275 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0667; FRL–9936–59–OW]

National Wetland Condition Assessment 2011 Draft Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft report on the National Wetland Condition Assessment (NWCA 2011) and opens a 30-day public review and comment period on the draft report. The NWCA 2011 is the first national assessment of the ecological condition of the nation's wetlands. The NWCA 2011 draft report describes the results of a nationwide

probabilistic survey of wetlands conducted in the spring and summer of 2011 by EPA and its state and tribal partners. Results are based on ecological data collected at over 1,000 sites using standardized protocols and include estimates of wetland area in ''good,'' ''fair,'' and ''poor'' condition, nationally and by ecoregion, for a biological indicator based on plants and key wetland stressors. The report also provides information on the design and implementation of the scientific assessment, possible implications, and future actions. This report completes the first series of probability-based surveys conducted under EPA's National Aquatic Resource Surveys program.

DATES: Comments must be received on or before December 7, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0667, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregg Serenbetz, Wetlands Division, Office of Water (4502T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202–566–1253; email address: *serenbetz.gregg@epa.gov.*

SUPPLEMENTARY INFORMATION: The *National Wetland Condition Assessment 2011: A Collaborative Survey of the Nation's Wetlands* is the first report assessing the condition of the nation's wetlands and the fifth report in a series of National Aquatic Resource Surveys (NARS), a national-scale monitoring program designed to produce statistically-valid assessments that answer critical questions about the condition of waters in the United States.

The key goals of the NWCA are to (1) describe the ecological condition of the nation's wetlands and stressors commonly associated with poor condition; (2) collaborate with states and tribes in developing complementary monitoring tools, analytical approaches, and data management technology to aid wetland protection and restoration programs; and (3) advance the science of wetland monitoring and assessment to support wetland management needs. EPA began planning activities for the NWCA in 2006 and engaged with a broad group of stakeholders including state environmental and natural resource agencies, tribes, federal agencies, academia, and other organizations to help inform different aspects of the assessment.

Both tidal and nontidal wetlands were targeted for sampling. To select wetland sites for sampling, EPA used the same digital map of wetland locations that the U.S. Fish and Wildlife Service uses in their Wetland Status and Trends program. While not a comprehensive map of all wetlands throughout the U.S., these mapped locations are used to statistically represent the extent of wetlands nationally. Sampling sites for the NWCA were randomly selected from this digital map and distributed based on the prevalence of wetlands across the U.S. using a survey design that ensures the results reflect the full range of wetlands in the target population. Each wetland site was sampled using standardized field protocols to collect ecological data on plants, soil, water chemistry, algae, and wetland stressors. The use of standardized field and laboratory protocols is another key feature of the NWCA and allows the data to be combined to produce a nationally consistent assessment. The results presented in the NWCA 2011 report are based on data from 1,138 wetland sites sampled during the spring and summer of 2011 in the conterminous U.S. (41 sites sampled in Alaska are not included in the national and regional results in the report). The NWCA 2011 report describes the ecological condition of wetlands nationally and in four ecoregions (Coastal Plains, Eastern Mountains and Upper Midwest, Interior Plains, and West) using a biological indicator of condition and several physical, chemical, and biological indicators of stress.

This is the first time a national monitoring study of the ecological condition of wetlands has been conducted. Under the NARS program, studies have been completed for wadeable streams (2004), lakes (2007), rivers and streams (2008–2009), and coastal waters (2010). The release of the NWCA 2011 final report will complete the first full cycle of NARS reports. EPA and our partners plan to continue to assess each of these water body types on a five year rotating basis.

This draft report has undergone external peer review. States and other stakeholders also reviewed and commented on the draft report. The purpose of this action is to solicit public comment on the draft report before finalizing it. EPA is seeking comment on the information contained in the draft report, the reasonableness of the conclusions, and the clarity with which the information is presented. The draft report and other supporting materials may also be viewed and downloaded from EPA's Web site at *http://www2.epa.gov/national-aquatic-resource-surveys/national-wetland-condition-assessment.*

Dated: October 28, 2015.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2015–28266 Filed 11–4–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0562]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 4, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents and Responses: 10 respondents; 15 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic cable service and associated rates after its request for certification has been denied or revoked, may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification. Oppositions to petitions may be filed within 15 days after the petition is filed. Replies may be filed within seven days of filing of oppositions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2015–28137 Filed 11–4–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–1216]

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting in the Commission Meeting Room, from 12:30 p.m. to 4:30 p.m. at the Federal Communications Commission, 445 12 Street SW., Washington, DC 20554.

DATES: Wednesday, December 9, 2015.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: At the December 9th meeting, the FCC Technological Advisory Council (TAC) will discuss progress on and issues involving its work program agreed to at its initial meeting on April 1, 2015. In addition, it is expected that final recommendations from current work groups will be presented to all TAC members. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may not be possible to fill.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

[FR Doc. 2015–28247 Filed 11–4–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10414 Polk County Bank, Johnston, IA

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10414 Polk County Bank, Johnston, IA (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Polk County Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 2, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–28243 Filed 11–4–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10112 First Bank of Kansas City, Kansas City, Missouri

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10112 First Bank of Kansas City, Kansas City, Missouri (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Bank of Kansas City (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 2, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–28242 Filed 11–4–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, November 10, 2015 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2015–09: Senate Majority PAC and House Majority PAC
Draft Advisory Opinion 2015–11: FYP, LLC
Draft Advisory Opinion 2015–12: Ethiq, Inc.
REG 2014–09 Amendment of 11 CFR 115
Rulemaking Priorities and Proposals: Regulatory Relief for Political Parties
REG 2014–10 Outline of Draft NPRM Implementing Party Segregated Accounts
REG 2013–01 Draft Notice of Proposed Rulemaking on Technical Modernization
Notice of Proposed Rulemaking on Reporting Multistate Independent Expenditures and Electioneering Communications in Presidential Primary Elections
Commission Documents/Public Disclosure Policies
Third Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2015–28370 Filed 11–3–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012366.

Title: MOL/NMCC/WLS and NYK Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd; Nissan Motor Car Carrier Co., Ltd.; World Logistics Service (U.S.A.), Inc.; and NYK Line (N.A.), Inc.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500, Washington, DC 20001.

Synopsis: The agreement would authorize the parties to charter space to/from one another for the carriage of vehicles and other Ro/Ro cargo in the trade between the U.S. and all foreign countries.

Agreement No.: 012367.

Title: MSC/Maersk Line Trans-Atlantic Space Charter Agreement.

Parties: Maersk Line A/S and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes MSC to charter space to Maersk in the trade from Bremerhaven, Germany and Rotterdam, the Netherlands to the Port of New York/New Jersey.

Agreement No.: 012368.

Title: Hybur Ltd./Crowley Space Charter Agreement.

Parties: Hybur Ltd. and Crowley Caribbean Services, LLC.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes Hybur to charter space to Crowley in the trade between Port Everglades, FL and George Town, Grand Cayman.

By Order of the Federal Maritime Commission.

Dated: October 30, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–28132 Filed 11–4–15; 8:45 am]

BILLING CODE 6731–AA–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 November 30, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Town and Country Financial Corporation,* Springfield, Illinois; to merge with West Plains Investors, Inc., and thereby indirectly acquire Premier Bank of Jacksonville, both in Jacksonville, Illinois.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Breckinridge Bancshares, Inc.,* Irvington, Kentucky; to acquire 100 percent of the voting shares of American Bank & Trust Company, Inc., Bowling Green, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–28262 Filed 11–4–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 November 30, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Oculina Banc Corp,* Vero Beach, Florida; proposes to merge with its parent company, Colonial Banc Corp, Vero Beach, Florida. Oculina Banc Corp will survive the merger. Colonial Banc Corp and Oculina Banc Corp control Oculina Bank, Vero Beach, Florida.

Board of Governors of the Federal Reserve System, November 2, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–28261 Filed 11–4–15; 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 November 30, 2015.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Southern BancShares (N.C.), Inc., Mount Olive, North Carolina;* to acquire voting shares of Heritage Bankshares Inc., and thereby indirectly acquire Heritage Bank, both in Norfolk, Virginia.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Darwin Bancshares, Inc., Darwin, Minnesota;* to merge with Winthrop Bancshares, Inc., and thereby indirectly acquire Winthrop State Bank, both in Winthrop, Minnesota.

Board of Governors of the Federal Reserve System, October 30, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–28128 Filed 11–4–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16CB; Docket No. CDC–2015–0094]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the evaluation of the progress of CDC partners that receive awards distributed via contracts, grants and cooperative agreements, from the Procurements and Grants Office (PGO). PGO is responsible for the stewardship of these funds while providing excellent, professional services to our partners and stakeholders. Data will be collected for the purpose of evaluating the progress of programmatic activities.

DATES: Written comments must be received on or before January 4, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0094 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

Proposed Project

Performance Progress and Evaluation Report (PPER)—Existing Collection in use without an OMB Control Number—Procurements and Grants Office (PGO), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, approximately 80% of the Centers for Disease Control and Prevention's (CDC) budget is distributed via contracts, grants and cooperative agreements, from the Procurements and Grants Office (PGO) to partners throughout the world to promote health, prevent disease, injury and disability and prepare for new health threats. PGO is responsible for the stewardship of these funds while providing excellent, professional services to our partners and stakeholders.

Currently, CDC uses SF–PPR (a progress report form for Non-Research awards) to collect information semi-annually from Awardees regarding the progress made over specified time periods on CDC funded projects. The SF–PPR (OMB Control Number: 0970–0406, Expiration Date: 10/31/2015) is owned by the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS). This New ICR is being developed by CDC to create a CDC-wide collection tool called the Progress Performance and Evaluation Report (PPER) that will be used to collect data on the progress of CDC Awardees for the purposes of evaluation and to bring the Awardee reporting procedure into compliance with the Paperwork Reduction Act (PRA).

The information collected will enable the accurate, reliable, uniform and timely submission to CDC of each Awardee's work plans and progress reports, including strategies, activities and performance measures. The information collected by the PPER is designed to align with, and support the goals outlined for each of the CDC Awardees. Collection and reporting of the information will occur in an efficient, standardized, and user-friendly manner that will generate a variety of routine and customizable reports. The PPER will allow each Awardee to summarize activities and progress towards meeting performance measures and goals over a specified time period specific to each award. CDC will also have the capacity to generate reports that describe activities across multiple Awardees. In addition, CDC will use the information collection to respond to inquiries from HHS, Congress and other stakeholder inquiries about program activities and their impact.

The total estimated burden is 16,000 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CDC Non-Research contract, grant, and cooperative agreement Awardees.	Performance Progress and Evaluation Report (PPER).	8,000	1	120/60	16,000
Total					16,000

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–28155 Filed 11–4–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0850; Docket No. CDC–2015–0093]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed extension of the Laboratory Response Network information collection.

DATES: Written comments must be received on or before January 4, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0093 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

Proposed Project

Laboratory Response Network—Extension—(OMB Control No. 0920–0850, expires April 30, 2016), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to Federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to suspected acts of biological, chemical, or radiological threats and other public health emergencies.

When Federal, State and local public health laboratories voluntarily join the LRN, they assume specific responsibilities and are required to provide information to the LRN Program Office at CDC. Each laboratory must submit and maintain complete information regarding the testing capabilities of the laboratory. Biennually, laboratories are required to review, verify and update their testing capability information. Complete testing capability information is required in order for the LRN Program Office to determine the ability of the Network to respond to a biological or chemical threat event. The sensitivity of all information associated with the LRN requires the LRN Program Office to obtain personal information about all individuals accessing the LRN Web site. In addition, the LRN Program Office must be able to contact all laboratory personnel during an event so each laboratory staff member that obtains access to the restricted LRN Web site must provide his or her contact information to the LRN Program Office.

As a requirement of membership, LRN Laboratories must report all biological and chemical testing results to the LRN Program at CDC using a CDC developed software tool called the LRN Results Messenger. This information is essential for surveillance of anomalies, to support response to an event that may involve multiple agencies and to manage limited resources. LRN Laboratories must also participate in and report results for Proficiency Testing Challenges or Validation Studies. LRN Laboratories participate in multiple Proficiency

Testing Challenges, Exercises and/or Validation Studies every year consisting of five to 500 simulated samples provided by the LRN Program Office. It is necessary to conduct such challenges in order to verify the testing capability of the LRN Laboratories. The rarity of biological or chemical agents perceived to be of bioterrorism concern prevents some LRN Laboratories from maintaining proficiency as a result of day-to-day testing. Simulated samples are therefore distributed to ensure proficiency across the LRN. The results obtained from testing these simulated samples must also be entered into Results Messenger for evaluation by the LRN Program Office.

During a surge event resulting from a bioterrorism or chemical terrorism attack, LRN Laboratories are also required to submit all testing results using LRN Results Messenger. The LRN Program Office requires these results in order to track the progression of a bioterrorism event and respond in the most efficient and effective way possible and for data sharing with other Federal partners involved in the response. The number of samples tested during a response to a possible event could range from 10,000 to more than 500,000 samples depending on the length and breadth of the event. Since there is potentially a large range in the number of samples for a surge event, CDC estimates the annualized burden for this event will be 2,250,000 hours or 625 responses per respondent.

There is no cost to the respondents other than their time. The total estimated annualized burden is 2,382,300 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Forms	Number of respondents	Average number of responses per respondent	Average burden per response (hours)	Total burden hours
Public Health Laboratories	Biennial Requalification	150	1	2	300
Public Health Laboratories	General Surveillance Testing Results.	150	25	24	90,000
Public Health Laboratories	Proficiency Testing/Validation Testing Results.	150	5	56	42,000
Public Health Laboratories	Surge Event Testing Results	150	625	24	2,250,000
Total					2,382,300

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–28154 Filed 11–4–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16BX; Docket No. CDC–2015–0092]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled ''Monitoring and Reporting for the Core State Violence and Injury Prevention Program Cooperative Agreement.'' CDC will use the information collected to monitor cooperative agreement awardees and to identify challenges to program implementation and achievement of outcomes.

DATES: Written comments must be received on or before January 4, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0092 by any of the following methods:

Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (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.

Proposed Project

Monitoring and Reporting for the Core State Violence and Injury Prevention Program Cooperative Agreement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Unintentional and violence-related injuries and their consequences are the leading causes of death for the first four decades of life, regardless of gender, race, or socioeconomic status. More than 192,000 individuals in the United States die each year as a result of unintentional injuries and violence, and more than 31 million others suffer non-fatal injuries requiring emergency department visits each year. Given these factors, the Public Health Service Act (PHS Act) provides an important opportunity for states to advance public health across the lifespan and to reduce health disparities. Support and guidance for these programs have been provided through cooperative agreement funding and technical assistance administered by CDC's National Center for Injury Prevention and Control (NCIPC). The goal of this ICR is to collect information needed to monitor cooperative agreement programs funded under the Core State Violence and Injury Prevention Program (Core SVIPP) (CDC–RFA–CE16–1602).

Information to be collected will provide crucial data for program performance monitoring and provide CDC with the capacity to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and other sources. Awardees will report progress and activity information to CDC on an annual schedule using an Excel-based fillable electronic templates. Each awardee will submit three information collection tools: Annual Progress Report, Evaluation and Performance Management Plan, and Injury Indicator Spreadsheets. In Year 1, each awardee will have additional burden related to initial collection of the reporting tools. Initial population of the tools is a one-time activity, after completing the initial population of the tools, pertinent information only needs to be updated annually for each report.

CDC will use the information collected to monitor each awardee's progress and to identify facilitators and challenges to program implementation and achievement of outcomes. Monitoring allows CDC to determine whether an awardee is meeting performance and goals and to make adjustments in the type and level of technical assistance provided to them, as needed, to support attainment of their performance measures. With the tools, the use of a standard set of data elements, definitions and specifications at all levels will help to improve the quality and comparability of performance information that is received by CDC for multiple awardees and multiple award types by ensuring that the same information is collected on all strategies and performance measures with slightly different areas of emphasis, depending on the awardee type (BASE, Enhanced with 1 Component, or Enhanced 2 Components).

OMB approval is requested for three years. Participation in the information collection is required as a condition of funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Core SVIPP BASE Awardees	Initial Population—Annual Progress Report.	20	1	22	440
	Annual Progress Report	20	1	11	220
	Evaluation and Performance Management Plan.	20	1	2	40
	Injury Indicator Spreadsheet	20	1	14	280
Core SVIPP 1—Enhanced Component Awardees.	Initial Population—Annual Progress Report.	5	1	73	365
	Annual Progress Report	5	1	58	290
	Evaluation and Performance Management Plan.	5	1	3	15
	Injury Indicator Spreadsheet	5	1	14	70
Core SVIPP 2—Enhanced Component Awardees.	Initial Population—Annual Progress Report.	5	1	146	730
	Annual Progress Report	5	1	116	580
	Evaluation and Performance Management Plan.	5	1	4	20
	Injury Indicator Spreadsheet	5	1	14	70
Total					3,120

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–28153 Filed 11–4–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before December 7, 2015.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–0990–New–30D for reference.

Information Collection Request Title: Information Collection Request Title: Evaluation of the Office on Women's Health Coalition for a Healthier Community Initiative.

Abstract: This collection is to provide data for the national evaluation of the U.S. Department of Health and Human Services (HHS), Office on Women's Health (OWH) Coalition for a Healthier Community (CHC) Initiative. The initiative supports 10 communities with grants to support coalitions in implementing gender-based public health systems approaches, evidence-based health interventions, and outreach and education activities to reduce barriers to and enhance facilitators of improvements in women and girls' health. Each of the grantees has implemented an IRB-approved local evaluation; however, OWH is seeking to collect core data across grantees to examine the extent to which the Government's investment has resulted in achieving OWH-related *Healthy People 2020* priorities and yields lessons learned upon which to plan future initiatives related to its mission.

Likely Respondents: The proposed collection includes plans for interviews with key staff (project directors, project coordinators, local evaluators), coalition members (including chairs and co-chairs), and community leaders connected to the coalitions. These respondents will also complete online surveys about their perceptions of the changes in their community as a result of coalition activities. Program participants and other community members exposed to the coalitions' activities through social media will also complete online surveys. Project directors and local evaluators also annually provide information to OWH on their coalition's functioning, the status of the cost-effectiveness analysis for their coalition's interventions, and the coalition's plans for sustainability. The following table summarizes the ''Total Estimated Annualized Burden—Hours'' by form and type of respondent.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
1—Key Persons Discussion Guide for Telephone Interviews	90	2	1	180
2—Key Persons, Coalition Members, and Community Leaders Online Survey	200	1	20/60	67
3—Coalition Participants and Other Community Members Online Survey	510	1	20/60	170
4—Grantee Annual Report on Coalition Functioning, Cost-Effectiveness, and Sustainability Planning	10	2	2	40
Total				457

Terry Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–28156 Filed 11–4–15; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. FDA–2015–D–3638]

Minutes of Institutional Review Board Meetings: Guidance for Institutions and Institutional Review Boards; Draft Guidance; Availability

AGENCY: The Office for Human Research Protections, Office of the Assistant Secretary for Health, Office of the Secretary, and the Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of the Assistant Secretary for Health, and the Food and Drug Administration (FDA) are announcing the availability of a draft guidance entitled ''Minutes of Institutional Review Board (IRB) Meetings: Guidance for Institutions and IRBs.'' The draft guidance is intended for institutions and IRBs that are responsible for the review and oversight of human subject research conducted or supported by the U.S. Department of Health and Human Services (HHS) or regulated by FDA. The purpose of the

draft guidance is to assist institutions and IRBs in preparing and maintaining minutes of IRB meetings (also referred to in the guidance as minutes) that meet the regulatory requirements for minutes set forth in FDA and HHS regulations. The draft guidance also provides general recommendations on the type and amount of information to be included in the minutes.

DATES: You can comment on any guidance at any time (21 CFR 10.115(g)(5)). To ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance, submit either written or electronic comments by January 4, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier* (*for written/paper submissions*): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–3638 for ''Minutes of Institutional Review Board Meetings: Guidance for Institutions and Institutional Review Boards; Draft Guidance; Availability'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Janet Donnelly, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5167, Silver Spring, MD 20993–0002, 301–796–4187; or Irene Stith-Coleman, Office for Human Research Protections, 1101 Wootton Pkwy., Suite 200, Rockville, MD 20852, 240–453–6900.

SUPPLEMENTARY INFORMATION:

I. Background

OHRP and FDA are announcing the availability of a draft guidance document entitled ''Minutes of Institutional Review Board Meetings: Guidance for Institutions and Institutional Review Boards; Draft Guidance; Availability.'' Because IRBs have been cited in OHRP determination letters and FDA warning letters as having inadequate minutes, OHRP and FDA are providing recommendations on the type and amount of information to include in minutes in order to help IRBs meet the regulatory requirements for minutes.

To enhance human subject protection and reduce regulatory burden, OHRP and FDA have been actively working to harmonize the Agencies' regulatory requirements and guidance for human subject research. This draft guidance document was developed as a part of these efforts. OHRP and FDA believe that it will be most helpful to the regulated community to issue a joint draft guidance document which will clearly demonstrate the Agencies' harmonious approach to the topic of preparing and maintaining minutes of IRB meetings.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of OHRP and FDA on minutes of IRB meetings. It does not establish any rights for any person and is not binding on OHRP, FDA, or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information referenced in this guidance that are related to IRB recordkeeping requirements under 21 CFR 56.115 have been approved under OMB control numbers 0910–0755 and 0910–0130. The collections of information referenced in this guidance that are related to IRB recordkeeping requirements under 45 CFR 46.115 have been approved under OMB control number 0990–0260.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/ScienceResearch/SpecialTopics/RunningClinicalTrials/ProposedRegulationsandDraftGuidances/default.htm,* or *http://www.hhs.gov/ohrp/newsroom/index.html,* or *http://www.regulations.gov.*

Dated: October 23, 2015.

Karen B. DeSalvo,

Acting Assistant Secretary for Health. U.S. Department of Health and Human Services.

Dated: October 27, 2015.

Leslie Kux,

Assistant Commissioner for Policy, U.S. Food and Drug Administration.

[FR Doc. 2015–27986 Filed 11–4–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, November 12, 2015, 10:00 a.m. to November 12, 2015, 02:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD, 20892 which was published in the **Federal Register** on October 19, 2015, 80 FR 63236.

The meeting notice is amended to change the date of the meeting from November 12, 2015 to November 24, 2015. The meeting is closed to the public.

Dated: October 30, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28230 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Therapeutics To Treat Brain Injury and Neurodegenerative Disease

AGENCY: National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7, that the National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Astrocyte Pharmaceuticals, Inc., (''Astrocyte''), a company incorporated under the laws of Delaware and having an office in Cambridge, Massachusetts, to practice the following inventions embodied in the following patent applications: US Provisional Patent Appl. No. 60/176,373 entitled, ''Methanocarba cycloalkyl nucleoside analogues,'' filed 14 Jan 2000 [HHS reference E–176–1999/0–US–01]; Intl. Appl. No. PCT/US01/00981, entitled, ''Methanocarba cycloalkyl nucleoside analogues,'' filed 12 Jan 2001 [HHS reference E–176–1999/0–PCT–02]; Australia Patent No. 2001230913, issued 13 Oct 2005 [HHS reference E–176–1999/0–AU–03]; Canada Patent No. 2.397,366, issued 15 Mar 2011 [HHS reference E–176–1999/0–CA–04]; European Patent Appl. No. 01903043.6 entitled, filed 12 Jan 2001 [HHS Ref No E–176–1999/0–EP–05]; US Patent No. 7,087,589, issued 8 Aug 2006 [HHS reference E–176–1999/0–US–06]; US patent No. 7,790,735, issued 8 Aug 2006 [HHS reference E–176–1999/0–US–07]; and Great Britain patent No. 1252160, issued 16 Aug 2006 [HHS reference E–176–1999/0–US–08]. The patent rights in these inventions have been assigned to the United States of America. The territories included in this license may be worldwide. The field of use may be related to ''Use of the patent rights in the development and sale of therapeutics for cerebral trauma, stroke, and neurodegenerative disorders.''

DATES: Only written comments or applications for a license (or both) which are received by the Technology Advancement Office of the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) on or before November 20, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, patents, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Patrick McCue, Ph.D., Senior Licensing and Patenting Manager, Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases, 12A South Drive, Bethesda, MD 20892, Telephone: (301) 435–5560; Email: *patrick.mccue@nih.gov.* A signed confidentiality non-disclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION:

The technology provides novel nucleoside and nucleotide derivatives that are agonist or antagonists of P1 and P2 receptors and may be useful in the treatment or prevention of various diseases including airway diseases, cancer, cardiac arrhythmias, cardiac ischemia, epilepsy, and Huntington's Disease.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIDDK receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Properly filed competing applications for a license received by the NIDDK in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 30, 2015.

Anna Z. Amar,

Acting Deputy Director, Technology Advancement Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2015–28245 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Provocative Questions—Cancer with an Underlying HIV Infection.
Date: December 9, 2015.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W514, Rockville, MD 20850, (Telephone Conference Call).
Contact Person: Peter J. Wirth, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W514, Rockville, MD 20850, 240–276–6434, *pw2q@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting I (P01).
Date: January 27–28, 2016.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892, 240–276–6456, *tangd@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Program Project Meeting II (P01).
Date: February 2–3, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Caterina Bianco, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W610, Bethesda, MD 20892–9750, 240–276–6459, *biancoc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI SPORE Review II.
Date: February 3–4, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: David G. Ransom, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W124, Rockville, MD 20850, 240–276–6351, *david.ransom@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI SPORE III Review.
Date: February 4–5, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20852, 240–276–6457, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 30, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28229 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Health Disparities/Diversity in Basic Cancer Research Special Emphasis Panel.
Date: November 12, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Health Disparities/Diversity in Basic Cancer Research.
Date: November 12–13, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Svetlana Kotliarova, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–451–3493, *kotliars@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 30, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28227 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: February 9, 2016.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Betsy L. Humphreys, M.L.S., Acting Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *humphreb@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 9–10, 2016.

Open: February 9, 2016, 9:00 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 9, 2016, 4:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: February 10, 2016, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Betsy L. Humphreys, M.L.S., Acting Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *humphreb@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on February 9–10, 2016.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 29, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28235 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR15–162: Pilot Clinical Urology, October 22, 2015, 04:00 p.m. to October 22, 2015, 05:00 p.m., Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202 which was published in the **Federal Register** on September 18, 2015, 80 FR 56476.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting will start on November 23, 2015 at 2:00 p.m. and end at 3:30 p.m. The meeting is closed to the public.

Dated: October 30, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28228 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

Date: April 7–8, 2016.

Open: April 7, 2016, 9:00 a.m. to 12:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 7, 2016, 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 8, 2016, 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

Open: April 8, 2016, 10:00 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license,

or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 29, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28232 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vector Biology.

Date: November 13, 2015.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.

Date: November 19–20, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Mclean Tysons Corner, 7920 Jones Branch Drive, Mclean, VA 22102.

Contact Person: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 2, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28224 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Novel Molecular Mechanism of Longevity.

Date: December 2, 2015.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 30, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28226 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: March 10–11, 2016.

Time: March 10, 2016, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: March 11, 2016, 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 29, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28233 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 25–26, 2016.

Open: February 25, 2016, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 25, 2016, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 26, 2016, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–692, *backusj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 29, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28234 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Investigator-initiated Clinical Trials (IICT)—PAR–13–151 and PAR–13–250''.

Date: December 1, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (R13/U13).

Date: December 1, 2015.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, DVM, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5020, *varthakaviv@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 30, 2015.

Natasha Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28231 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; U01 Advancing Health Disparities Interventions through CBPR-Face-to-Face Review Meeting.

Date: November 30–December 3, 2015.

Time: 6:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 1 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2704, *Deborah.Ismond@nih.gov.*

Dated: November 2, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–28225 Filed 11–4–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-Day notice of Information collection for review; Form No. I–515A; Notice to Student or Exchange Visitor; OMB Control No. 1653–0037.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on August 19, 2015, Vol. 80 No. 20396 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–515A); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. When an academic student (F–1), vocational student (M–1), exchange visitor (J–1), or dependent (F–2, M–2 or J–2) is admitted to the United States as a nonimmigrant alien under section 101(a)(15) of the Immigration and Nationality Act (Act), he or she is required to have certain documentation. If the student or exchange visitor or dependent is missing documentation, he or she is provided with the Form I–515A, Notice to Student or Exchange Visitor. The Form I–515A provides a list of the documentation the student or exchange visitor or dependent will need to provide to the Department of Homeland Security (DHS), Student and Exchange Visitor Program (SEVP) office within 30 days of admission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,701 responses at 10 minutes (0.1667 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,776 annual burden hours.

Dated: November 2, 2015.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2015–28222 Filed 11–4–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Aviation Security Advisory Committee (ASAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) on Friday, November 20, 2015, to discuss issues listed in the ''Meeting Agenda'' section below. This meeting will be open to the public as stated in the ''Summary'' section below.

DATES: The Committee will meet on Friday, November 20, 2015, from 1:00 p.m. to 4:00 p.m. This meeting may end early if all business is completed.

ADDRESSES: The meeting will be held at TSA Headquarters, 601 12th Street South, Arlington, VA 20598–6028.

We invite your comments on the items listed in the ''Meeting Agenda'' section below. You may submit comments on these items, identified by the TSA docket number to this action (Docket No. TSA–2011–0008), to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes the TSA's official regulatory dockets, will scan the submission and post it to FDMS.

For other applicable information on the meeting, comment submissions, facilities, or services, see the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Dean Walter, Aviation Security Advisory Committee Designated Federal Official, Transportation Security Administration (TSA–28), 601 South

12th Street, Arlington, VA 20598–6028, *ASAC@tsa.dhs.gov*, 571–227–2645.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this action by submitting written comments, data, or views on the issues to be considered by the committee as listed in the ''Meeting Summary'' section below. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from the agenda items to be discussed at the meeting. See **ADDRESSES** above for information on where to submit comments.

Please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific item of the meeting agenda, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and Sensitive Security Information (SSI),[1] as that term is defined under 49 U.S.C. 114(r) and 49 CFR part 1520. Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. All comments, however, will become part of the committee record. The docket is available for public inspection before and after the comment closing date. Submit comments by November 16, 2015, on issues listed in the ''Meeting Agenda'' section below.

Handling of Confidential or Proprietary Information and Sensitive Security Information Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552) and DHS's Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov.*

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE., Washington, DC 20590.

Availability of Committee Documents

You can get an electronic copy using the Internet by—

(1) Searching for the key words ''Aviation Security Advisory Committee'' on the electronic Federal Docket Management System Web page at *http://www.regulations.gov*; or

(2) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

Summary

Notice of this meeting is given under sec. (c)(4)(B) of the Aviation Security Stakeholder Participation Act, 49 U.S.C. 44946. The Aviation Security Advisory Committee is exempt from the Federal Advisory Committee Act (5 U.S.C. App.). The committee provides advice and recommendations for improving aviation security measures to the Administrator of TSA.

The meeting will be open to the public and will focus on items listed in the ''Meeting Agenda'' section below. Members of the public, and all non-ASAC members and TSA staff must register in advance with their full name to attend. Due to space constraints the meeting is limited to 75 people, including ASAC members and staff, on a first to register basis. Attendees are required to present government-issued photo identification to verify identity.

In addition, members of the public must make advance arrangements, as stated below, to present oral or written statements specifically addressing issues pertaining to the items listed in the ''Meeting Agenda'' section below. The public comment period will begin at 3:00 p.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 16, 2015, to register to attend the meeting and/or to present oral or written statements addressing issues pertaining to the items listed in the ''Meeting Agenda'' section

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

below. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Meeting Agenda

The Committee will meet to discuss items listed in the agenda below:

- Review of 2015 Recommendations
- Subcommittee briefing on key issues and areas of focus for 2015 committee term:
  - Commercial airports
  - International aviation
  - Air cargo
  - General aviation
  - Security Technology
- Future committee meetings

Dated: October 28, 2015.

Eddie D. Mayenschein,

Assistant Administrator, Office of Security Policy and Industry Engagement.

[FR Doc. 2015–28135 Filed 11–4–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2015–0160; FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before December 7, 2015.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2015–0160.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2015–0160; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: Fox Brown Outfitters, Indiantown, FL; PRT–71725B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*) from the captive-herd maintained at their facility for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Palm Beach Zoo and Conservation Society, West Palm Beach, FL; PRT–73299B

The applicant requests a permit to import a live, wild-caught, confiscated female jaguar (*Panthera onca*) for the purpose of enhancement of the survival of the species through zoological display and captive propagation.

Applicant: Timothy Estep, Worcester, MA; PRT–69026B

The applicant requests a permit to import hairy rattle weed (*Baptisia arachnifera*), green pitcher-plant

(*Sarracenia oreophila*), Alabama canebrake pitcher-plant (*Saracenia ruba* spp. *Alabamensis*), and mountain sweet pitcher-plant (*Sarracenia rubra* ssp. *Jonesii*) from Europe for the purpose of scientific research.

Applicant: Toledo Zoological Gardens, Toledo, OH; PRT–68848B

The applicant requests a permit to import a captive-bred female snow leopard (*Uncia uncia*) from Helsinki Zoo, Helsinki, Finland for the purpose of enhancement of the survival of the species.

Applicant: Toledo Zoological Gardens, Toledo, OH; PRT68850B

The applicant requests a permit to import a captive-bred male snow leopard (*Uncia uncia*) from Stiftelsen Nordens Ark, Hunnebostrand, Sweden for the purpose of enhancement of the survival of the species.

Applicant: Eduardo Guzman, Fernandina Beach, FL; PRT–66728B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Galapagos tortoise (*Chelonoidis nigra*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Christopher Ton, East Norriton, PA; PRT–56809B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Red siskin (*Carduelis cucullata*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: The George Washington University, Washington, DC; PRT–69115B

The applicant requests a permit to import partial skeletons and teeth of eastern gorillas (*Gorilla beringei*) and chimpanzees (*Pan troglodytes*) from the wild archived by the Rwandan government for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–71659B

The applicant requests a permit to import two male and eight female captive-bred pronghorn peninsular (*Antilocapra americana peninsularis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Ronald Urbanczyk, Spring Branch, TX; PRT–77410B

Applicant: Mark Dietz, Wichita, KS; PRT–75358B

Applicant: Justin Trial, Albany, TX; PRT–74769B

Applicant: Gordon Ambrosek, Apache, OK; PRT–73572B

Applicant: Billy Marlow, Ruleville, MS; PRT–74317B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–28189 Filed 11–4–15; 8:45 am]

BILLING CODE 4313–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N176; FXES11130800000–156–FF08EVEN00]

Proposed Safe Harbor Agreement for the Reestablishment of the California Red-Legged Frog in the Santa Monica Mountains, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received, from the California Department of Parks and Recreation, Angeles District (applicant), an application for an enhancement of survival permit for the federally threatened California red-legged frog, under the Endangered Species Act of 1973, as amended (Act). This permit application includes a proposed safe harbor agreement (agreement) between the applicant and the Service. The agreement and permit application are available for public comment.

DATES: To ensure we are able to consider your comments, please send them to us by December 7, 2015.

ADDRESSES: The documents are available on our Web site, at *http://www.fws.gov/ventura.* A limited number of printed copies are available by request. You may request the documents or submit comments by any of the following methods.

- *Email: fw8SHASAMO@fws.gov.* Include ''SAMO SHA'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor; U.S. Fish and Wildlife Service; Ventura Fish and Wildlife Office; 2493 Portola Road, Suite B; Ventura, CA 93003.
- *Fax:* Attn: Field Supervisor, (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Eric Morrissette, Senior Biologist, Ventura Fish and Wildlife Office, at the address above or by telephone at (805) 644–1766.

SUPPLEMENTARY INFORMATION: We have received an application for an enhancement of survival permit for the threatened California red-legged frog (*Rana draytonii*) under the Act. This permit application includes a proposed safe harbor agreement (agreement) between the applicant and the Service. The agreement and permit application are available for public comment.

Availability of Documents

You may obtain copies of the documents for review by using one of the methods in **ADDRESSES**, or by contacting the individual named in the **FOR FURTHER INFORMATION CONTACT** section. You also may make an appointment to view the documents at the Ventura Fish and Wildlife Office (see **ADDRESSES**) during normal business hours.

Background

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to benefit species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe harbor agreements, and the subsequent permits that are issued under section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for permits through safe harbor agreements are found in 50 CFR 17.22(c) and 17.32(c).

Proposed Agreement

We have worked with the applicant to develop this proposed agreement for the

conservation of the California red-legged frog on the properties subject to the agreement (enrolled properties), which are owned and managed by the applicant. The four enrolled properties are: (1) Point Mugu State Park, La Jolla Canyon Watershed, Ventura County; (2) Leo Carrillo State Park, Arroyo Sequit Watershed, Los Angeles County; (3) Malibu Creek State Park, Monte Nido Watershed, Los Angeles County; and (4) Topanga State Park, Temescal Creek, Santa Monica Watershed, Los Angeles County. The area of each enrolled property follows: The area of La Jolla Canyon Watershed within Point Mugu State Park is 2,790 acres; the area of Arroyo Sequit Watershed within Leo Carrillo State Park is 1,803 acres; the area of Monte Nido Watershed within Malibu Creek State Park is 5,420 acres; and the area of Temescal Creek, Santa Monica Watershed within Topanga State Park is 6,917 acres. The total combined area of the enrolled properties is 16,930 acres. The enrolled properties occur within the historic range of the California red-legged frog. Within the 16,930 acres of land comprising the enrolled properties, approximately 135 acres contain suitable habitat for the California red-legged frog. California red-legged frogs will be translocated and reestablished into suitable habitat at the enrolled properties according to a written agreement between the applicant and Service. Under this written agreement, the existing habitat for the California red-legged frog will be managed for the species, and additional habitat for the species may be created in the future. We expect that the activities proposed in the agreement will result in the reestablishment of the California red-legged frog in suitable habitat that will be maintained and remain relatively undisturbed, thus resulting in a net conservation benefit for the species.

The agreement provides for the translocation and reestablishment of the California red-legged frog at the enrolled properties, and the management of its suitable habitat. The proposed duration of the agreement and term of the enhancement of survival permit is 50 years. The agreement fully describes the proposed management activities to be undertaken by the applicant and the net conservation benefits expected to be gained for the California red-legged frog.

What Would Happen Upon Approval of Agreement

Upon approval of this agreement and satisfactory completion of all other applicable legal requirements, and consistent with the Service's Safe Harbor Policy, published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the applicant authorizing take of the California red-legged frog incidental to the implementation of the management activities specified in the agreement, including translocation and reestablishment of California red-legged frogs to the enrolled properties, incidental to other lawful uses of the enrolled property, including normal, routine land management activities and recreation, including hiking, horseback riding, bicycling, camping, and picnicking; incidental to monitoring and surveying activities; and incidental to the return to pre-agreement conditions (baseline).

Management activities included in the agreement will provide for the translocation and reestablishment of the California red-legged frog and management of its habitat within the enrolled properties. The objective of such activities is to reestablish self-sustaining populations of the California red-legged frog within its historic range in the suitable habitat at the enrolled properties. Take of California red-legged frogs in the form of capture would occur during translocation activities, thereby necessitating take authority under the permit. Take incidental to activities associated with the management of California red-legged frog habitat is unlikely; however, it is possible that in the course of such activities or other lawful activities on the enrolled property, the applicant could incidentally take individual California red-legged frogs, thereby necessitating take authority under the permit.

Baseline conditions at the enrolled properties, as described in the agreement, have been established, consisting of two elements, the current area of suitable habitat for the California red-legged frog and the elevated presence of California red-legged frog populations. Under the agreement, an elevated baseline for the California red-legged frog populations means that, in anticipation that translocation and reestablishment of the California red-legged frog is successful, the populations of California red-legged frogs would remain at the enrolled properties at the end of the agreement term where there currently are no California red-legged frog populations and under other circumstances the baseline for the species presence could be zero. The elevated baseline has been established to aid in reaching recovery objectives for the California red-legged frog by implementing recovery activities with the intent to create and maintain self-sustaining populations of California red-legged frogs at the enrolled properties post-translocation. The applicant must maintain baseline on the enrolled properties in order to receive coverage regarding incidental take of California red-legged frogs. The agreement and requested permit would allow the applicant to return the enrolled property to baseline conditions for habitat, and to the elevated baseline for the California red-legged frog populations, after the end of the term of the agreement and prior to the expiration of the 50-year permit, if so desired by the applicant.

Public Review and Comments

The Service has made a preliminary determination that the proposed agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

Individuals wishing copies of the permit application, copies of our draft Environmental Action Statement, and copies of the agreement, including a map of the proposed permit area, should contact the Ventura Fish and Wildlife Office (see **ADDRESSES**).

If you wish to comment on the permit application or the agreement, you may submit your comments to one of the addresses listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, under section 10(c) of the Act.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

We will evaluate this permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed agreement and issue an enhancement of

survival permit under section 10(a)(1)(A) of the Act to the applicant for take of the California red-legged frog incidental to otherwise lawful activities in accordance with the terms of the agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments we receive during the comment period.

The Service provides this notice under section 10(c) of the Act and under implementing regulations for NEPA (40 CFR 1506.6).

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office.

[FR Doc. 2015–28200 Filed 11–4–15; 8:45 am]

BILLING CODE 4313–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX.16.GG00.99600.00]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0051).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on April 30, 2016.

DATES: You must submit comments on or before January 4, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–0051, Earthquake Hazards Program Research and Monitoring' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lemersal, Earthquake Hazards Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 905, Reston, VA 20192 (mail); 703–648–6716 (phone); or *Lemersal@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Research and monitoring findings are essential to fulfilling USGS's responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and recording earthquake activity nationwide. Residents, emergency responders, and engineers rely on the USGS for this accurate and scientifically sound information. The Earthquake Hazards Program funds external investigators to carry out these important activities. In response to our Program Announcements investigators submit proposals for research and monitoring activities on earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS's Earthquake Hazards Program objectives. Final reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards of a two- to five-year duration. Final reports are made available to the public at the Web site *http://earthquake.usgs.gov/research/external/*.

II. Data

OMB Control Number: 1028–0051.

Form Number: N/A.

Title: Earthquake Hazards Program Research and Monitoring.

Type of Request: Extension of a currently approved collection.

Affected Public: Research scientists, engineers, and the general public.

Respondent's Obligation: None. Participation is voluntary, but necessary to receive benefits.

Frequency of Collection: Annually and once every three to five years.

Estimated Total Number of Annual Responses: 370 (250 applications and narratives and 120 annual and final reports).

Estimated Time per Response: 45 hours per proposal application response and 9 hours per final or annual progress report.

Estimated Annual Burden Hours: 12,330 (11,250 hours per application and 1,080 hours per final or annual progress report).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

William Leith,

Senior Science Advisor for Earthquake and Geologic Hazards.

[FR Doc. 2015–28236 Filed 11–4–15; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO120200 L16300000.NU0000]

Notice of Proposed Supplementary Rules for Public Lands in New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The New Mexico State Office of the Bureau of Land Management (BLM) is proposing to establish supplementary rules within public lands in New Mexico.

DATES: Interested parties may submit written comments regarding the proposed supplementary rules until January 4, 2016.

ADDRESSES: You may submit comments by mail, hand-delivery, or electronic mail.

Mail: Office of Law Enforcement, BLM, New Mexico State Office, P.O. Box 27115 Santa Fe, NM 87502–0115.

Hand-delivery: 301 Dinosaur Trail, Santa Fe, New Mexico.

Electronic mail: *BLM_NM_Supplementary_Rules@blm.gov.* Please indicate ''Attention: Law Enforcement'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Jeffery Miller, New Mexico State Chief Ranger, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115, at (505) 954–2206, or *j51mille@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

You may mail, email, or hand-deliver comments to the New Mexico State Office, at the addresses listed above (See **ADDRESSES**). Written comments on the proposed supplementary rules should be specific and confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider, or include in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (See **ADDRESSES**) or comments that the BLM receives after the close of the comment period (See **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including names, street addresses, and other contact information for respondents, will be available for public review at 301 Dinosaur Trail, Santa Fe, New Mexico, during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

The BLM New Mexico State Office is proposing to establish supplementary rules for public lands that it manages within the State of New Mexico. The proposed supplementary rules are necessary to support the mission of the BLM by protecting the natural resources and enhancing the health and safety of those using and enjoying the public lands. The proposed supplementary rules have been grouped into locations according to where they would be applicable. Some of the proposed supplementary rules would apply to all BLM-managed public lands in New Mexico, some would apply to developed recreation areas, and some would apply to specified locations.

III. Discussion of Proposed Supplementary Rules

In the mid-1990s, three BLM Districts established individual sets of supplementary rules for BLM-managed public lands in New Mexico:

- Establishment of Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Albuquerque District, NM, published on May 10, 1996 (61 FR 21479);
- Reestablishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Roswell District, NM, published on December 7, 1995 (60 FR 62879); and
- Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, NM, published on November 13, 1995 (60 FR 57012).

The BLM proposes to modify or remove many existing supplementary rules for several reasons. First, the BLM has redrawn the administrative boundaries for some of the BLM Districts since the BLM published the supplementary rules for the three districts. For example, the Taos Field Office, which was previously part of the Albuquerque District, is now part of the Farmington District. Additionally, the Socorro Field Office, which was previously part of the Las Cruces District, is now part of the Albuquerque District. This has led to confusion about whether, and to what extent, the supplementary rules apply in areas where the administrative boundaries have changed. Second, the BLM is removing some supplementary rules because they are already codified in Title 43 of the Code of Federal Regulations (CFR), including in Sections 8365 (Visitor Services—Rules of Conduct), 9212 (Fire Management—Wildfire Protection), and 9268 (Law Enforcement—Criminal—Recreation Programs). Third, the BLM is removing or revising some of the existing supplementary rules to be consistent with the specific language of State law. Fourth, the BLM's proposed supplementary rules would implement decisions made in current Resource Management Plans (RMPs). Most BLM offices in New Mexico have either created or updated an RMP since the publication of the three district supplementary rules in the mid-1990s. In the proposed supplementary rules, the BLM seeks to implement special management decisions that apply to specific locations by formally publishing them in the **Federal Register**. These specific decisions have been analyzed and approved in various RMPs. The publication of these supplementary rules is necessary to be able to enforce the specific decisions that have been analyzed and approved in various RMPs.

Two of the proposed supplementary rules would be new for all the BLM managed lands within the State of New Mexico. These rules can be summarized as:

1. Use or possession of drug paraphernalia; and
2. Open alcoholic beverage container in a motor vehicle, which includes off-highway vehicles

Currently, the BLM's controlled substance and alcohol regulations in New Mexico lack specific rules with penalties for the possession of drug paraphernalia and open alcoholic beverage container in a motor vehicle. The possession of drug paraphernalia and open containers of alcoholic beverage in a motor vehicle are already illegal on public lands under State law. These two new rules would be consistent with current New Mexico Statutes found in NMSA 1978 sections 30–31–25.1 and 66–8–138.

The supplementary rules proposed in this Notice, if adopted, will replace and supersede all existing supplementary rules currently applicable to BLM-managed public lands within the State of New Mexico.

IV. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563)

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563. They would not have an effect of $100 million or more on the economy. The proposed supplementary rules would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The

proposed supplementary rules would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients nor do they raise novel legal or policy issues. They would merely impose rules of conduct and impose other limitations on certain recreational and commercial activities on certain public lands to protect natural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has found that the proposed supplementary rules are categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.205(b) and 46.210(i). In addition, the proposed supplementary rules do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental regulations, policies, and procedures of the Department of the Interior (DOI) (43 CFR 46.205), the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. All of the proposed supplementary rules are consistent with applicable land use plans. Additionally, through the various RMPs developed within the State of New Mexico, the BLM has already analyzed the potential impacts captured by the proposed supplementary rules.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational or commercial activities on public lands in order to protect natural resources and the environment, and provide for human health and safety. Therefore, the BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed supplementary rules are not a ''major rule'' as defined under 5 U.S.C. 804(2). The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands and would not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate of more than $100 million per year; on State, local, or tribal governments in the aggregate, or on the private sector, nor would they have a significant or unique effect on small governments. The proposed supplementary rules would have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands and would not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act at 2 U.S.C. 1531.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that the proposed supplementary rules do not include policies that would have tribal implications. The proposed supplementary rules would merely revise the rules of conduct for public use of limited areas of public lands.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that these proposed consolidated supplementary rules would not impede facilitating cooperation conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources. The rules would properly accommodate local participation in the Federal decision-making process, and would provide that the programs,

projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554). In accordance with the Information Quality act, the DOI has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on the DOI's Web site at *http://www.doi.gov/ocio/information_management/iq.cfm.*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the proposed supplementary rules would not comprise a significant energy action, and that they would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The proposed supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. Moreover, any information collection that may result from Federal criminal investigations or prosecutions conducted under the proposed supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is Jeffery Miller, State Chief Ranger, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, NM 87508.

V. Proposed Supplementary Rules

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1–6, 43 U.S.C. 1733(a), 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a, the BLM New Mexico State Director proposes to issue consolidated supplementary rules for public lands managed by the BLM in New Mexico, to read as follows:

Definitions

Camp means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home, or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

Developed recreation sites and areas means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: Delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

Grey water means wastewater from washing machines, showers, bathtubs, hand washing lavatories, and sinks that does not contain human excrement or chemicals, excluding soaps and shampoos.

Mechanical Transport means any vehicle, device or contrivance for moving people or material in or over land, water, snow, or air that has moving parts, including, but not limited to, bicycles, game carriers, carts and wagons. The term does not include wheelchairs, horses or other stock, skis or snowshoes.

Minor means any person under 21 years of age, consistent with the New Mexico Liquor Control Act at New Mexico Statutes 60–3A–3–P.

Motor Vehicle means any self-propelled device in, upon, or by which any person or property is or may be propelled, moved or drawn, including, but not limited to, cars, trucks, vans, motorcycles, all-terrain vehicles, motor-driven cycles, motorized scooters, motorized skateboards, and snowmobiles. ''Motor vehicle'' does not include a self-propelled wheelchair, tricycle or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

Pet means a dog, cat, or any domesticated companion animal.

Weapon means all firearms, air rifles, pellet and BB guns, spring guns, bows and arrows, slings, paint ball markers, other instruments that can propel a projectile (such as a bullet, dart, or pellet by combustion, air pressure, gas pressure or other means), or any instrument that can be loaded with and fire blank cartridges.

Management Plan means any land use plan, resource management plan, travel management plan, recreation activity management plan, or other similar implementation level plan.

Prohibited Acts

Unless otherwise authorized by the BLM, the following prohibitions apply to all BLM-managed public lands within the State of New Mexico:

Natural Resource Protection

1. You must not construct or maintain any unauthorized pit toilet facility, other than shallow holes or trench toilets for use by backcountry visitors for stays lasting 14 days or less. All holes, trenches, and pits must be at least 100 feet from any permanent water source.

Camping

2. You must not camp or occupy any site longer than 14 days within a 28-day period. After 14 days, campers must move at least 25 miles and not camp within this 25-mile radius for at least 30 days.

3. You must not park any motor vehicle or camp in violation of state law.

Transportation

4. You must not park a motor vehicle in areas where prohibited in a management plan for the area.

5. You must not use mechanical transport in areas or on trails posted as closed to such use and prohibited in a management plan for the area.

Pets and Livestock

6. You must not allow a pet to harass, molest, injure, or kill humans, domesticated animals, wildlife, or livestock.

7. You must not ride a horse in areas or on trails posted as closed to such use and prohibited in a management plan for the area.

8. You must not bring a pet on any trail, in any cave, or freshwater spring closed to pets in the management plan for the area. Service animals are exempt from this rule.

9. You must remove/dispose of all pet waste from areas with regular human foot traffic including, but not limited to, developed recreation areas, picnic areas, parking areas, and trails.

Alcohol and Drugs

10. You must not buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor; deliver alcoholic beverages to a minor; or aid or assist a minor to buy, procure or be served alcoholic beverages.

11. If you are a minor, you must not buy, attempt to buy, receive, possess, or consume alcoholic beverages.

12. You must not knowingly have in your possession or on your person, while in a motor vehicle upon any public road, any bottle, can or other receptacle containing any alcoholic beverage that has been opened or had its seal broken or the contents of which have been partially removed.

13. You must not use or possess any drug paraphernalia in violation of state law.

Public Health and Safety

14. You must not use or possess a weapon, including concealed carry, in violation of State law.

15. You must not fail to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

16. You must not possess a glass container where prohibited in a management plan for the area.

The following prohibitions apply to all BLM-managed developed recreation areas and sites within the State of New Mexico:

Natural Resource Protection

1. You must not dispose of any grey water from a trailer or other vehicle except in facilities provided for such.

Camping

2. You must not reserve camping space by any means not authorized or required by the BLM.

Pets and Livestock

3. You must not bring equine stock, llamas, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

Public Health and Safety

4. You must not engage in noncommercial float boating without wearing at all times while on the river, an approved U.S. Coast Guard Type I, III or V life preserver.

The following prohibitions apply to the specified locations on BLM public lands within the State of New Mexico:

Las Cruces District

1. Within Organ Mountains-Desert Peaks National Monument

a. Within Aguirre Spring Campground:

You must not be within the campground after 10 p.m. unless overnight camping.

You must not access the campground with a motor vehicle between 9 p.m. and 7 a.m.

b. Within Dripping Springs Natural Area:

You must not climb, walk on, ascend, descend, or traverse historic structures.

You must not enter outside of posted day-use-only hours.

You must not swim, wade, or bathe in a pond.

You must not hike off trail on Dripping Springs Trail southeast of Crawford Trail junction.

c. Within Organ/Franklin Mountains Area of Critical Environmental Concern:

You must not bring a pet into upper Ice Canyon. Service animals are exempt from this rule.

You must not hike off designated trails in upper Ice Canyon.

d. Within Kilbourne Hole Volcanic Crater:

You must not discharge a weapon within the rim

2. Within Lake Valley Historic Site:

a. You must not walk off an established trail.

b. You must not camp.

c. You must not use outside of posted hours.

3. Within Fort Cummings Special Management Area:

a. You must not climb, walk on, ascend, descend, or traverse historic structures.

b. You must not discharge a weapon within a fenced enclosure.

c. You must not walk off an established trail within a fenced enclosure.

d. You must not camp within a fenced enclosure.

4. Within Apache Box Area of Critical Environmental Concern:

You must not discharge a weapon between February 1 and August 15.

5. Within Cook's Range Area of Critical Environmental Concern:

You must not collect fuelwood.

6. Within Guadalupe Canyon Area of Critical Environmental Concern:

You must not collect fuelwood.

Albuquerque District

Rio Puerco Field Office

7. Within Guadalupe Ruin:

You must not camp.

8. Within Kasha-Katuwe Tent Rocks National Monument:

a. You must not camp or occupy between 10 p.m. and 6 a.m.

b. You must not build, tend, or use a campfire.

c. You must not climb or walk on ''Tent Rock'' formations.

9. Within La Ventana Natural Arch area:

a. You must not camp.

b. You must not participate in technical rock climbing.

10. Within El Malpais National Conservation Area:

You must not camp at The Narrows.

Socorro Field Office

11. Within Fort Craig Historic Site:

a. You must not walk off an established trail.

b. You must not camp.

12. Within Zuni Salt Lake Proprietary Area of Critical Environmental Concern:

You must not cut wood.

13. Within Johnson Hill Special Recreation Management area:

You must not target shoot within a half a mile from the trail.

Farmington District

Taos Field Office

14. Within Ward Ranch Recreation sites:

You must not camp or occupy between 10 p.m. and 6 a.m.

15. Within Rio Grande Del Norte National Monument:

Wild Rivers Bear Crossing Overlook:

You must not camp or occupy between 10 p.m. and 6 a.m.

Rio Grande Wild and Scenic River:

a. At John Dunn Bridge Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

b. At Manby Hot Springs Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

c. At Black Rock Spring Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

d. At Chawalauna Overlooks, you must not camp or occupy between 10 p.m. and 6 a.m.

Orilla Verde Recreation Area:

a. You must not launch or take out boats, except for emergencies, at any site not designated for such use.

b. At gauging station picnic site, you must not camp or occupy between 10 p.m. and 6 a.m.

Taos Valley Overlook Zone:

a. You must not discharge a weapon.

b. You must not camp.

c. You must not allow an unleashed dog at any trailhead.

San Antonio Extensive Recreation Management Area:

You must not have a fire outside a fire container.

Taos Plateau Extensive Recreation Management Area:

You must not camp in the Guadalupe Mountain Zone within the Wild Rivers Recreation Area.

Ute Mountain Extensive Recreation Management Area:

You must not camp within 300 feet of the descent points into Rio Grande or Costilla Creek.

16. Within Lower Gorge Special Recreation Management Area:

a. At Quartzite Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

b. At County Line Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

c. At Lover's Lane Recreation Site, you must not camp or occupy between 10 p.m. and 6 a.m.

d. Between County Line and Velarde Diversion Dam, you must not use

motorized craft, including inboard or outboard motors, jet skis, personal watercraft or hovercraft.

17. Within Chama Canyon Special Recreation Management Area:

You must not have a fire outside a fire container.

18. Within Posi Special Recreation Management Area:

a. You must not discharge a weapon.

b. You must not camp.

c. You must not allow an unleashed dog in the area of the trailhead, including the parking area.

19. Within Palacio Arroyos Special Recreation Management Area:

a. You must not target shoot within the areas used for parking, unloading trailers, camping, and pit areas (during OHV events).

b. You must not allow an unleashed dog in the area used for parking, unloading trailers, camping, and pit areas (during OHV events).

20. Within La Puebla Special Recreation Management Area:

a. You must not discharge a weapon.

b. You must not camp.

21. Within Cieneguilla Special Recreation Management Area:

a. You must not discharge a weapon.

b. You must not camp.

c. You must not allow an unleashed dog in the area of the trailhead, including the parking area.

22. Within Diablo Canyon Special Recreation Management Area:

You must not discharge a weapon.

23. Within Cerrillos Hills/Burnt Corn Special Recreation Management Area:

You must not discharge a weapon.

24. Within La Cienega Area of Critical Environmental Concern:

a. You must not discharge a weapon in Santa Fe River Canyon or cultural resource sites.

b. You must not cut wood.

25. Within Copper Hills Area of Critical Environmental Concern:

You must not camp within 100 feet of rivers and streams.

26. Within Galisteo Basin Area of Critical Environmental Concern:

You must not target shoot.

Farmington Field Office

27. Within Alien Run Mountain Bike Trail:

a. You must not discharge a weapon.

b. You must not gather wood.

28. Within Carracas Mesa Recreation and Wildlife Area:

You must not gather wood.

29. Within Head Canyon Motocross Track:

a. You must not gather wood.

b. You must not discharge a weapon.

30. Within Glade Run Recreation Area:

a. You must not discharge a weapon.

b. You must not gather wood.

c. You must not camp.

31. Within Navajo Lake Horse Trail:

a. You must not gather wood.

b. You must not discharge a weapon, except licensed hunters during hunting season.

32. Within Angel Peak Scenic Area:

You must not gather wood.

33. Within Dunes Off-Road Vehicle Recreation Area:

a. You must not gather wood.

b. You must not discharge a weapon.

34. Within Negro Canyon Special Designated Area:

You must not gather wood.

35. Within Pinon Mesa Recreation Area:

a. You must not gather wood.

b. You must not discharge a weapon, except licensed hunters during hunting season.

c. You must not enter posted-closed areas between March 1 and August 1.

36. Within Rock Garden Recreation Area:

a. You must not gather wood.

b. You must not discharge a weapon, except licensed hunters during hunting season.

37. Within Simon Canyon Area of Critical Environmental Concern:

a. You must not gather wood.

b. You must not discharge a weapon in the Simon Canyon drainage.

38. Within Thomas Canyon Recreation and Wildlife Area:

You must not gather wood.

39. Within Ephemeral Wash Riparian Area:

You must not cut or gather wood.

Pecos District

Roswell Field Office

40. Within Rio Bonito Acquired Lands:

You must not discharge a weapon including hunting, except for bow hunting in authorized areas

41. Within Fort Stanton National Conservation Area:

a. You must not enter Fort Stanton Cave between November 1 and April 15.

b. You must not enter Feather Cave.

42. Within Roswell Cave Complex:

a. You must not enter Crockett, Crystal Caverns, Martin-Antelope Gyp, Torgac Annex, Torgac, Big-Eared Cave, Malpais Madness, Corn Sink Hole, or Tres Nino caves between November 1 and April 15.

b. You must not enter Bat Hole Cave or Coachwhip Cave.

43. Carrizozo Land Partnership

a. You must not enter lands without being in possession of required permit (*i.e.,* vehicle pass).

Exemptions

The following persons are exempt from these supplementary rules: Federal, State, local, and/or military employees acting within the scope of their duties; members of any organized rescue or fire-fighting force performing an official duty; and persons, agencies, municipalities or companies holding an existing special-use permit and operating within the scope of their permit.

On BLM-managed public lands, outside of developed recreation areas and sites, where discharging a weapon is prohibited through the establishment of a supplementary rule, unless specifically excluded, persons with a valid New Mexico hunting license while legally and actively in the pursuit of game during an open season are authorized by the BLM to discharge weapons in these areas.

Penalties

On public lands under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district, and within the boundaries established in the rules shall be punishable by a fine of not more than $500. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. Under the Sikes Act, 16 U.S.C. 670j, any person who violates any of these supplementary rules on public lands subject to a conservation and rehabilitation program implemented by the Secretary of the Interior may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 6 months or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Aden Seidlitz,

Acting State Director, Bureau of Land Management, New Mexico.

[FR Doc. 2015–28240 Filed 11–4–15; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–969]

Certain Blood Cholesterol Test Strips and Associated Systems Containing Same; 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 October 2, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Polymer Technology Systems, Inc. of Indianapolis, Indiana. A supplement to the complaint was filed on October 16, 2015. 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 blood cholesterol test strips and associated systems containing same by reason of infringement of certain claims of U.S. Patent No. 7,087,397 (''the '397 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests 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 Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

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 October 29, 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 blood cholesterol test strips and associated systems containing same by reason of infringement of one or more of claims 1, 3, 10–12, and 17–19 of the '397 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 complainant is:

Polymer Technology Systems, Inc., 7736 Zionsville Road, Indianapolis, IN 46268

(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:

Infopia Co., Ltd., 132 Anyangcheondong-ro, Dongan-gu, Anyang-si, Gyeonggi-do, 431–836, Republic of Korea

Infopia America LLC, 2323 S. Washington Avenue, Suite 200, Titusville, FL 32780

Jant Pharmacal Corporation, 16530 Ventura Boulevard, Suite 512, Encino, CA 91436

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

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.

Dated: October 30, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–28152 Filed 11–4–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–531–533 and 731–TA–1270–1273 (Final)]

Polyethylene Terephthalate (PET) Resin From Canada, China, India, and Oman; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–531–533 and 731–TA–1270–1273 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of polyethylene terephthalate (PET) resin from Canada, China, India, and Oman, provided for in subheading 3907.60.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value and imports of PET resin from China and India

preliminarily determined to have been subsidized.[1 2]

DATES: *Effective Date:* October 15, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Haberstroh, (202–205–3390), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China and India of polyethylene terephthalate (PET) resin, and that such products from Canada, China, India, and Oman are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 10, 2015, by DAK Americas, LLC, Charlotte, NC; M&G Chemicals, Houston, TX; and Nan Ya Plastics Corporation, America, Lake City, SC.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on February 16, 2016, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 1, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 24, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on February 26, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 23, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 8, 2016. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 8, 2016. On March 24, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 28, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing predominantly virgin PET resin content, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

[2] The Department of Commerce has preliminarily determined that *de minimis* countervailable subsidies are being provided to producers and exporters of PET resin from Oman. 80 FR 48808, August 14, 2015. For purposes of efficiency, the Commission hereby waives rule 207.21(b) so the final phase of these investigations may proceed concurrently in the event that Commerce makes final affirmative determinations with respect to such imports. Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 2, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–28260 Filed 11–4–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States v. Tri-Marine Management Co. LLC, et al.* (Civil Action No. 1:15–cv–0454), which was lodged with the United States District Court for the District of Hawaii on October 28, 2015.

The Complaint in this Clean Water Act case was filed against Tri-Marine Management Co., LLC, Tri-Marine Fishing Management LLC, and Cape Mendocino Fishing LP (collectively, ''Tri-Marine'') concurrently with the lodging of the proposed Consent Decree. The Complaint alleges that Tri-Marine is civilly liable for violations of Section 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1321. The Complaint seeks civil penalties and injunctive relief for the discharge of harmful quantities of marine diesel fuel oil into navigable waters of the United States from Tri-Marine's commercial tuna fishing vessel, the *Capt. Vincent Gann*, into Pago Pago Harbor in American Samoa as well as related violations of the Coast Guard's spill prevention regulations issued under the Clean Water Act. The Complaint alleges the hull of the *Capt. Vincent Gann* was breached during a crash in October 2014 and at least 35 barrels of marine fuel oil that was illegally stored in the bulbous bow of the vessel flowed into the water. The Complaint further alleges the illegal oil storage was done to extend the duration of the fishing voyage and allow storage of a larger catch of fish. The extra fuel oil had been stored in two of the fish holds, but the oil was transferred out of the fish holds to the bulbous bow to make room for storage of tuna in those fish holds. The Complaint further alleges the vessel was equipped with unlawful piping configurations that tied the bilge water system into the fuel system and that the extra fuel originally was loaded into the vessel using an unauthorized method of pumping fuel oil with hoses over the top of the deck into open fish holds.

Under the proposed Consent Decree, Tri-Marine will pay a civil penalty of $1,050,000 for the alleged violations. In addition to payment of the civil penalties, the Consent Decree requires Tri-Marine to perform inspections and corrective measures across its entire fleet of ten American Samoa-based vessels, including review and overhaul of all of the vessels' oil handling practices, operator certifications, independent audits, increased reporting, and the engagement of a full-time consultant or in-house personnel focused on environmental and maritime compliance.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Tri-Marine Management Co. LLC*, D.J. Ref. No. 90–5–1–1–11245. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent__Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–28133 Filed 11–4–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bank Collective Investment Funds, Prohibited Transaction Class Exemption 1991–38

AGENCY: Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Bank Collective Investment Funds, Prohibited Transaction Class Exemption 1991–38,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201510-1210-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW.,

Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Bank Collective Investment Funds, Prohibited Transaction Class Exemption (PTE) 1991–38, information collection. PTE 1991–38 exempts from Employee Retirement Income Security Act of 1974 (ERISA) section 406, 29 U.S.C. 1106, prohibited transaction provisions certain transactions between a bank collective investment fund and parties in interest to a plan, provided that the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund and that the bank maintains and makes available certain records. Internal Revenue Code section 4975(c)(2) and ERISA section 408(a) authorize this information collection. *See* 26 U.S.C. 4975(c)(2), 29 U.S.C. 1108(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0082.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 17, 2015 (80 FR 34696).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0082. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Collective Investment Funds, Prohibited Transaction Class Exemption 1991–38.

OMB Control Number: 1210–0082.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 6,000.

Total Estimated Number of Responses: 6,000.

Total Estimated Annual Time Burden: 1,000 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 30, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–28188 Filed 11–4–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997–41

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997–41,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201510-1210-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–

4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997–41 (PTE 97–41) information collection. PTE 97–41 permits an employee benefit plan to purchase shares of an open-end registered investment company in exchange for plan assets transferred in-kind from a collective investment fund maintained by a bank or plan adviser, where the bank or plan adviser is the investment adviser of the investment company and a fiduciary of the plan, provided specified conditions are met. PTE 97–41 requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in the exemption. Internal Revenue Code section 4975(c)(2) and Employee Retirement Income Security Act of 1974 section 408(a) authorize this information collection. *See* 26 U.S.C. 4975(c)(2), 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0104.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 17, 2015 (80 FR 34696).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0104. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Collective Investment Funds Conversion Transactions, Prohibited Transaction Class Exemption 1997–41.

OMB Control Number: 1210–0104.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 50.

Total Estimated Number of Responses: 105.

Total Estimated Annual Time Burden: 1,760 hours.

Total Estimated Annual Other Costs Burden: $508,282.

Dated: November 1, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–28187 Filed 11–4–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Trust Fund Activity

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Unemployment Insurance Trust Fund Activity,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 7, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201508-1205-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Unemployment Insurance Trust Fund Activity information collection that comprises the Unemployment Trust Fund (UTF) management reports. These reports assure that UTF contributions collected are immediately paid over to the Secretary of the Treasury. The reports also assure that expenditure of all money withdrawn from the unemployment fund of a State is used exclusively for the payment of benefits, exclusive of refund. Federal Unemployment Tax Act sections 3304(a)(3) and 3304(a)(4) and Social Security Act sections 303(a)(4) and 303(a)(5) authorize this information collection. *See* 26 U.S.C. 3304(a)(3), 3304(a)(4); 42 U.S.C. 503(a)(4), 503(a)(5).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0154.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 14, 2015 (80 FR 27706).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0154. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Unemployment Insurance Trust Fund Activity.

OMB Control Number: 1205–0154.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 3,604.

Total Estimated Annual Time Burden: 1,802 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 1, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–28185 Filed 11–4–15; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–102)]

NASA Advisory Council; Charter Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of the charter of the NASA Advisory Council.

SUMMARY: Pursuant to sections 14(b)(1) and 9(c) of the Federal Advisory Committee Act (Public Law 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the NASA Administrator has determined that renewal of the charter of the NASA Advisory Council is necessary and in the public interest in connection with the performance of duties. The renewed charter is for a two-year period ending October 21, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NASA Advisory Council Administrative Officer, Advisory Committee Management Division, Office of International and Interagency Relations, (202) 358–1148, NASA, Washington, DC 20546–0001.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–28134 Filed 11–4–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–101)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed revisions to existing Privacy Act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the National Aeronautics and Space Administration is issuing public notice of its proposal to modify its previously noticed system of records. This notice publishes updates to health related systems of records as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period, if no adverse comments are received.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F. Stockman, (202) 358–4787, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its biennial System of Records review, NASA is making minor modifications of its systems of records including: Update of Locations of Records; revision of Categories of Records to reflect reduced information collected; updates of System and Subsystem Managers; and clarification of Routine Uses. Changes for specific NASA systems of records are set forth below:

Human Experimental and Research Data Records/NASA 10HERD: Include a purpose section; provide minor wording

refinements of Categories of Records and Individuals; update the Routine Uses and Safeguards sections.

Health Information Management System/NASA 10HIMS: Update System Locations; provide minor wording refinements of Categories of Records and Individuals, Routine Uses, and Subsystem Managers; and update the Safeguards section.

Occupational Radiation Information System/NASA 10ORIS: Update System Location and Safeguards sections to be more complete.

Renee P. Wynn,

NASA Chief Information Officer.

NASA 10HERD

SYSTEM NAME:

Human Experimental and Research Data Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 2, 5, 6, and 8, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in this system of records is maintained on individuals who have been involved in space flight, aeronautical research flight, and/or participated in NASA tests or experimental or research programs. Categories of individuals covered include civil service and military employees, employees of other government agencies, contractor employees, students, International Space Partner personnel, volunteers, and other human research subjects on whom information is collected as part of an experiment or study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories in this system include data obtained in the course of an experiment, test, or research medical data from in-flight records, and other information collected in connection with an experiment, test, or research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

51 U.S.C. 20113(a) and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Records and information in this system may be disclosed: (1) To other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in NASA programs or are otherwise furthering the understanding or application of biological, physiological, and behavioral phenomena as reflected in the data contained in this system of records; (2) to external biomedical professionals and independent entities to support internal and external reviews for purposes of research quality assurance; (3) to international partners for research activities pursuant to NASA Space Act agreements; (4) to external professionals conducting research, studies, or other activities through arrangements or agreements with NASA and for mutual benefit; and (5) in accordance with standard routine uses set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSITIONING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored as paper documents, electronic media, micrographic media, photographs, or motion picture film, and various medical recordings such as electrocardiograph tapes, stripcharts, and x-rays.

RETRIEVABILITY:

Records are retrieved by the individual's name, experiment or test; arbitrary experimental subject number; flight designation; or crewmember designation on a particular space or aeronautical flight.

SAFEGUARDS:

Records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet, or remotely via a secure Virtual Private Network (VPN) connection requiring two-factor token authentication or via employee PIV badge authentication from NASA-issued computers. Non-electronic records are secured in locked rooms or files.

RETENTION AND DISPOSAL:

Records are maintained in Agency files for varying periods of time depending on the need for use of the records and destroyed when no longer needed in accordance with NASA Records Retention Schedules, Schedule 7 Item 16.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief Health and Medical Officer, Location 1.

Subsystem Managers: Director Life Sciences Directorate, Chief Space Medicine Division, and Program Scientist Human Research Program, both at Location 5; and Institutional Review Board (IRB) Chairs at Locations 2, 6, and 8, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained by contacting the cognizant system or subsystem manager listed above. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; and Social Security Number.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from experimental test subjects, physicians and other health care providers, principal investigators and other researchers, and previous experimental test or research records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NASA 10HIMS

SYSTEM NAME:

Health Information Management System.

SECURITY CLASSIFICATION:

None.

PURPOSE:

Information in this system of records is maintained on anyone receiving health or medical care in or through a NASA clinic or healthcare activity.

SYSTEM LOCATION:

Paper-based records of Medical Clinics/Units and Environmental Health Offices are held at NASA Locations 1, 9, 11, 14, and 19, as set forth in Appendix A. Electronic records are hosted on secure NASA servers in Locations 5 and 6, as set forth in Appendix A, and at the Medgate Chicago Data Center, 341 Haynes Drive, in Wood Dale, Illinois 60191, which is a secure, redundant, Tier III, SAS 70 certified facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains information on (1) NASA civil service employees and applicants; (2) other Agency civil service and military employees working at NASA; (3) active or retired astronauts and active astronaut family members; (4) International Space Station Partner personnel, their families, or other space flight personnel on temporary or extended duty at NASA; (5) onsite contractor personnel who receive job-related examinations under the NASA Occupational Health Program, have work-related mishaps or accidents, or visit clinics for emergency or first-aid treatment; and (6) visitors to NASA Centers who use clinics for emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains:

(1) General medical records of routine health care, first aid, emergency treatment, examinations (*e.g.,* surveillance, hazardous workplace, certification, flight, special purpose and health maintenance), exposures (*e.g.,* hazardous materials and ionizing radiation), and consultations by non-NASA physicians.

(2) Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examination results; immunization records; administration of medications prescribed by private/personal or NASA flight surgeon physicians; consultation records; and hazardous exposure and other health hazard/abatement data.

(3) Medical records, behavioral health records, and physical examination records of Astronauts and their families.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; 51 U.S.C. 20113(a); 44 U.S.C. 3101; 42 CFR part 2.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in this system may be disclosed: (1) To external medical professionals and independent entities to support internal and external reviews for purposes of medical quality assurance; (2) to private or other government health care providers for consultation or referral; (3) to the Office of Personnel Management, Occupational Safety and Health Administration, and other Federal or State agencies as required in accordance with the Federal agency's special program responsibilities; (4) to insurers for referrals or reimbursement; (5) to employers of non-NASA personnel in support of the Mission Critical Space Systems Personnel Reliability Program; (6) to international partners for mission support and continuity of care for their employees pursuant to NASA Space Act agreements; (7) to non-NASA personnel performing research, studies, or other activities through arrangements or agreements with NASA and for mutual benefit; (8) to the public of pre-space flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (9) to the public, limited to the crewmember's name and the fact that a medical condition exists, if a flight crewmember is, for medical reasons, unable to perform a scheduled public event following a space flight mission/landing; (10) to the public to advise of medical conditions arising from accidents, consistent with NASA regulations; and (11) in accordance with standard routine uses as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSITIONING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in multiple formats including paper, digital, micrographic, photographic, and as medical recordings such as electrocardiograph tapes, x-rays and strip charts.

RETRIEVABILITY:

Records are retrieved from the system by the individual's name, date of birth, and/or Social Security or other assigned Number.

SAFEGUARDS:

Records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet, or remotely via a secure Virtual Private Network (VPN) connection requiring two-factor token authentication using NASA-issued computers or via employee PIV badge authentication from NASA-issued computers. The Medgate Chicago Data Center maintains documentation and verification of commensurate safeguards in accordance with FISMA, NASA Procedural Requirements (NPR) 2810.1A, and NASA ITS–HBK–2810.02–05. Non-electronic records are secured in locked rooms or files.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed by series in accordance with NASA Records Retention Schedule 1, Item 126, and NASA Records Retention Schedule 8, Item 57.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief Health and Medical Officer at Location 1.

Subsystem Managers: Director, Health and Medical Systems, Occupational Health at Location 1; Chief, Space Medicine Division at Location 5; Occupational Health Contracting Officer Representatives at Locations 2–4, 6–14, and 19. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained by contacting the cognizant system or subsystem manager listed above. Requests must contain the identifying

data concerning the requester, *e.g.,* first, middle and last name; date of birth; and Social Security Number.

RECORD ACCESS PROCEDURES:

Individual written requests for information shall be addressed to the System Manager at Location 1 or the subsystem manager at the appropriate NASA Center.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE PROCEDURES:

The information in this system of records is obtained from individuals, physicians, and previous medical records of individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NASA 10ORIS

SYSTEM NAME:

Occupational Radiation Information System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

NASA's electronic health records are hosted at the Medgate Chicago Data Center, 341 Haynes Drive, in Wood Dale, Illinois 60191. Paper-based records and non-medical electronic records are located in NASA facilities in Locations 2 through 14 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on NASA civil service employees and applicants; other Agency civil service and military employees working at NASA; International Space Station Partner personnel who use NASA space or aeronautical vehicles; principal investigators or other visitors to NASA Centers; onsite contractor personnel who handle, use, or are exposed to ionizing or non-ionizing radiation sources and/or devices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include, but are not limited to name, date of birth, and social security number contained in: (1) Work history questionnaires and training records, including Nuclear Regulatory Commission (NRC) training and experience documents; (2) Radiation producing source and/or device use authorizing forms; (3) Personnel licenses and/or certifications; (4) Employee radiation levels including medical, background and space radiation exposure and/or calculated radiation levels from Medical records and patient histories; and (5) Prenatal exposure counseling and pregnancy declarations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

51 U.S.C. 20113(a); 10 CFR part 20, 29 CFR 1910.1096; and State law and/or State agreement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Records and information in this system may be disclosed: (1) To State oversight agencies, the NRC, and/or Occupational Safety and Health Administration (OSHA) for verification and evidence of regulatory compliance; (2) to agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity; (3) to International Space Agencies (as appropriate) for data obtained on their national employees who are assigned, detailed and/or participating at a NASA Center or spacecraft; (4) to other Federal agencies including, but not limited to, the Air Force, Environmental Protection Agency (EPA), and Food and Drug Administration (FDA), as evidence of regulatory compliance; and (5) in accordance with standard routine uses set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSITIONING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept under controlled conditions in both physical form in file cabinets and electronic form on NASA work stations and servers.

RETRIEVABILITY:

Records are retrieved from the system by the individual's name.

SAFEGUARDS:

Records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet, or remotely via computers using a secure Virtual Private Network (VPN) connection requiring two-factor NASA-issued token authentication or via employee PIV badge authentication using NASA-issued computers. The Medgate Chicago Data Center is a secure, redundant, Tier III, SAS 70 certified facility that maintains documentation and verification of commensurate safeguards in accordance with FISMA, NASA Procedural Requirements (NPR) 2810.1A, and NASA ITS–HBK–2810.02–05. Physical records are secured under locked conditions when not in use.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules (NRRS), Schedule 1 Item 130; and Schedule 8 Item 57, or individual State, NRC or OSHA requirements if longer than those in the NRRS.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Chief Health and Medical Officer, Location 1.

Subsystem Managers: NASA and Contractor Radiation Safety Officers at Locations 2 through 14 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the subsystem managers listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

RECORD AMENDMENT PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals themselves, mishap reports, field surveys, licensing and certification authorities, and monitoring device laboratories.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–28254 Filed 11–4–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: On September 23, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 30, 2015 to:

Permit No. 2016–007

John McKeon, President, Polar Latitudes, Inc

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–28196 Filed 11–4–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 7, 2015. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 201X–0XX

1. *Applicant:* Name and Address

Activity for Which Permit Is Requested

A small expedition would use a reinforced ketch rigged sailing yacht to transit from Ushuaia, Chile, to the Antarctic Peninsula region and back. Activities to be conducted include: Passenger landings, hiking, photography, wildlife viewing, and possible station visits. Designated pollutants that would be generated during the trip include air emissions, waste water (urine, grey-water) and solid waste (food waste, human solid waste, and packaging materials). Human waste and grey water would be disposed of in offshore waters, complying with the provisions of Article 5 of Annex III and Article 6 of Annex IV of MARPOL Protocol and the Convention. All other wastes would be kept for proper disposal in Ushuaia at the end of the expedition. Seawater samples would be collected for studies on microplastics.

Location

Antarctic Peninsula region, including Deception Island, Foyn Harbor, Paradise Bay, Port Lockroy, Vernadsky, Hovgard Island, Hero Inlet/Anvers Island, and Melchior Islands.

Dates

January 16, 2015–February 6, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–28193 Filed 11–4–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 7, 2015. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2016–022

1. *Applicant*; Joseph Wilson, Penguin Films LTd, 1 St Augustine's Lane, Bristol BS1 5DE United Kingdom.

Activity for Which Permit Is Requested

ASPA entry; Applicant requests entry to Cape Crozier, ASPA 124 in order to film an Adelie penguin documentary film for Disney. The applicant and team would use long lens filming techniques, which require the camera person to be at a distance from the animals in order to capture natural behaviors. The work would be observational and would not involve interactions with penguins. The team would be working with penguin scientists who conduct work in Cape Crozier.

Location

Cape Crozier, ASPA 124

Dates

December 25, 2015–February 10, 2015

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–28195 Filed 11–4–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249; NRC–2015–0250]

Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Exelon Generation Company, LLC (the licensee), for operation of the Dresden Nuclear Power Station (DNPS), Units 2 and 3. The proposed amendment uses a new Criticality Safety Analysis (CSA) methodology for performing the criticality safety evaluation for legacy fuel types in addition to the new ATRIUM 10XM fuel design in the DNPS spent fuel pools (SFPs). In addition, the licensee's amendment request proposes a change to the DNPS Technical Specification (TS) 4.3.1, ''Criticality,'' in support of the new CSA.

DATES: Submit comments by December 7, 2015. Requests for a hearing or petition for leave to intervene must be filed by January 4, 2016.

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–2015–0250. 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: OWFN–12–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: Russell S. Haskell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1129, email: *Russell.Haskell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0250 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–2015–0250.
- 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 license amendment request dated December 30, 2014, and supplemental letters dated May 8, and July 30, 2015, are publicly available in ADAMS under Accession Nos. ML14364A100, ML15128A305, and ML15215A336.
- 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–2015–0250 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 will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. DPR–19 and DPR–25, issued to Exelon Generation Company, LLC, for operation of the Dresden Nuclear Power Station (DNPS), Units 2 and 3, located in Grundy County, Illinois. The proposed amendment uses a new Criticality Safety Analysis (CSA) methodology for performing the criticality safety evaluation for legacy fuel types in addition to the new ATRIUM 10XM fuel design in the DNPS spent fuel pools (SFPs). In addition, the licensee's amendment request proposes a change to the DNPS Technical Specification (TS) 4.3.1, ''Criticality,'' in support of the new CSA.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not: (1)

involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves a revised CSA for the DNPS Units 2 and 3, SFPs using a new methodology and proposes a new TS requirement limiting the maximum in-rack k-infinity. The proposed amendment does not change or modify the fuel, fuel handling processes, spent fuel storage racks, number of fuel assemblies that may be stored in the SFP, decay heat generation rate, or the SFP cooling and cleanup system.

The proposed amendment was evaluated for impact on the following previously evaluated events and accidents:

- A fuel handling accident (FHA),
- A fuel mis-positioning event,
- A seismic event, and
- A loss of SFP cooling event

The probability of a FHA is not increased because implementation of the proposed amendment will employ the same equipment and processes to handle fuel assemblies that are currently used. The FHA radiological consequences are not increased because the methodology used in support of the CSA does not impact the radiological source term of a single fuel assembly.

Therefore, the proposed amendment does not significantly increase the probability or consequences of an FHA.

Operation in accordance with the proposed amendment will not significantly increase the probability of a fuel mis-positioning event because fuel movement will continue to be controlled by approved fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly that is moved. The consequences of a fuel mis-positioning event are not changed because the reactivity analysis demonstrates that the new sub-criticality criteria and requirements will be met for the worst-case fuel mis-positioning event.

Operation in accordance with the proposed amendment will not change the probability of a seismic event. The consequences of a seismic event are not increased because the forcing functions for seismic excitation are not increased and because the mass of storage racks has not changed. Operation in accordance with the proposed amendment will not change the probability of a loss of SFP cooling event because the systems and events that could affect SFP cooling are unchanged. The consequences are not significantly increased because there are no changes in the SFP heat load or SFP cooling systems, structures or components due to the proposed change in CSA methodology. Furthermore, conservative analyses indicate that the current design requirements and criteria continue to be met with the presence of Boral blisters.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Onsite storage of spent fuel assemblies in the DNPS, Units 2 and 3, SFPs is a normal activity for which DNPS has been designed and licensed. As part of assuring that this normal activity can be performed without endangering the public health and safety, the ability to safely accommodate different possible accidents in the spent fuel pool have been previously analyzed. These analyses address accidents such as radiological releases due to dropping a fuel assembly; and potential inadvertent criticality due to mis-loading a fuel assembly. The proposed amendment does not change the method of fuel movement or spent fuel storage and does not create the potential for a new accident.

The proposed use of a new methodology for performing the DNPS SFP CSA and addition of a new TS requirement limiting the maximum in-rack k-infinity does not change or modify the fuel, fuel handling processes, spent fuel racks, number of fuel assemblies that may be stored in the pool, decay heat generation rate, or the SFP cooling and cleanup system. The potential for blistering on the Boral has been evaluated and the neutron poison will continue to fulfill its function.

The limiting fuel assembly mis-positioning event does not represent a new or different type of accident. The mis-positioning of a fuel assembly within the fuel storage racks has always been possible. The proposed amendment involves a revised CSA for the DNPS Units 2 and 3, SFPs using a new methodology. The associated analysis results show that the storage racks remain sub-critical, with substantial margin, following a worst-case fuel mis-loading event.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves a revised CSA for the DNPS Units 2 and 3, SFPs using a new methodology and proposes a new TS requirement limiting the maximum in-rack k-infinity. This change was evaluated for its effect on margins of safety related to criticality and spent fuel heat removal capability.

DNPS TS 4.3, ''Fuel Storage,'' Specification 4.3.1.1.a requires the spent fuel storage racks to maintain the effective neutron multiplication factor, k-eff, less than or equal to 0.95 when fully flooded with unborated water, which includes an allowance for uncertainties. Therefore, for spent fuel pool criticality considerations, the required safety margin is 5 percent.

The proposed change ensures, as verified by the associated criticality analysis, that k-eff continues to be less than or equal to 0.95, thus preserving the required safety margin of 5 percent. In addition, using the in-rack k-infinity limit ensures that the SFP criticality analysis remains bounding and provides adequate protection to ensure public health and safety in that it determines the reactivity limit for the fuel assemblies that are allowed to be stored in the SFP storage racks.

The proposed use of a new methodology for performing the DNPS SFP CSA does not affect spent fuel heat generation or the spent fuel cooling systems. A conservative analysis indicates that the design basis requirements and criteria for spent fuel cooling continue to be met with Boral blistering considered.

In addition, the radiological consequences of a dropped fuel assembly remain unchanged as the anticipated fuel damage due to a fuel handling accident is unaffected by the use of a new methodology to perform the CSA. The proposed change also does not increase the capacity of the Unit 2 and Unit 3 spent fuel pools beyond the current capacity of not more than 3537 fuel assemblies.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The hearing request or petition must specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 4, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency

thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by January 4, 2016.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the

proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra (Tami) Domeyer, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, Illinois 60555.

NRC Branch Chief: Travis L. Tate.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is ordered.

Dated at Rockville, Maryland, this 30th day of October, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2015–28290 Filed 11–4–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–037; NRC–2008–0556]

AmerenUE Combined License Application for Callaway Plant, Unit 2 Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for combined license; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing an application for a combined license (COL) for the Callaway Plant, Unit 2 Nuclear Power Plant in Callaway County, Missouri. The COL application is being withdrawn at the request of the applicant, AmerenUE (Ameren).

DATES: The effective date of the withdrawal of Ameren's combined license application for Callaway Plant, Unit 2 Nuclear Power Plant is November 5, 2015.

ADDRESSES: Please refer to Docket ID NRC–2008–0556 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–2008–0556. 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

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

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: Prosanta Chowdhury, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1647, email: *Prosanta.Chowdhury@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated July 24, 2008, as supplemented by letters dated September 24, 2008, and November 14, 2008, AmerenUE (Ameren) submitted an application to the NRC for a COL for a single unit of the U.S. Evolutionary Power Reactor (U.S. EPR) in accordance with the requirements contained in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor would be identified as Callaway Plant, Unit 2 and located at the current Callaway County, Missouri site of Callaway Power Plant (NRC License No. NPF–30).

On December 18, 2008, a notice was published in the **Federal Register** (73 FR 77078) announcing the acceptance of the Callaway Plant, Unit 2 COL application for docketing in accordance with 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' and 10 CFR part 52. The NRC docket number established for this application is 52–037.

By letter dated June 23, 2009, Ameren requested that the NRC staff suspend all activities relating to the COL application (ADAMS Accession No. ML091750988). By letter dated June 29, 2009, the NRC granted the suspension of the COL application (ADAMS Accession No. ML091750665). By letter dated August 12, 2015, Ameren requested that the Callaway Plant, Unit 2 COL application be withdrawn (ADAMS Accession No. ML15265A524). Pursuant to the requirements in 10 CFR part 2, the Commission grants Ameren its request to withdraw the Callaway Plant, Unit 2 COL application.

Dated at Rockville, Maryland, this 29th day of October 2015.

For the Nuclear Regulatory Commission.

Francis M. Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–28258 Filed 11–4–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meetings

TIME AND DATE: Week of November 2, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of November 9, 2015—Tentative

Monday, November 9, 2015

2:45 p.m. Affirmation Session (Public Meeting) (Tentative)

a. *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant), *Friends of the Earth's Appeal of LBP–15–6* (Tentative)

b. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant)—Appeal of LBP–15–17 (Tentative)

c. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant)—Appeal of LBP–15–20 (Tentative)

d. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3)—Petition for Interlocutory Review of Atomic Safety and Licensing Board's July 20, 2015 Order (Denying New York Motion to Withdraw Proprietary Designation) (Tentative)

CONTACT PERSON FOR MORE INFORMATION: The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:*http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: November 2, 2015.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–28297 Filed 11–3–15; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–0327 and 50–0328; NRC–2014–0045]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 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 Tennessee Valley Authority (the licensee) to withdraw its application dated October 2, 2013, for a proposed amendment to DPR–77 and DPR–79. The proposed amendment would have revised Units 1 and 2 Technical Specification (TS) 3.7.5, ''Ultimate Heat Sink.''

ADDRESSES: Please refer to Docket ID NRC–2014–0045 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–2014–0045. 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: Andrew Hon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–8480, email: *Andrew.Hon@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Tennessee Valley Authority (the licensee) to withdraw its October 2, 2013, application (ADAMS Accession No. ML13280A267) for proposed amendment to Facility Operating License Nos. DPR–77 and DPR–79 issued to the licensee for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

The licensee requested to revise Units 1 and 2 TSs 3.7.5, ''Ultimate Heat Sink,'' to place additional limitations on the maximum average Essential Raw Cooling Water (ERCW) System supply header water temperature during operation with one ERCW pump per loop and operation with one ERCW supply strainer per loop. In addition, the one-time limitations on Unit 1 ultimate heat sink (UHS) temperature and the associated license condition requirements used for the Unit 2 steam generator replacement project are proposed to be deleted. The proposed changes would place additional temperature limitations on the UHS TS Limiting Condition for Operation 3.7.5 with associated required actions, to support maintenance on plant component without requiring a dual unit shutdown.

This proposed amendment request was noticed in 78 *FR* 74184 dated December 10, 2013 and supplemented by letters dated December 11, 2013 (ML13354A715), August 18, 2014 (ML14231B294) and October 22, 2015 (ML15295A427).

Dated at Rockville, Maryland, this 28th day of October 2015.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–28253 Filed 11–4–15; 8:45 am]

BILLING CODE 7590–01–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice-PCLOB–2015–05; Docket No. 2015–0001; Seq. No. 5]

Notice of a Closed Meeting

Time and Date: Monday, November 9, 2015 from 9:30 a.m. through 12:30 p.m. (Eastern Standard Time).

Place: 2100 K Street NW., Washington, DC 20427.

Status: Closed. Pursuant to 5 U.S.C. 552b(c)(1) and 6 CFR 1003.5(a), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

Matters To Be Considered: On April 8, 2015, during an open Sunshine Act meeting, the Board voted to select certain counterterrorism-related activities governed by Executive Order 12333, and conduct focused, in-depth examinations of those activities. The November 9, 2015 closed meeting will discuss these in-depth examinations.

Contact Person for More Information: Ms. Sharon Bradford Franklin, Executive Director, 202–331–1986.

Dated: November 2, 2015.

Eric Broxmeyer,

General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2015–28283 Filed 11–4–15; 8:45 am]

BILLING CODE 6820–B3–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Identifying Sources of Agricultural Innovation

ACTION: Notice of Request for Information.

SUMMARY: The purpose of this Request for Information (RFI) is to discover new ideas that will spur innovation in agriculture and food systems and raise the profile of agricultural research. According to recent projections from The United Nations, the global population could reach 9.15 billion people by 2050. In the future, to meet the demand for food and other plant-derived products from a global population of this size, an increase of global agriculture production by as much as 70 percent will be required. More than four-fifths of the necessary production gains will need to occur on existing agricultural land through sustainable intensification that makes effective use of land and water resources. The Office of Science and Technology Policy (OSTP) therefore seeks information about programs, public or private, that are actively working to innovate agricultural science, as well as areas of need in research, education, and training. Input is sought from biological and agricultural stakeholders, including researchers in academia and industry, non-governmental organizations, scientific and professional societies, and other interested members of the public.

DATES: Responses must be received by December 4, 2015 to be considered.

ADDRESSES: You may submit responses by any of the following methods (webform is preferred):

• *Webform:* Use *https://www.whitehouse.gov/webform/request-information-agricultural-innovation* to submit responses.

• *Mail:* ATTN: Elizabeth Stulberg, Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC 20504. If submitting a response by mail, please allow sufficient time for mail processing.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions; however, they should clearly indicate the number of each question to which they are responding. Responses must be unclassified and should not contain any information that might be considered proprietary, confidential, or personally identifying (such as home address or social security number). Responses to this RFI may be posted without change online. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Elizabeth Stulberg, *estulberg@eop.ostp.gov,* Office of Science and Technology Policy, Science Division.

SUPPLEMENTARY INFORMATION:

Information Requested

The purpose of this RFI is to solicit feedback from researchers in academia and industry, non-governmental organizations, scientific and professional societies, and other interested members of the public on the research, education, and training programs that are successfully working to push the cutting edge of agricultural

technology and science and to identify the tools, techniques, and training needed to advance agricultural research beyond current roadblocks to innovation.

Questions

Respondents may wish to address the following questions with regard to the future of agriculture and food systems:

1. Over the next ten years, what are the most important research gaps that must be addressed to advance agricultural innovation?
2. What interdisciplinary agriculture and food programs successfully impact agricultural innovation?
3. What elementary, middle, and high school outreach programs are successful examples of introducing students to agricultural careers, and what are examples of effective ways to introduce agriculture to suburban and urban students interested in careers in science, technology, engineering, and math (STEM)?
4. How can colleges and universities recruit STEM undergraduates into agricultural disciplines? What effect, if any, do introductory courses that engage students in discovery-based research have for this purpose?
5. What resources are fundamental to addressing agricultural research needs?
6. What further training is needed among agricultural professionals to take advantage of advances in agriculture research?
7. Is there any additional information, not requested above, that you believe OSTP should consider in identifying crucial areas of agricultural research?

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2015–28289 Filed 11–4–15; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76320; File No. SR–BATS–2015–92]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 21.2, 21.6, and 21.7, as They Relate to Order Acceptance Time

October 30, 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 October 28, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 21.2, 21.6, and 21.7 to change the time orders will be accepted on the Exchange's options platform (''BATS Options'') from 8:00 a.m. to 7:30 a.m.

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 is proposing to amend Rules 21.2, 21.6, and 21.7 to change the time orders will be accepted on BATS Options from 8:00 a.m. to 7:30 a.m. Currently, the Exchange begins accepting orders at 8:00 a.m. Eastern Time. Orders would then be available for execution as of 9:30 a.m. until 4:00 p.m. Eastern Time.[5] The Exchange does not propose to amend how it handles orders accepted prior to the market open other than to begin accepting orders at 7:30 a.m. Eastern Time rather than 8:00 a.m. Eastern Time.

First, the Exchange proposes to amend Rule 21.2(a) to expressly state that the Exchange will begin accepting orders at 7:30 a.m. Eastern Time, as described in Rule 21.7 and discussed below. The addition of this sentence to Rule 21.2(a) would align the text of the rule with EDGX Exchange, Inc. (''EDGX'') Rule 21.2(a).[6]

Second, the Exchange proposes to amend Rule 21.6(c) to state that orders can be entered into the System starting at 7:30 a.m. Eastern Time. Currently, the Rule 21.6(c) states that orders can be entered into the System from 9:30 a.m. Eastern Time until the market close. While orders will be accepted by the System starting at 7:30 a.m. Eastern Time, they will not be eligible for execution until 9:30 a.m. Eastern Time. The Exchange also proposes to amend Rule 21.6(c) to state that orders received prior to completion of the Exchange's Opening Process will be handled in accordance with Rule 21.7 discussed below. As with the proposed change to Rule 21.2(a) discussed above, the addition of this sentence to Rule 21.6(c) would align the text of the rule with EDGX Rule 21.6(c).[7]

Lastly, as amended, Rule 21.7 would state that the Exchange will accept market and limit orders and quotes for inclusion in the opening process beginning at 7:30 a.m. Eastern Time, rather than 8:00 a.m. as is currently the case and will continue to accept market and limit orders and quotes until such time as the Opening Process is initiated in that option series (the ''Order Entry Period''), other than index options.[8] The Exchange will continue to not accept IOC,[9] FOK[10] or WAIT[11] orders for queuing prior to the completion of the Opening Process. The Exchange will also continue to convert all Intermarket

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Option contracts on Fund Shares, as defined in Rule 19.3(i), option contracts on exchange-traded notes including Index-Linked Securities, as defined in Rule 19.3(l), and option contracts on broad-based indexes, as defined in Rule 29.1(j), close as of 4:15 p.m. Eastern Time. *See* Exchange Rule 21.2(a).

[6] The Exchange understands that EDGX is to also file a proposed rule change with the Commission to amend its Rules 21.2, 21.6, and 21.7 to change the time orders will be accepted from 8:00 a.m. to 7:30 a.m.

[7] *Id.*

[8] Rule 21.7 also discusses order acceptance when the primary listing market for the applicable underlying security declares a regulatory trading halt, suspension, or pause with respect to such security (''Regulatory Halt''). The Exchange does not propose to amend the treatment of orders during a Regulatory Halt under Rule 21.7.

[9] *See* Exchange Rule 21.1(f)(2).

[10] *See* Exchange Rule 21.1(f)(5).

[11] *See* Exchange Rule 21.1(f)(4).

Sweep Orders (''ISOs'') [12] entered for queuing prior to the completion of the Opening Process into non-ISOs.

2. Statutory Basis

The Exchange believes that its proposal to begin accepting orders at 7:30 a.m. is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] In particular, the proposal is consistent with Section 6(b)(5) of the Act [14] because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that accepting orders at 7:30 a.m. will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. The Exchange also notes that other options exchanges currently accept orders prior to 8:00 a.m. Eastern Time [15] and the proposal would enable the Exchange to directly compete with these exchanges for order flow.

Lastly, the Exchange believes the proposed additions to Rules 21.2(a) and 21.6(c) are consistent with Section 6(b)(5) of the Act [16] because it is designed to provide consistent rules across the Exchange and EDGX, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. The proposed rule changes would provide greater harmonization between rules of similar purpose on the Exchange and EDGX, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive change that is designed to attract additional order flow to the Exchange.[17] The proposed rule change would, therefore, increase competition by enabling the Exchange to accept orders starting at 7:30 a.m. Eastern Time like its competitors. For all the reasons stated above, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition. Lastly, the proposed changes to Rules 21.2(a) and 21.6(c) are not designed to address any competitive issues but rather to provide greater harmonization among Exchange and EDGX rules of similar purpose.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. 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

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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 [18] and paragraph (f)(6) of Rule 19b-4 thereunder,[19] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 No. SR–BATS–2015–92 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 No. SR–BATS–2015–92. 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

[12] *See* Exchange Rule 21.1(d)(11).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Nasdaq OMX Systems Hours of Operation, *available at http://nasdaqtrader.com/content/TechnicalSupport/nasdaq_sys_hours.pdf* (stating that system hours begin at 7:00 a.m. for Nasdaq OMX BX (''BX'') and 7:30 a.m. for Nasdaq OMX PHLX (''PHLX''), *and* BX Chapter VI, Section 2(a) (stating the System operates and shall be available to accept bids and offers and orders from the time prior to market open specified by the Exchange on its Web site to market close on each business day). *See also* Hours of Operation of the MIAX Options Exchange (''MIAX'') *available at http://www.miaxoptions.com/hours-operation-miax-options-exchange* (stating that firms can connect and conduct pre-market activity starting at 7:30 a.m.).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 15.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

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 No. SR–BATS–2015–92, and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28145 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76321; File No. SR–EDGX–2015–50]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 21.2, 21.6, and 21.7, as They Relate To Order Acceptance Time

October 30, 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 October 28,2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 21.2, 21.6, and 21.7 to change the time orders will be accepted on the Exchange's options platform (''EDGX Options'') from 8:00 a.m. to 7:30 a.m.

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 is proposing to amend Rules 21.2, 21.6, and 21.7 to change the time orders will be accepted on EDGX Options from 8:00 a.m. to 7:30 a.m. Currently, Exchange rules state that the Exchange will begin accepting orders at 8:00 a.m. Eastern Time. Orders would then be available for execution as of 9:30 a.m. until 4:00 p.m. Eastern Time.[5] The Exchange does not propose to amend how it would handle orders accepted prior to the market open other than to begin accepting orders at 7:30 a.m. Eastern Time rather than 8:00 a.m. Eastern Time.

First, the Exchange proposes to amend Rule 21.2(a) to state that the Exchange will begin accepting orders at 7:30 a.m. Eastern Time, as described in Rule 21.7 and discussed below. Second, the Exchange proposes to amend Rule 21.6(c) to state that orders can be entered into the System starting at 7:30 a.m. Eastern Time. Currently, the Rule 21.6(c) states that orders can be entered into the System from 8:00 a.m. Eastern Time until the market close. While orders will be accepted by the System starting at 7:30 a.m. Eastern Time, they will not be eligible for execution until 9:30 a.m. Eastern Time.

Lastly, as amended, Rule 21.7 would state that the Exchange will accept market and limit orders and quotes for inclusion in the opening process beginning at 7:30 a.m. Eastern Time, rather than 8:00 a.m. as is currently the case and will continue to accept market and limit orders and quotes until such time as the Opening Process is initiated in that option series (the ''Order Entry Period''), other than index options.[6] The Exchange will continue to not accept IOC[7] or FOK[8] orders for queuing prior to the completion of the Opening Process. The Exchange will also continue to convert all Intermarket Sweep Orders (''ISOs'')[9] entered for queuing prior to the completion of the Opening Process into non-ISOs.

2. Statutory Basis

The Exchange believes that its proposal to begin accepting orders at 7:30 a.m. is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, the proposal is consistent with Section 6(b)(5) of the Act[11] because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that accepting orders at 7:30 a.m. will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices. The Exchange also notes that other options exchanges currently accept orders prior to 8:00 a.m. Eastern Time[12] and the proposal would enable

[20] 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).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Option contracts on Fund Shares, as defined in Rule 19.3(i), option contracts on exchange-traded notes including Index-Linked Securities, as defined in Rule 19.3(l), and option contracts on broad-based indexes, as defined in Rule 29.1(j), close as of 4:15 p.m. Eastern Time. *See* Exchange Rule 21.2(a).

[6] Rule 21.7 also discusses order acceptance when the primary listing market for the applicable underlying security declares a regulatory trading halt, suspension, or pause with respect to such security (''Regulatory Halt''). The Exchange does not propose to amend the treatment of orders during a Regulatory Halt under Rule 21.7.

[7] *See* Exchange Rule 21.1(f)(2).

[8] *See* Exchange Rule 21.1(f)(5).

[9] *See* Exchange Rule 21.1(d)(10).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Nasdaq OMX Systems Hours of Operation, *available at http://nasdaqtrader.com/content/TechnicalSupport/nasdaq_sys_hours.pdf* (stating that system hours begin at 7:00 a.m. for Nasdaq OMX BX (''BX'') and 7:30 a.m. for Nasdaq OMX PHLX (''PHLX''), *and* BX Chapter VI, Section 2(a) (stating the System operates and shall be available to accept bids and offers and orders from the time prior to market open specified by the Exchange on its Web site to market close on each business day). *See also* Hours of Operation of the MIAX Options Exchange (''MIAX'') *available at http://*

Continued

the Exchange to directly compete with these exchanges for order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change is a competitive change that is designed to attract additional order flow to the Exchange.[13] The proposed rule change would, therefore, increase competition by enabling the Exchange to accept orders starting at 7:30 a.m. Eastern Time like its competitors. For all the reasons stated above, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the 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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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[14] and paragraph (f)(6) of Rule 19b–4 thereunder,[15] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 No. SR–EDGX–2015–50 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 No. SR–EDGX–2015–50. 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 No. SR–EDGX–2015–50, and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28146 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31887]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 30, 2015.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2015. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Chief Counsel's Office at (202) 551–6821, SEC, Division of Investment

---

www.miaxoptions.com/hours-operation-miax-options-exchange (stating that firms can connect and conduct pre-market activity starting at 7:30 a.m.).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Santander AM Funds Trust [File No. 811–22890]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 28, 2015.

Applicant's Address: 2 Morrissey Boulevard, Dorchester, Massachusetts 02125.

Eudora Funds [File No. 811–22729]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 10, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $7,750 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 30, 2015.

Applicant's Address: 8000 Town Centre Drive, Suite 400, Broadview Heights, Ohio 44147.

Russell Exchange Traded Funds Trust [File No. 811–22320]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 30, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $41,223 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on October 5, 2015.

Applicant's Address: 1301 Second Avenue, 18th Floor, Seattle, Washington 98101.

HCIM Trust [File No. 811–22871]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Hatteras Disciplined Opportunity Fund, a series of Hatteras Alternative Mutual Funds Trust, and on July 10, 2015, made a final distribution to its shareholders based on net asset value. Expenses of $16,987.50 incurred in connection with the reorganization were paid by the investment adviser of the applicant and the acquiring fund.

Filing Dates: The application was filed on October 6, 2015.

Applicant's Address: 6601 Six Forks Road, Suite 340, Raleigh, North Carolina 27615.

Franklin Mutual Recovery Fund [File No. 811–21306]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Franklin Mutual Quest Fund of the Franklin Mutual Series Funds, and on August 27, 2015, made a final distribution to its shareholders based on net asset value. Expenses of approximately $116,653 incurred in connection with the reorganization were paid by the acquiring fund and the investment adviser of the applicant and the acquiring fund.

Filing Dates: The application was filed on October 23, 2015.

Applicant's Address: 101 John F. Kennedy Parkway, Short Hills, New Jersey 07078–2702

Master Basic Value LLC [File No. 811–10179]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 9, 2015, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $135,046 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on October 28, 2015.

Applicant's Address: 100 Bellevue Parkway, Wilmington, Delaware 19809

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28149 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76323; File No. SR–NYSE–2015–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Change, as Modified by Amendment No. 1, Amending Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual to Exempt Early Stage Companies From Having To Obtain Shareholder Approval Before Issuing Shares for Cash to Related Parties, Affiliates of Related Parties or Entities in Which a Related Party Has a Substantial Interest

October 30, 2015.

On April 16, 2015, New York Stock Exchange (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval before issuing shares for cash to related parties, affiliates of related parties or entities in which a related party has a substantial interest. The proposed rule change was published for comment in the **Federal Register** on May 6, 2015.[3] The Commission received no comment letters in response to the publication of the Notice. On June 18, 2015, the Commission designated a longer period for Commission action on the proposed rule change, until August 4, 2015.[4] On August 4, 2014, the Commission initiated proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On August 31, 2015, in response to the Order Instituting Proceedings, the Commission received a comment letter from the Exchange as well as an Amendment No. 1 to the proposed rule change.[7] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74849 (April 30, 2015), 80 FR 26118 (''Notice'').

[4] *See* Securities Exchange Act Release No. 75248 (June 18, 2015), 80 FR 36385 (June 24, 2015).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 75599 (August 4, 2015), 80 FR 47978 (August 10, 2015) (''Order Instituting Proceedings'').

[7] *See* letter to Brent J. Fields, Secretary, Commission from Clare F. Saperstein, Associate General Counsel, New York Stock Exchange, dated August 31, 2015 and Amendment No. 1 to the

Continued

Commission has received two other comment letters in response to the Order Instituting Proceedings.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change.[10] The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[11] The proposed rule change was published for comment in the **Federal Register** on May 6, 2015. November 2, 2015 is 180 days from that date, and January 1, 2016 (which is a Federal holiday) is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the comment letters and take action on the Exchange's proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates December 31, 2015, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSE–2015–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28148 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

proposed rule change dated August 31, 2015. In Amendment No. 1 the Exchange stated that it believed there was a potential ambiguity in the proposed rule language submitted as part of the original proposal. Amendment No. 1 amends the original proposed rule language to clarify that the proposed exemption from shareholder approval transactions involving the sale of stock for cash by an early stage company applies not only to a related party, as originally proposed, but also to a subsidiary, affiliate or other closely-related person of a related party; or any company or entity in which a related party has a substantial direct or indirect interest.

[8] *See* memorandum to the Commission from Rick. A. Fleming, Office of the Investor Advocate, Commission, dated October 16, 2015; and public comment email from Suzanne Shatto, dated October 16, 2015.

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[11] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76317; File No. SR–BX–2015–060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Risk Monitor Mechanism

October 30, 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 October 16, 2015, NASDAQ OMX BX, Inc. (''BX'' 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 Chapter VI, Section 19 entitled ''Risk Monitor Mechanism'' by reserving this rule and relocating the rule governing the Risk Monitor Mechanism into BX Rule at Chapter VII, Section 6(f)(i), entitled ''Market Maker Quotations'' which contains similar market maker[3] risk monitor tools. The Exchange is also modifying the language currently

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to relocate and amend the current rule text of the Risk Monitor Mechanism at Chapter VI, Section 19.[4] The Exchange is proposing to relocate the rule text into Chapter VII, Section 6, which currently describes two other risk mechanisms offered to BX Market Makers today.[5] Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Risk Monitor Mechanism (hereinafter ''Percentage-Based Threshold'') permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange will require BX Market Makers to utilize either the Percentage-Based Threshold or the Volume-Based Threshold.[6] The Multi-Trigger Threshold will be optional.[7] Today, BX Market Makers are required to utilize the Percentage-Based Threshold.

Current Rule Text in Chapter VI, Section 19

BX Rules at Chapter VI, Section 19 specifically describes the counting program that is maintained by the System for each Participant in a particular option. Specifically, the counting program counts the number of contracts traded in an option by each Participant within a specified time period, not to exceed 15 seconds, established by each Participant known

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to BX Rules at Chapter VII, Section 5, entitled ''Obligations of Market Makers'', in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[4] The proposed amendments will conform the rule text to the manner in which the System operates today.

[5] The two risk protections, Volume-Based Threshold and the Multi-Trigger Threshold, are BX Market Maker protections, similar to the Risk Monitor Mechanism to assist BX Market Makers to control their trading risks.

[6] The Volume-Based Threshold is offered only to BX Market Makers.

[7] The Multi-Trigger Threshold is offered only to BX Market Makers.

in this rule as the ''specified time period.''

The specified time period commences for an option when a transaction occurs in any series in such option. The Exchange counts Specialized Quote Feed (''SQF'')[8] quotes only in determining the number of contracts traded and removed by the System. When a Participant trades the Specified Engagement Size during the specified time period, the Percentage-Based Threshold is triggered[9] and the System automatically removes such Participant's quotations from the Exchange's orders in all series of the particular option. The Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Participant, not less than 100%.

The Specified Engagement Size is automatically offset by a number of contracts that are executed on the opposite side of the market in the same option issue during the specified time period known as the ''Net Offset Specified Engagement Size.'' Long call positions are only offset by short call positions, and long put positions are only offset by short put positions. The Percentage-Based Threshold is engaged once the Net Offset Specified Engagement Size represents a net number of contracts executed among all series in an option issue, during the specified time period, where the issue percentage is equal to or greater than the Specified Percentage.[10]

The System automatically resets the counting program and commences a new specified time period when: (i) A previous counting period has expired and a transaction occurs in any series in such option; or (ii) the Participant refreshes his/her quotation, in a series for which an order has been executed (thus commencing the specified time period) prior to the expiration of the specified time period.

Proposed Rule

The Exchange's amendments to the current rule text are described below in greater detail. The Exchange proposes to amend the current rule to first offer the Percentage-Based Threshold to BX Market Makers only. Today, the Percentage-Based Threshold is offered to all Participants. No other market participants, other than BX Market Makers, currently utilize the Percentage-Based Threshold today.[11] The proposed term ''BX Market Maker'' will be utilized throughout proposed Chapter VII, Section 6(f)(i).

Counting Program

Proposed Rule Chapter VII, Section 6(f)(i) provides, as in the current rule, the Percentage-Based Threshold determines: (i) The percentage that the number of contracts executed in that series represents relative to the Market Maker's disseminated[12] size of each side in that series (''Series Percentage''); and (ii) the sum of the Series Percentage in the option issue (''Issue Percentage''). An offset occurs during the Percentage-Based Specified Time Period.[13] The Exchange proposes to amend the rule text in proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap. The Exchange proposes to amend the rule text of proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period commences for an option every time an execution occurs in any series in such option and continues until the System removes quotes as described in current Chapter VII, Section 6(f)(iv), which is being amended to include the Percentage-Based Specified Time Period, or the Percentage-Based Specified Time Period expires.

Rounding

The Exchange proposes to add amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state that if the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by a Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes in all series of the underlying security submitted through designated BX protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.[14] The current text of Chapter IV, Section 6 states that the Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Market Maker, not less than 100%. The Exchange's proposal adds amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state, that if the Issue Percentage, *rounded to the nearest integer*, equals or exceeds a percentage established by the Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes in all series of an underlying security submitted through designated BX protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.

Today, the System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period. The System tracks transactions, *i.e.*, the sum of buy-side put percentages, the sum of sell-side put percentages, the sum of buy-side call percentages, and the sum of sell-side call percentages, and then calculates the absolute value of the difference between the buy-side puts and the sell-side puts plus the absolute value of the difference between the buy-side calls and the sell-side calls. With this proposal, when these values are rounded, if that number is greater than the Specified Percentage, the Percentage-Based Threshold would be triggered.

Reset

The Exchange proposes to amend the manner in which the System resets. The System will automatically remove quotes in all option series of an underlying security when the Percentage-Based Threshold is reached and then the Percentage-Based Specified

[8] SQF permits the receipt of quotes. SQF Auction Responses and market sweeps are also not included.

[9] A trigger is defined as the event which causes the System to automatically remove all quotes in all options series in an underlying issue.

[10] Any marketable orders or quotes that are executable against a Participant's disseminated quotation that are received prior to the time the Percentage-Based Threshold is engaged are automatically executed at the disseminated price up to the Participant's disseminated size, regardless of whether such an execution results in executions in excess of the Participant's Specified Engagement Size. In the event that the specialist's quote is removed by the Percentage-Based Threshold and there are no other Participants quoting in the particular option, the System will automatically provide two-sided quotes that comply with the Exchange's Rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation. All quotations generated by the Exchange on behalf of a specialist shall be considered ''firm quotations'' and shall be the obligation of the specialist.

[11] The System counts SQF quotes. SQF is available only to BX Market Makers.

[12] The disseminated size is the original size quoted by the Participant.

[13] A specified time period is established by the BX Market Maker and may not to exceed 15 seconds. *See* proposed Chapter VII, Section 6(f)(i).

[14] The System's count of the number of contracts executed is based on trading interest resting on the Exchange book. The Volume-Based Specified Time Period, in current Chapter VII, Section 6(f)(ii), designated by the BX Market Maker must be the same time period as designated for purposes of the Percentage-Based Threshold. The Exchange references protocols more specifically in this rule. The Exchange counts SQF quotes only in determining the number of contracts traded and removed by the System. *See* note 8.

Time Period is reset. The System will send a Purge Notification Message [15] to the Market Maker for all affected options when the threshold has been reached. Pursuant to this proposal, when the System removes quotes as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System.[16] If a Market Maker requests the System to remove quotes in all options series in an underlying issue, the System will automatically reset the Percentage–Based Specified Time Period(s) and new Percentage-Based Specified Time Period(s) will commence for the Percentage-Based Threshold. With this proposal, when the System removes quotes as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System. The proposed rule text adds specificity to the manner in which the Market Maker re-enters the market after a trigger.

Firm Quote

The Exchange represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing the risk protections available to Exchange members. Each of the proposed amendments do not raise a novel regulatory issue, rather these proposed amendments provide for operational transparency.

The proposed rule text continues to offer BX Market Makers a risk protection tool, in addition to other available risk tools,[19] to decrease risk and increase stability. The Exchange offers this risk tool to BX Market Makers, in order to encourage them to provide as much liquidity as possible and encourage market making generally, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system and protect investors and the public interest. Further, it is important to note that any interest that is executable against a BX Market Maker's quotes that are received [20] by the Exchange prior to the trigger of the Percentage-Based Threshold, which is processed by the System, automatically executes at the price up to the Market Maker's size. Further, the Purge Notification Message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the message.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to BX Market Makers as compared to all Participants is just and equitable because quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Percentage-Based Threshold permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. Other BX Participants do not bear the burden of the risk and do not have the obligations that BX Market Makers are obligated by rule to comply with on a continuous basis.[21] Also, BX Market Makers are the only participants that utilize the risk tool today and therefore no other market participant is being denied access to a tool as they never had the ability to utilize the risk tool because only SQF quotes are impacted.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential time segments is consistent with the Act because the purpose of the risk tool is to provide BX Market Makers with the ability to monitor its transactions. The proposed counting program provides a tracking method for BX Market Makers related to the specified time period. The System captures information to determine whether a removal of quotes is necessary. The proposed function of this counting program will enable the Exchange to provide the BX Market Maker with information relative to that BX Market Maker's interest currently at risk in the market.

Rounding

The Exchange's amendment which states that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes in all series of an underlying security is consistent with the Act because investors will be protected by providing BX Market Makers with a risk tool which allows BX Market Makers to properly set their risk protections at a level that they are able to meet their obligations and also manage their risk. This specificity provides more detail so that BX Market Makers may properly set their risk controls. Understanding the manner in which the System will round is important in determining when the System will trigger a risk control. Also, today, BX discusses rounding in its Rulebook.[22] Rounding to the nearest integer is not novel.

Reset

The Exchange's proposal to amend the rule text related to resets provides guidance to BX Market Makers as to the manner in which they may re-enter the System after a removal of quotes. This amendment is consistent with the Act because the Exchange desires to provide BX Market Makers with access to the market at all times. BX Market Makers perform an important function in the marketplace and the Exchange desires to provide its market participants with access to the market. If the Market Maker is removed from the market due to a trigger of the Percentage-Based risk tool, the Exchange will permit re-entry to the market provided the Market Maker sends a re-entry indicator to re-enter the System. This is important because it informs the Exchange that the Market Maker is ready to re-enter the market. Also, the Exchange currently has risk mechanisms in place which provide guidance as to the manner in which a Market Maker may re-enter the System after a removal of quotes.[23]

Quoting Obligations—Market Makers

The Exchange further represents that the System operates consistently with the firm quote obligations of a broker-

[15] A message entitled ''Purge Notification Message'' is systemically sent to the BX Market Maker upon the removal of quotes due to the Percentage-Based Threshold. *See* proposed Chapter VI, Section 6(f)(iii).

[16] The re-entry indicator must be marked as such to cause the System to reset.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* note 5.

[20] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[21] *See* note 3.

[22] *See* BX Rules at Chapter VII, Section 5 regarding Market Maker allocations.

[23] *See* BX Chapter VI, Section 6(f)(vi).

dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to BX Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the removal of such quotes by the Percentage-Based Threshold. BX Market Makers are required to provide continuous two-sided quotes on a daily basis.[24] BX Market Makers that utilize the Percentage-Based Threshold will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day.

Finally, the Exchange believes that its proposal to provide BX Market Makers the optionality to either select the Percentage-Based Threshold or Volume-Based Threshold as one of their risk tools will also protect investors and is consistent with the Act. Today, BX Market Makers are required to utilize the Percentage-Based Threshold. With this proposal, BX Market Makers will have the ability to select their mandatory risk as between the Percentage-Based Threshold or Volume-Based Threshold.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Percentage-Based Threshold is meant to protect BX Market Makers from inadvertent exposure to excessive risk. Accordingly, this proposal will have no impact on competition. Specifically, the proposal does not impose a burden on intra-market or inter-market competition, rather, it provides BX Market Makers with the opportunity to avail themselves of similar risk tools which are currently available on other exchanges.[25] BX Market Makers quote across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose BX Market Makers. The Percentage-Based Threshold permits BX Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange is proposing this rule change to continue to permit BX Market Makers to reduce their risk in the event the Market Maker is suffering from a system issue or due to the occurrence of unusual or unexpected market activity. Reducing such risk will enable BX Market Makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. Reducing risk by utilizing the proposed risk protections enables BX Market Makers, specifically, to enter quotations with larger size, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to BX Market Makers as compared to all Participants does not create an undue burden on competition because other BX Participants do not bear the burden of the risk and do not have the obligations that BX Market Makers are obligated by rule to comply with on a continuous basis.[26] Also, BX Market Makers are the only participants that utilize the risk tool today and therefore no other market participant is being denied access to a tool as they never had the ability to utilize the risk tool because only SQF quotes are impacted.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential time segments does not create an undue burden on competition, rather, it provides the Market Maker with clarity as to the manner in which the System counts quotes and thereby provides BX Market Makers with an increased ability to monitor transactions.

Rounding

The Exchange's amendment to add that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes in all series of an underlying security does not create an undue burden on competition because this amendment also provides the Market Maker with clarity as to the manner in which the System will remove quotes and thereby provides BX Market Makers with an increased ability to monitor transactions and set risk limits.

Reset

The amendment to the rule text concerning resetting does not create an undue burden on competition. The Exchange proposes to amend the manner in which a Market Maker may re-enter the System after a removal of quotes. This amendment provides information to BX Market Makers as to the procedure to re-enter the System after a trigger. This information is intended to provide BX Market Makers with access to the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and subparagraph (f)(6) of Rule 19b–4 thereunder.[28]

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.

[24] *See* note 3.

[25] *See* Section 8 of the 19b–4.

[26] *See* note 3.

[27] 15 U.S.C. 78s(b)(3)(a)(iii).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2015–060 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–BX–2015–060.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–060 and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28144 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76322]

Order Exempting Certain Large Traders From the Self-Identification Requirements of Rule 13h–1 Under the Securities Exchange Act of 1934, and Exempting Certain Broker-Dealers From the Recordkeeping, Reporting, and Monitoring Responsibilities Under the Rule

October 30, 2015.

On July 27, 2011, the Securities and Exchange Commission (''Commission'') adopted Rule 13h–1 (the ''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') to assist the Commission in both identifying and obtaining information on market participants that conduct a substantial amount of trading activity, as measured by volume or market value, in U.S. securities (such persons are referred to as ''large traders'').[1] The Rule requires certain large traders to identify themselves to the Commission by filing Form 13H and separately requires certain broker-dealers to maintain records of large trader transaction information and report such information to the Commission upon request as well as monitor customer trading to help promote compliance with the Rule by traders. Since December 1, 2011, persons whose trading activity reached or exceeded the identifying activity level specified in the Rule have been required to identify themselves to the Commission by filing Form 13H through the Commission's EDGAR system. The Commission implemented the broker-dealer recordkeeping, reporting, and monitoring requirements of the Rule in phases through a series of exemptive orders establishing certain delayed compliance dates,[2] and currently certain broker-dealers are required to keep records of and report to the Commission upon request transaction data for certain of their customers that are either a large trader or an Unidentified Large Trader.[3] Most recently, the Commission established a compliance date of November 1, 2013 for Phase Two of the Rule, which, among other things, implemented the recordkeeping and reporting responsibilities for an additional category of traders and also implemented the monitoring requirements under the Rule to require certain broker-dealers to monitor their customers' trading activity in order to promote awareness of and foster compliance with the self-identification requirements of the Rule.[4] At that time, the Commission stated that the compliance date for Phase Three of the Rule would be November 1, 2015.[5]

The Commission has received a request from the Financial Information Forum (''FIF'') to exempt options traders from the requirements of the Rule conditioned upon such traders not exceeding the ''identifying activity level'' (*i.e.,* the threshold at which a person triggers the self-identification requirements of the Rule) as calculated based on the gross *premium* of the options trades.[6] FIF asserts that such relief would appropriately limit the identification requirements of the Rule by exempting from the Rule a class of persons whose options trading is unlikely to have a market impact.[7] In addition, FIF requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting requirements of Phase Three of the Rule, or alternatively postpone the compliance date of the Phase Three requirements until November 1, 2020.[8] The Securities Industry and Financial Markets Association (''SIFMA'') also has requested that the Commission permanently exempt broker-dealers from the recordkeeping and reporting

[1] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (''Adopting Release''). The effective date of Rule 13h–1 was October 3, 2011.

[2] *See* Securities Exchange Act Release Nos. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) (establishing Phase Two and providing for Phase Three); 69281 (April 3, 2013), 78 FR 20960 (April 8, 2013) (extension of the compliance date); and 66839 (April 20, 2012), 77 FR 25007 (April 26, 2012) (establishing Phase One).

[3] Rule 13h–1(a)(9) defines ''Unidentified Large Trader'' as ''each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.'' The Rule provides that, for purposes of determining whether a registered broker-dealer has reason to know that a person is a large trader, ''a registered broker-dealer need take into account only transactions in NMS securities effected by or through such broker-dealer.'' Rule 13h–1(a)(9).

[4] *See* Securities Exchange Act Release No. 70150, *supra* note 2 (establishing the November 1, 2013 compliance date for customer monitoring responsibilities). *See also* note 27, *infra,* and accompanying text.

[5] Phase Three includes all of the remaining requirements of Rule 13h–1 that were not implemented in either Phase One or Phase Two. In particular, Phase Three would require reporting of execution time on trades for additional categories of persons beyond those covered in Phases One and Two.

[6] *See* Letter from Mary Lou VonKaenel, Managing Director, FIF, to Stephen Luparello, Director of the Division of Trading and Markets, Commission, dated March 27, 2015 (''FIF Letter''), *available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.* Currently, the fair market value of equity options is calculated based on the value of the underlying securities. *See* Rule 13h–1(c)(1)(i).

[7] *See* FIF Letter, *supra* note 6, at 2–3.

[8] *See* FIF Letter, *supra* note 6, at 3.

requirements of Phase Three of the Rule, or alternatively postpone the compliance date of the Phase Three requirements until November 1, 2020.[9]

For the reasons explained below, the Commission believes that providing exemptive relief for equity options traders and deferring Phase Three are appropriate. Accordingly, the Commission is: (1) Conditionally exempting equity options market participants from the self-identification requirements of the Rule if they have not met or exceeded the alternative threshold described below that is applicable to equity options trading;[10] and (2) temporarily exempting broker-dealers until November 1, 2017 from the remaining recordkeeping and reporting obligations of the Rule beyond those established in Phases One and Two.[11]

I. Background

A. Large Trader Status

The Rule defines a large trader as a person who ''directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the *identifying activity level''* (emphasis added).[12] The identifying activity level contains daily and monthly share volume and fair market value thresholds, namely: aggregate transactions in NMS securities that are equal to or greater than (1) during a calendar day, either 2 million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million.[13]

In establishing the current identifying activity level for equity derivative securities, the Commission stated that the Rule was intended to focus on the potential impact of options transactions on the market for the underlying security.[14]

Specifically, for equity options,

- share volume is calculated by multiplying the number of contracts by the option contract's specified multiplier; and
- fair market value is calculated using the value of the securities underlying the option.[15]

At the time the Commission adopted Rule 13h–1, the Commission stated that this approach was consistent with Section 13(h)(1) of the Exchange Act, which sought to promote the Commission's ability to ''monitor[ ] the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value . . .'' in that the methodology considers the equivalent exercise value of the options on the date of purchase.[16] This approach eliminates the need to track and separately consider exercise and instead preemptively identifies traders whose options trading may be of a sufficient magnitude to potentially affect the underlying stock if the positions are exercised.

B. The Requirements of Rule 13h–1

1. Large Trader Self-Identification

As noted above, the Rule requires large traders to self-identify to the Commission on Form 13H and periodically update their Form 13H submission,[17] obtain a unique large trader identification number (''LTID'') from the Commission,[18] and provide this number to their brokers and identify each account to which the LTID applies.[19] These large trader responsibilities are referred to collectively as the ''*Self-Identification Requirements.*''

2. Broker-Dealers' Recordkeeping and Reporting Responsibilities Regarding Unidentified Large Traders and the Customer Monitoring Safe Harbor

Under Rules 13h–1(d) and (e), registered broker-dealers are responsible for, among other things, keeping records of and reporting to the Commission upon request data for their customers that are large traders or Unidentified Large Traders.[20] Specifically, Rule 13h–1 requires that every registered broker-dealer maintain records of data specified in paragraphs (d)(2) and (d)(3) of the Rule (''Transaction Data''), including the applicable LTID(s) and execution time on each component trade, for all transactions effected directly or indirectly by or through: (1) An account such broker-dealer carries for a large trader or an Unidentified Large Trader; or (2) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader under the Rule, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader must maintain records of all Transaction Data.[21] These recordkeeping obligations are referred to collectively as the ''*Recordkeeping Responsibilities.*'' The Rule also requires that, upon Commission request, every registered broker-dealer that is itself a large trader or carries an account for a large trader or an Unidentified Large Trader must electronically report Transaction Data to the Commission through the Electronic Blue Sheets (''EBS'') system for all transactions, equal to or greater than the reporting activity level, effected directly or indirectly by or through accounts carried by such broker-dealer for large traders or Unidentified Large Traders.[22] Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader or Unidentified Large Trader must electronically report Transaction Data to the Commission through the EBS system.[23] The Rule requires that reporting broker-dealers submit the requested Transaction Data no later than the day and time specified in the

[9] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Stephen Luparello, Director of the Division of Trading and Markets, Commission, dated April 9, 2015 (''SIFMA Letter''), *available at: http://www.sec.gov/comments/s7-10-10/s71010.shtml.*

[10] As discussed below, with respect to any persons that previously registered as a large trader on account of their equity options transactions, this exemption relieves those persons from continued compliance with the periodic filing obligations as long as they do not otherwise meet or exceed the identifying activity level in the future.

[11] Phases One and Two are discussed below. *See infra* text accompanying notes 53 and 54.

[12] *See* Rule 13h–1(a)(1).

[13] *See* Rule 13h–1(a)(7).

[14] *See* Adopting Release, *supra* note 1, 76 FR at 46967 (noting that this focus reflected and was consistent with Section 13(h) of the Exchange Act).

[15] Examples of how to calculate the identifying activity for options transactions were provided in the Adopting Release, *supra* note 1, 76 FR at 46967. In contrast, for index options, share volume is not calculated because index options do not overlie shares and fair market value is calculated by multiplying together the index multiplier, the number of options, and the price per contract.

[16] *See* Adopting Release, *supra* note 1, 76 FR at 46967, text accompanying n.65.

[17] *See* Rule 13h–1(b)(1)(i)–(iii). Form 13H and all updates to it are filed electronically through the Commission's EDGAR system.

[18] When a large trader files its initial Form 13H filing through EDGAR, the system sends an automatically generated confirmation email acknowledging acceptance of the filing. That email also contains the unique 8-digit LTID number assigned to the large trader.

[19] *See* Rule 13h–1(b)(2). *See also* Large Trader Adopting Release, *supra* note 1, 76 FR at 46971 (''the requirements that a large trader provide its LTID to all registered broker-dealers who effect transactions on its behalf, and identify each account to which it applies, are ongoing responsibilities that must be discharged promptly'').

[20] *See* note 3, *supra.*

[21] *See* Rule 13h–1(d)(1)(iii).

[22] *See* Rule 13h–1(e).

[23] *See id.*

Commission's request.[24] These reporting obligations are referred to collectively as the ''*Reporting Responsibilities.*'' The Commission has implemented the Recordkeeping and Reporting Responsibilities in phases, as discussed in greater detail below.[25]

Rule 13h–1(f) provides a safe harbor that is designed to reduce broker-dealers' recordkeeping and reporting burdens with respect to Unidentified Large Traders by, among other things, providing relief for when a broker-dealer shall be deemed to know or have reason to know that a person is a large trader and thus subject to reporting obligations related to Unidentified Large Traders under Rule 13h–1. Under the safe harbor, a registered broker-dealer is deemed not to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and it establishes policies and procedures reasonably designed to identify customers whose transactions at the broker-dealer equal or exceed the identifying activity level and, if so, to treat such persons as Unidentified Large Traders and notify them of their potential reporting obligations under this Rule.[26] Collectively, these broker-dealer undertakings are referred to as the ''*Customer Monitoring Obligations.*'' The Customer Monitoring Obligations are intended to promote awareness of and foster compliance with the Rule among persons who might not otherwise be aware of the large trader reporting requirements.[27]

As noted above, the Commission previously granted broker-dealers temporary exemptions from the Customer Monitoring Obligations.[28] As of November 1, 2013, to avail themselves of the safe harbor, broker-dealers with recordkeeping and reporting responsibilities were required to implement the Customer Monitoring Obligations.

II. Exemptive Relief

Pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h–1(g) thereunder,[29] the Commission, by order, may exempt from the provisions of Rule 13h–1, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of Rule 13h–1 to the extent that such exemption is consistent with the purposes of the Exchange Act.

FIF requests that the Commission grant exemptive relief for options traders that would be conditioned upon such traders' activity not exceeding the Rule's identifying activity threshold based on the gross premiums paid for the options as opposed to the value of the underlying stock at the time of the trade.[30] FIF notes that some of its members, particularly brokers with retail customers, have identified through their Customer Monitoring Obligations a number of retail customers that met or exceeded the threshold based primarily on such customers' equity options trading, particularly in deep out-of-the-money options on high priced underlying stocks.[31] According to FIF, customers that meet the ''underlying value'' threshold rarely exercise their options, and many of them would be unable to do so based on their account balances.[32] FIF argues that exemptive relief for all options traders conditioned upon a premium-based threshold calculation would appropriately focus the Rule on traders who are more significant participants in the U.S. securities markets and who are more likely to trade options at levels and in a manner that could have a market impact.[33]

In addition, both FIF and SIMFA request that the Commission permanently exempt broker-dealers from the additional recordkeeping and reporting requirements of Phase Three of the Rule, which have not yet been implemented.[34] In the alternative, FIF requests an extension of Phase Three by an additional five years[35] and SIFMA requests an extension to the earlier of full implementation of a Consolidated Audit Trail (''CAT'') or November 1, 2020.[36] Both FIF and SIFMA stated that their request would allow firms to focus their resources on implementing a CAT.[37]

A. Exemption From the Self-Identification Requirements for Equity Options Traders

As discussed above, the current identifying activity level methodology for equity options was designed to focus on the potential impact of options transactions on the market for the underlying securities. Based on its experience and the experience of its member firms, however, FIF suggests that the current methodology designates as large traders some persons who rarely exercise their options and whose aggregate equity options transactions, considering the actual premium paid for the options, are not of a large enough fair market value to have an impact either on the options market or the underlying equities markets.

In particular, FIF notes that this issue appears to be especially pronounced for market participants, particularly individual non-professional investors, who transact in deep out-of-the money options on high-priced securities.[38] While such transactions may have large exercise values, the premium paid for the options may be modest due to the deep-out-of-the-money nature of the contract, and, importantly, exercise among these traders is very infrequent, according to FIF. FIF's members reported that, among their customers that became large traders as a result of options transactions, such customers very rarely exercised their options,[39] and FIF asserts that many may have lacked the resources to do so.[40] In other words, the current methodology for calculating the fair market value of equity options has resulted in the self-identification as large traders of a number of investors who trade equity options, yet such investors' activity is

[24] *See id.*

[25] *See* Section II.D, *infra.*

[26] *See* Rule 13h–1(f).

[27] *See* Adopting Release, *supra* note 1, 76 FR at 46997.

[28] *See* Securities Exchange Act Release Nos. 66839 and 69281, *supra* note 2.

[29] *See* 15 U.S.C. 78m and 17 CFR 240.13h–1(g), respectively.

[30] FIF requests that the alternative ''options premium'' threshold be consistent with Rule 13h–1(a)(7), which establishes the daily and monthly market value thresholds of the identifying activity level as $20 million and $200 million, respectively. *See* FIF Letter, *supra* note 6, at 2.

[31] *See* FIF Letter, *supra* note 6, at 1.

[32] *See* FIF Letter, *supra* note 6, at 2.

[33] *See* FIF Letter, *supra* note 6, at 2–3.

[34] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2–3.

[35] *See* FIF Letter, *supra* note 6, at 3.

[36] *See* SIFMA Letter, *supra* note 9, at 2. *See also* Rule 613; Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[37] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2.

[38] *See* FIF Letter, *supra* note 6, at 1.

[39] FIF reports that it surveyed its members and found that customers that became large traders as a result of options transactions (''Equity Options LT Customers'') exercised their options less than 2% of the time on average. *See* FIF Letter, *supra* note 6, at 2.

[40] FIF states that, ''[g]iven the account size associated with this class of investor it is unlikely that they would have the ability to exercise these out of the money options.'' *See id.* To support this conclusion, FIF provides anecdotal data: A firm with approximately 2,000 Equity Options LT Customers reported that the average account value was $835,000. Another FIF member firm reported that: The average account size for 90% of its Equity Options LT Customers was less than $555,000; the average value across all Equity Options LT Customer accounts was $2.5 million; and excluding the top 50% of its Equity Options LT Customer accounts, the average account size was under $56,000. *See id.* FIF suggests that without sufficient assets or collateral, such customers would not be able to outright purchase or otherwise finance their acquisition of the underlying securities in an amount that equals or exceeds the $20 million threshold.

unlikely to have a material impact either on the options market or the underlying equities markets for the purposes of Rule 13h–1.

In order to alleviate the burdens on these persons without undermining the purposes of Section 13(h), the Commission hereby is providing a conditional exemption from the Self-Identification Requirements for persons that trade equity options if: (1) The aggregate value of their equity option transactions based on premium paid,[41] combined with the aggregate value of their transactions in all other NMS securities (if any), does not reach or exceed the current fair market value thresholds of the identifying activity level; and (2) they also do not reach or exceed the share volume thresholds of the identifying activity level.[42] Accordingly, this exemptive relief makes the calculation of fair market value for equity options consistent with how index options are valued under the identifying activity level.[43]

This relief utilizes the existing fair market value thresholds of the identifying activity level and references premium paid instead of the price of the underlying at the time of the trade.[44] The Commission is persuaded that valuing equity options using premium paid and applying the existing fair market value thresholds appropriately focuses the Rule on persons whose transactions are more likely to have a market impact and therefore warrant triggering the Self-Identification Requirements. In particular, as FIF has stated, the current methodology impacts a number of equity options traders, many of whom reach the threshold by purchasing options that are deep out of the money and who do not otherwise trade in an amount required to reach the identifying activity level. When these options expire out of the money and are not exercised, the position does not result in any trading in the underlying securities, and thus valuing such options with reference to the price of the underlying security is unlikely to be a useful method to identify traders with the potential to have a market impact on the underlying equities.[45] Using premium paid to value equity options instead will focus the identification requirement on options traders who trade options in larger amounts that thus may be more likely to have a market impact regardless of whether the positions are ultimately exercised. In addition, employing the existing fair market value thresholds to the new premium-based methodology for equity options allows all trading in NMS securities to be easily aggregated for purposes of determining large trader status.[46] For these reasons, the Commission believes that calculating the fair market value for equity options by referencing the premium paid for the options is a better overall indicator, for purposes of Rule 13h–1, of potential market impact and provides appropriate relief to equity options traders. Accordingly, the Commission finds the exemptive relief to be consistent with the purposes of the Exchange Act.

Applying the Threshold Permitted by this Conditional Exemption. Equity Option Transactions Example. For example, during a calendar day, a person purchases 200 call options on ABC stock, each with a 100 multiplier, for a premium of $15 per share, where the underlying stock is trading at $1,000 at the time of the transaction. This transaction reaches the identifying activity level under the current calculation methodology,[47] pursuant to which the options are valued as follows: 200 contracts × 100 shares per contract × $1,000 (the market price of the underlying stock at the time of the trade) = $20 million. Therefore, this transaction would cause the person to qualify as a large trader. However, under this exemptive relief, the fair market value of the options trade would be calculated as follows: 200 contracts × 100 shares per contract × $15 premium price = $300,000. In this case, the transaction price of $300,000 is less than the identifying activity level of $20 million. Further, the daily share volume would be calculated as follows: 200 contracts × 100 shares of the underlying per contract = 20,000 shares, which also is less than the identifying activity level of 2 million shares. Therefore, the person would qualify for this exemption from the Self-Identification Requirements and would not be required to register as a large trader on the basis of this particular options trade alone.

''Mixed'' Transactions Example. By way of another example, consider a person that, during a calendar day, (1) purchases: (a) 100 call options, each with a 100 multiplier, for a premium of $15 per share, where the underlying stock is trading at $1,000 at the time of the transaction; and (b) 100 contracts of puts on an index, where each option uses a $100 multiplier, for $50 per unit; and (2) sells 100,000 shares of an exchange-traded fund (''ETF'') for $100 per share. Under the current method, the fair market value of each transaction would be calculated as follows:

- 100 call option contracts × 100 (contract multiplier) x $1,000 (price of the underlying stock) = $10 million
- 100 index puts × $100 (contract multiplier) x $50 (price per unit) = $500,000
- 100,000 ETF shares × $100 (price per share) = $10 million

Collectively, for purposes of the identifying activity level, the transactions would be valued at $20,500,000 ($10 million + $500,000 + $10 million), which is greater than the daily value threshold ($20 million). Accordingly, the person would be required to self-identify to the Commission as a large trader.

To determine whether the large trader qualifies for this exemptive relief, the equity options would be valued as follows:

- 100 call option contracts × 100 (contract multiplier) × $15 (premium price) = $150,000
- 100 index puts × $100 (contract multiplier) × $50 (price per unit) = $500,000

[41] To calculate premium paid for an options trade, multiply together the number of options contracts involved, the premium paid, and the applicable multiplier. For an example, *see infra* Section II.A.3.

[42] Neither FIF nor SIFMA have requested exemptive relief for persons who become large traders as a result of reaching the identifying activity level *share* volume thresholds applicable to equity options, and the Commission is not herein granting such relief.

[43] *See* Rule 13h–1(c)(1)(ii) (concerning the fair market value of index options). *See also* Adopting Release, *supra* note 1, 76 FR at 46967 (noting, in footnote 64 and the accompanying text, how to determine the fair market value of index (and equity) options).

[44] *See* Rule 13h–1(c)(1)(i) (concerning the fair market value of equity securities underlying transactions in stock options).

[45] Only purchases and sales of equity options and not transactions in the underlying securities pursuant to exercises or assignments count toward the identifying activity level. *See* Rule 13h–1(a)(6). Purchases and sales pursuant to exercises or assignments were expressly excluded from the identifying activity level calculation to avoid double-counting. *See* Adopting Release, *supra* note 1, 76 FR at 46967. The Commission notes that traders may trigger the Self-Identification Requirements when they trade out of the position they obtained by exercising their options.

[46] Further, as noted above, for purposes of the identifying activity level under Rule 13h–1(c) (i) and (ii), fair market value of equity options is calculated differently than that for index options; the fair market value of equity options is calculated based on the value of the underlying security, while the fair market value of index options is calculated based on the premium paid for the contract. As a result, it is easier to reach the identifying activity level by transacting in options on an exchange-traded fund overlying a securities index than it is to transact in index options on the same securities index. This relief harmonizes the fair market value calculations for equity options overlying index-tracking securities (such as index-based exchange traded funds) with the calculations for index options, thereby eliminating the Self-Identification Requirements as a consideration for investors choosing between options products with comparable exposures.

[47] The daily market value threshold of the identifying activity level is $20 million.

- 100,000 ETF shares × $100 (price per share) = $10 million

The person qualifies for exemption from the Self-Identification Requirements (*i.e.,* does not have to identify as a large trader based on this day's transactions alone) because: (1) The daily share volume threshold of the identifying activity level (2 million shares) is not reached;[48] and (2) the value of the equity options under the alternative methodology ($150,000), when combined with the fair market value of the index option and ETF transactions ($500,000 and $10 million, respectively), is less than the daily identifying activity level threshold ($20 million).[49]

B. Broker-Dealers May Update Their Monitoring Safe Harbor Policies and Procedures To Use the New Methodology

Paragraph (f) of Rule 13h–1 provides a safe harbor to reduce broker-dealers' burdens in connection with monitoring their customers' trading for purposes of identifying possible large traders. To take advantage of the safe harbor, broker-dealers must have policies and procedures reasonably designed to identify persons who have reached or exceeded the identifying activity level[50] but not identified themselves to the broker-dealer as a large trader, treat such persons as Unidentified Large Traders, and inform such persons of the obligations under Rule 13h–1. A broker-dealer that updates its policies and procedures to reflect the terms of the exemptive relief described above will be able to avail itself of the monitoring safe harbor.

C. Relief for Equity Options Large Traders Who Already Self-Identified

For any person that previously reached the identifying activity level as a result of the fair market value of their equity options transactions and previously self-identified to the Commission as a large trader, but who otherwise does not presently meet the identifying activity level as calculated under the exemptive relief provided herein, the Commission finds that it is consistent with the purposes of the Exchange Act to allow such person to file for inactive status without waiting the required full calendar year provided in paragraph (b)(3)(iii) of Rule 13h–1.

To take advantage of this relief, a large trader must file for *inactive status* by submitting Form 13H electronically through EDGAR.[51] After filing for inactive status, the large trader is relieved from the Self-Identification Requirements, and thereafter is not required to file any further amendments or annual updates to Form 13H through EDGAR, unless and until the large trader subsequently effects transactions that reach or exceed the identifying activity level, accounting for the relief granted herein for calculating equity options activity. If a large trader that has filed for inactive status later reaches or exceeds the identifying activity level, using premium paid to calculate the fair market value of subsequent equity options transactions, then the large trader must promptly file Form 13H with the Commission for *reactivated status* and promptly thereafter notify its broker-dealers of its reactivated status and update them regarding the applicability of the large trader's LTID and the accounts to which it applies.

D. Temporary Exemption From Phase Three of the Recordkeeping and Reporting Responsibilities

As noted above, the Commission has implemented the Recordkeeping and Reporting Responsibilities applicable to clearing brokers for large traders in phases. In Phase One, which began on November 30, 2012, the Commission required clearing brokers for large traders (including the large trader itself if it is a self-clearing broker-dealer) to keep records and report Transaction Data for large traders' transactions that were either (1) proprietary trades by a U.S. registered broker-dealer; or (2) effected through a ''sponsored access'' arrangement;[52] otherwise, broker-dealers were temporarily exempted from the Recordkeeping and Reporting Responsibilities.[53] In Phase Two, which began on November 1, 2013, the Commission again temporarily exempted broker-dealers, until November 1, 2015, from the Recordkeeping and Reporting Responsibilities, except for: (1) The clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a ''sponsored access'' arrangement; and (c) transactions effected pursuant to a ''direct market access'' arrangement; and (2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time.[54] The Commission also established Phase Three, which requires full compliance with the Recordkeeping and Reporting Responsibilities for all applicable broker-dealers starting November 1, 2015.[55]

When the Commission adopted the Rule, it characterized the large trader reporting requirements as ''relatively modest steps'' to ''address the Commission's near-term need for access to more information about large traders and their trading activities. . . .''[56] After the Commission adopted the Rule, industry commenters began to identify specific implementation challenges and offered more detailed estimates of the cost of full compliance with the Recordkeeping and Reporting Responsibilities. Such concerns led the Commission to implement the Recordkeeping and Reporting Responsibilities in phases.[57]

Additionally, since adopting the Rule, the Commission adopted Rule 613, which directed the self-regulatory organizations (''SROs'') to jointly submit a plan to create a comprehensive CAT that would allow regulators to efficiently and accurately track all activity throughout the U.S. markets in National Market System (NMS) securities.[58] When the Commission adopted that rule, it stated that, while certain aspects of Rule 13h–1 are not addressed by Rule 613, Rule 613 may

[48] The share volume calculation of the three transactions is as follows: (100 call option contracts x 100 contract multiplier) + 0 (index options have no underlying shares) + 100,000 ETF shares = 110,000 shares.

[49] $150,000 + $500,000 + $10 million = $10,650,000, which is less than the daily market threshold of the identifying activity level ($20 million).

[50] *See* Rule 13h–1(f)(1).

[51] The specific form type in EDGAR to file for inactive status is Form 13H–I. After filing for inactive status, the large trader also may inform the broker-dealers through which it transacts of its inactive status. Broker-dealers are not required to keep records of transactions by inactive large trader customers after receiving notice of inactive status from such trader with respect to transactions effected subsequent to such notification. *See* Adopting Release, *supra* note 1, 76 FR at 46976.

[52] *See* Securities Exchange Act Release No. 66839, *supra* note 2, 77 FR at 25008–9. A sponsored access arrangement is one where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer's trading system (*i.e.,* using the customer's own technology or that of a third party provider). At the time, FIF indicated that broker-dealer compliance would be easier for sponsored access customers because those arrangements typically are distinct from all other business lines of the broker-dealer, with infrastructure that processes this order flow that is separate from the platforms that handle other client and proprietary flows. *See id.,* 77 FR at 25008, n.16.

[53] *See id.,* 77 FR at 25010.

[54] *See* Securities Exchange Act Release No. 70150, *supra* note 2, 78 FR at 49558–9.

[55] *See id.,* 78 FR at 49560.

[56] *See* Adopting Release, *supra* note 1, 76 FR at 46963.

[57] *See* note 2, *supra.*

[58] Among other things, Rule 613 requires the self-regulatory organizations to jointly submit an NMS plan to create, implement and maintain a consolidated audit trail, and specifies the type of data to be collected and reported to a central repository.

supersede certain of the broker-dealer Recordkeeping and Reporting Responsibilities of Rule 13h–1.[59] Specifically, the Commission stated: ''[t]o the extent that . . . data reported to the central repository under Rule 613 obviates the need for the EBS system, the Commission expects that the separate [trade] reporting requirements of Rule 13h–1 related to the EBS system would be eliminated.'' [60]

The SROs submitted the initial CAT NMS plan to the Commission on September 30, 2014, and filed an amended plan on February 27, 2015.[61] As of the date of this Order, an NMS plan for a CAT has not yet been published for notice and comment. Accordingly, the Commission continues to rely on, among other things, information available through the Recordkeeping and Reporting Responsibilities as implemented through Phases One and Two. In light of the fact that there is no approved CAT NMS plan, the Commission is hesitant at this time to require broker-dealers to incur the costs associated with the remaining Phase Three Large Trader data while the timing of a CAT remains unclear.

However, the Commission finds that it is consistent with the purposes of the Exchange Act to delay Phase Three, temporarily exempting broker-dealers until November 1, 2017 from the Recordkeeping and Reporting Responsibilities, except for: (1) The clearing broker-dealer for a large trader, with respect to (a) proprietary transactions by a large trader broker-dealer; (b) transactions effected pursuant to a ''sponsored access'' arrangement; and (c) transactions effected pursuant to a ''direct market access'' arrangement; and (2) a broker-dealer that carries an account for a large trader, with respect to transactions other than those set forth above, and for Transaction Data other than the execution time. While FIF and SIFMA have requested a permanent exemption, or alternatively an additional 5-year deferment of the compliance date for Phase Three,[62] the Commission believes at this time that a 2-year extension of the Phase Three compliance date provides sufficient time for the Commission to consider whether to revisit compliance with all of the Recordkeeping and Reporting Responsibilities. Specifically, two years will give the Commission enough time to evaluate future developments, including any investment in or progress on a CAT.[63]

III. Conclusion

It is hereby ordered, pursuant to Section 13(h)(6) of the Exchange Act and Rule 13h–1(g) thereunder, that:

(1) Persons transacting in equity options are exempt from the Self-Identification Requirements if: (1) The aggregate value of their equity option transactions, calculated based on premium paid, combined with the aggregate value of their transactions in all other NMS securities (if any), does not reach or exceed the fair market value thresholds of the identifying activity level; and (2) they also do not reach or exceed the share volume thresholds of the identifying activity level.

(2) A large trader whose transactions in NMS securities since October 3, 2011 reached the identifying activity level one or more times because of the fair market value of its equity options transactions and who would have qualified in each instance for relief under this exemption is exempt from its responsibilities under Rule 13h–1(b)(1)(ii), 13h–1(b)(1)(iii), and 13h–1(b)(2), if such trader files for inactive status by submitting Form 13H and does not subsequently effect transactions that reach or exceed the identifying activity threshold using premium paid to calculate the fair market value of equity options transactions.

(3) Broker-dealers are exempted temporarily until November 1, 2017 from the recordkeeping and reporting requirements of Rule 13h–1(d) and (e), except for (1) clearing broker-dealers for large traders with respect to (a) proprietary transactions by a large trader broker-dealer, (b) transactions effected pursuant to a ''sponsored access'' arrangement, and (c) transactions effected pursuant to a ''direct market access'' arrangement; and, for other types of transactions, (2) broker-dealers that carry an account for a large trader for Transaction Data other than the execution time.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28147 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

[59] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45734 (August 1, 2012).

[60] *Id.,* text accompanying n.95.

[61] Pursuant to Rule 613, the SROs were required to file the CAT NMS Plan on or before April 28, 2013. At the SROs' request, the Commission granted exemptions to extend the deadline for filing the CAT NMS Plan to December 6, 2013, and then to September 30, 2014. *See* Securities Exchange Act Release Nos. 69060 (Mar. 7, 2013), 78 FR 15771 (Mar. 12, 2013) and 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013).

[62] *See* FIF Letter, *supra* note 6, at 3 and SIFMA Letter, *supra* note 9, at 2–3.

[63] *See* note 60, *supra,* and accompanying text.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76316; File No. SR–NASDAQ–2015–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Risk Monitor Mechanism

October 30, 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 October 16, 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 NASDAQ. 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

NASDAQ proposes to amend Chapter VI, Section 19 entitled ''Risk Monitor Mechanism'' by reserving this rule and relocating the rule governing the Risk Monitor Mechanism into NOM Rule at Chapter VII, Section 6(f)(i), entitled ''Market Maker Quotations'' which contains similar market maker [3] risk monitor tools. The Exchange is also modifying the language currently contained in Chapter VI, Section 19.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to NOM Rules at Chapter VII, Section 5, entitled ''Obligations of Market Makers'', in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a NOM Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to relocate and amend the current rule text of the Risk Monitor Mechanism at Chapter VI, Section 19.[4] The Exchange is proposing to relocate the rule text into Chapter VII, Section 6, which currently describes two other risk mechanisms offered to NOM Market Makers today.[5] Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose NOM Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Risk Monitor Mechanism (hereinafter ''Percentage-Based Threshold'') permits NOM Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange will require NOM Market Makers to utilize either the Percentage-Based Threshold or the Volume-Based Threshold.[6] The Multi-Trigger Threshold will be optional.[7] Today, NOM Market Makers are required to utilize the Percentage-Based Threshold.

Current Rule Text in Chapter VI, Section 19

NOM Rules at Chapter VI, Section 19 specifically describes the counting program that is maintained by the System for each Participant in a particular option. Specifically, the counting program counts the number of contracts traded in an option by each Participant within a specified time period, not to exceed 15 seconds, established by each Participant known in this rule as the ''specified time period.''

The specified time period commences for an option when a transaction occurs in any series in such option. The Exchange counts Specialized Quote Feed (''SQF'')[8] quotes and OTTO[9] orders only in determining the number of contracts traded and removed by the System. When a Participant trades the Specified Engagement Size during the specified time period, the Percentage-Based Threshold is triggered[10] and the System automatically removes such Participant's quotations from the Exchange's orders in all series of the particular option. The Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Participant, not less than 100%.

The Specified Engagement Size is automatically offset by a number of contracts that are executed on the opposite side of the market in the same option issue during the specified time period known as the ''Net Offset Specified Engagement Size.'' Long call positions are only offset by short call positions, and long put positions are only offset by short put positions. The Percentage-Based Threshold is engaged once the Net Offset Specified Engagement Size represents a net number of contracts executed among all series in an option issue, during the specified time period, where the issue percentage is equal to or greater than the Specified Percentage.[11]

The System automatically resets the counting program and commences a new specified time period when: (i) A previous counting period has expired and a transaction occurs in any series in such option; or (ii) the Participant refreshes his/her quotation, in a series for which an order has been executed (thus commencing the specified time period) prior to the expiration of the specified time period.

Proposed Rule

The Exchange's amendments to the current rule text are described below in greater detail. The Exchange proposes to amend the current rule to first offer the Percentage-Based Threshold to NOM Market Makers only. Today, the Percentage-Based Threshold is offered to all Participants. No other market participants, other than NOM Market Makers, currently utilize the Percentage-Based Threshold today.[12] The proposed term ''NOM Market Maker'' will be utilized throughout proposed Chapter VII, Section 6(f)(i).

Counting Program

Proposed Rule Chapter VII, Section 6(f)(i) provides, as in the current rule, the Percentage-Based Threshold determines: (i) The percentage that the number of contracts executed in that series represents relative to the Market Maker's disseminated[13] size of each side in that series (''Series Percentage''); and (ii) the sum of the Series Percentage in the option issue (''Issue Percentage''). An offset occurs during the Percentage-Based Specified Time Period.[14] The Exchange proposes to amend the rule text in proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified

[4] The proposed amendments will conform the rule text to the manner in which the System operates today.

[5] The two risk protections, Volume-Based Threshold and the Multi-Trigger Threshold, are NOM Market Maker protections, similar to the Risk Monitor Mechanism to assist NOM Market Makers to control their trading risks.

[6] The Volume-Based Threshold is offered only to NOM Market Makers.

[7] The Multi-Trigger Threshold is offered only to NOM Market Makers.

[8] SQF permits the receipt of quotes. SQF Auction Responses and market sweeps are also not included.

[9] OTTO immediate or cancel orders will not be included. OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from System subscribers, and if there is a matching order, the orders will execute. Non-matching orders are added to the limit order book, a database of available limit orders, where they are matched. All NOM Participants have the ability to utilize OTTO; although non-NOM Market Makers are automatically set at a default value. OTTO does not permit non-NOM Market Makers to adjust the default setting. NOM Market Makers are able to adjust the setting.

[10] A trigger is defined as the event which causes the System to automatically remove all quotes and orders in all options series in an underlying issue.

[11] Any marketable orders or quotes that are executable against a Participant's disseminated quotation that are received prior to the time the Percentage-Based Threshold is engaged are automatically executed at the disseminated price up to the Participant's disseminated size, regardless of whether such an execution results in executions in excess of the Participant's Specified Engagement Size. In the event that the specialist's quote is removed by the Percentage-Based Threshold and there are no other Participants quoting in the particular option, the System will automatically provide two-sided quotes that comply with the Exchange's Rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation. All quotations generated by the Exchange on behalf of a specialist shall be considered ''firm quotations'' and shall be the obligation of the specialist.

[12] The System counts SQF quotes and OTTO orders. *See* notes 8 and 9.

[13] The disseminated size is the original size quoted by the Participant.

[14] A specified time period is established by the NOM Market Maker and may not to exceed 15 seconds. *See* proposed Chapter VII, Section 6(f)(i).

Time periods may overlap. The Exchange proposes to amend the rule text of proposed Rule Chapter VII, Section 6(f)(i) to state that the Percentage-Based Specified Time Period commences for an option every time an execution occurs in any series in such option and continues until the System removes quotes and orders as described in current Chapter VII, Section 6(f)(iv), which is being amended to include the Percentage-Based Specified Time Period, or the Percentage-Based Specified Time Period expires.

Rounding

The Exchange proposes to add amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state that if the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by a Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes in all series of the underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.[15] The current text of Chapter IV, Section 6 states that the Percentage-Based Threshold is engaged when the counting program determines that the Issue Percentage equals or exceeds a percentage established by the Market Maker, not less than 100%. The Exchange's proposal adds amended rule text to proposed Rule Chapter VII, Section 6(f)(i) to state, that if the Issue Percentage, *rounded to the nearest integer,* equals or exceeds a percentage established by the Market Maker, not less than 100% (''Specified Percentage''), the System automatically removes a Market Maker's quotes and orders in all series of an underlying security submitted through designated NASDAQ protocols, as specified by the Exchange, during the Percentage-Based Specified Time Period.

Today, the System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period. The System tracks transactions, *i.e.,* the sum of buy-side put percentages, the sum of sell-side put percentages, the sum of buy-side call percentages, and the sum of sell-side call percentages, and then calculates the absolute value of the difference between the buy-side puts and the sell-side puts plus the absolute value of the difference between the buy-side calls and the sell-side calls. With this proposal, when these values are rounded, if that number is greater than the Specified Percentage, the Percentage-Based Threshold would be triggered.

Reset

The Exchange proposes to amend the manner in which the System resets. The System will automatically remove quotes and orders in all option series of an underlying security when the Percentage-Based Threshold is reached and then the Percentage-Based Specified Time Period is reset. The System will send a Purge Notification Message [16] to the Market Maker for all affected options when the threshold has been reached. Pursuant to this proposal, when the System removes quotes and orders as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System.[17] If a Market Maker requests the System to remove quotes and orders in all options series in an underlying issue, the System will automatically reset the Percentage-Based Specified Time Period(s) and new Percentage-Based Specified Time Period(s) will commence for the Percentage-Based Threshold. With this proposal, when the System removes quotes and orders as a result of the Percentage-Based Threshold, the Market Maker will be required to send a re-entry indicator to re-enter the System. The proposed rule text adds specificity to the manner in which the Market Maker re-enters the market after a trigger.

Firm Quote

The Exchange represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing the risk protections available to Exchange members. Each of the proposed amendments do not raise a novel regulatory issue, rather these proposed amendments provide for operational transparency.

The proposed rule text continues to offer NOM Market Makers a risk protection tool, in addition to other available risk tools,[20] to decrease risk and increase stability. The Exchange offers this risk tool to NOM Market Makers, in order to encourage them to provide as much liquidity as possible and encourage market making generally, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system and protect investors and the public interest. Further, it is important to note that any interest that is executable against a NOM Market Maker's quotes and orders that are received [21] by the Exchange prior to the trigger of the Percentage-Based Threshold, which is processed by the System, automatically executes at the price up to the Market Maker's size. Further, the Purge Notification Message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the message.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to NOM Market Makers as compared to all Participants is just and equitable because quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose NOM Market Makers, who are required to continuously quote in assigned options, to potentially significant market risk. The Percentage-Based Threshold permits NOM Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. Other NOM Participants do not bear the burden of the risk and do not have the obligations that NOM Market Makers are obligated by rule to comply with on a continuous basis.[22] Also, NOM Market Makers are

[15] The System's count of the number of contracts executed is based on trading interest resting on the Exchange book. The Volume-Based Specified Time Period, in current Chapter VII, Section 6(f)(ii), designated by the NOM Market Maker must be the same time period as designated for purposes of the Percentage-Based Threshold. The Exchange references protocols more specifically in this rule. The Exchange counts SQF quotes and OTTO orders only in determining the number of contracts traded and removed by the System. *See* notes 8 and 9.

[16] A message entitled ''Purge Notification Message'' is systemically sent to the NOM Market Maker upon the removal of quotes and orders due to the Percentage-Based Threshold. *See* proposed Chapter VI, Section 6(f)(iii).

[17] The re-entry indicator must be marked as such to cause the System to reset.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* note 5.

[21] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[22] *See* note 3.

the only participants that utilize the risk tool today and therefore no other market participant is being denied access to this risk tool.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential time segments is consistent with the Act because the purpose of the risk tool is to provide NOM Market Makers with the ability to monitor its transactions. The proposed counting program provides a tracking method for NOM Market Makers related to the specified time period. The System captures information to determine whether a removal of quotes and orders is necessary. The proposed function of this counting program will enable the Exchange to provide the NOM Market Maker with information relative to that NOM Market Maker's interest currently at risk in the market.

Rounding

The Exchange's amendment which states that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes and orders in all series of an underlying security is consistent with the Act because investors will be protected by providing NOM Market Makers with a risk tool which allows NOM Market Makers to properly set their risk protections at a level that they are able to meet their obligations and also manage their risk. This specificity provides more detail so that NOM Market Makers may properly set their risk controls. Understanding the manner in which the System will round is important in determining when the System will trigger a risk control. Also, today, NOM discusses rounding in its Rulebook.[23] Rounding to the nearest integer is not novel.

Reset

The Exchange's proposal to amend the rule text related to resets provides guidance to NOM Market Makers as to the manner in which they may re-enter the System after a removal of quotes and orders. This amendment is consistent with the Act because the Exchange desires to provide NOM Market Makers with access to the market at all times. NOM Market Makers perform an important function in the marketplace and the Exchange desires to provide its market participants with access to the market. If the Market Maker is removed from the market due to a trigger of the Percentage-Based risk tool, the Exchange will permit re-entry to the market provided the Market Maker sends a re-entry indicator to re-enter the System. This is important because it informs the Exchange that the Market Maker is ready to re-enter the market. Also, the Exchange currently has risk mechanisms in place which provide guidance as to the manner in which a Market Maker may re-enter the System after a removal of quotes and orders.[24]

Quoting Obligations—Market Makers

The Exchange further represents that the System operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to NOM Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the removal of such quotes by the Percentage-Based Threshold. NOM Market Makers are required to provide continuous two-sided quotes on a daily basis.[25] NOM Market Makers that utilize the Percentage-Based Threshold will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day.

Finally, the Exchange believes that its proposal to provide NOM Market Makers the optionality to either select the Percentage-Based Threshold or Volume-Based Threshold as one of their risk tools will also protect investors and is consistent with the Act. Today, NOM Market Makers are required to utilize the Percentage-Based Threshold. With this proposal, NOM Market Makers will have the ability to select their mandatory risk as between the Percentage-Based Threshold or Volume-Based Threshold.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Percentage-Based Threshold is meant to protect NOM Market Makers from inadvertent exposure to excessive risk. Accordingly, this proposal will have no impact on competition. Specifically, the proposal does not impose a burden on intra-market or inter-market competition, rather, it provides NOM Market Makers with the opportunity to avail themselves of similar risk tools which are currently available on other exchanges.[26] NOM Market Makers quote across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose NOM Market Makers. The Percentage-Based Threshold permits NOM Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange is proposing this rule change to continue to permit NOM Market Makers to reduce their risk in the event the Market Maker is suffering from a system issue or due to the occurrence of unusual or unexpected market activity. Reducing such risk will enable NOM Market Makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. Reducing risk by utilizing the proposed risk protections enables NOM Market Makers, specifically, to enter quotations with larger size, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

Offering the Risk Tool to Market Makers

The Exchange believes that offering the risk tool to NOM Market Makers as compared to all Participants does not create an undue burden on competition because other NOM Participants do not bear the burden of the risk and do not have the obligations that NOM Market Makers are obligated by rule to comply with on a continuous basis.[27] Also, NOM Market Makers are the only participants that utilize the risk tool today and therefore no other market participant is being denied access to this risk tool.

Counting Program

The Exchange's amendment to the operation of the counting program to describe that it operates on rolling basis, with a time window after each transaction, not singular and sequential

[23] *See* NOM Rules at Chapter VII, Section 5 regarding Market Maker allocations.

[24] *See* NOM Chapter VI, Section 6(f)(vi).

[25] *See* note 3.

[26] *See* Section 8 of the 19b4.

[27] *See* note 3.

time segments does not create an undue burden on competition, rather, it provides the Market Maker with clarity as to the manner in which the System counts quotes and orders and thereby provides NOM Market Makers with an increased ability to monitor transactions.

Rounding

The Exchange's amendment to add that if the Issue Percentage, rounded to the nearest integer, equals or exceeds the Specified Percentage, the System automatically removes a Market Maker's quotes and orders in all series of an underlying security does not create an undue burden on competition because this amendment also provides the Market Maker with clarity as to the manner in which the System will remove quotes and orders and thereby provides NOM Market Makers with an increased ability to monitor transactions and set risk limits.

Reset

The amendment to the rule text concerning resetting does not create an undue burden on competition. The Exchange proposes to amend the manner in which a Market Maker may re-enter the System after a removal of quotes and orders. This amendment provides information to NOM Market Makers as to the procedure to re-enter the System after a trigger. This information is intended to provide NOM Market Makers with access to the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [28] and subparagraph (f)(6) of Rule 19b–4 thereunder.[29]

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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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–2015–122 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NASDAQ–2015–122.* 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–2015–122* and should be submitted on or before November 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–28143 Filed 11–4–15; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(3)(a)(iii).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to provide recommendations regarding occupant protection rulemaking in normal and transport category rotorcraft for older certification basis type designs that are still in production. The FAA amended regulations to incorporate occupant protection rules, including those for emergency landing conditions and fuel system crash resistance, for new type designs in the 1980s and 1990s. These rule changes do not apply to newly manufactured rotorcraft with older type designs or to derivative type designs that keep the certification basis of the original type design. This approach has resulted in a very low incorporation rate of occupant protection features into the rotorcraft fleet, and fatal accidents remain unacceptably high. At the end of 2014, only 16% of U.S. fleet had complied with the crash resistant fuel system requirements effective 20 years earlier, and only 10% had complied with the emergency landing requirements effective 25 years earlier. A recent fatal accident study has shown these measures would have been effective in saving lives.

This notice informs the public of the new ARAC activity and solicits

membership for the new Rotorcraft Occupant Protection Working Group.

FOR FURTHER INFORMATION CONTACT: Martin R. Crane, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, Texas 76177, *Martin.R.Crane@faa.gov,* phone number 817–222–5110, facsimile number 817–222–5961.

SUPPLEMENTARY INFORMATION:

ARAC Acceptance of Task

As a result of the September 17, 2015, ARAC meeting, the FAA assigned and ARAC accepted this task establishing the Rotorcraft Occupant Protection Working Group. The Rotorcraft Occupant Protection Working Group will serve as staff to the ARAC and provide advice and recommendations on the assigned task. The ARAC will review and accept the recommendation report and will submit it to the FAA.

Background

The FAA established the ARAC to provide information, advice, and recommendations on aviation-related issues that could result in rulemaking to the FAA Administrator, through the Associate Administrator of Aviation Safety.

The Rotorcraft Occupant Protection Working Group will provide advice and recommendations to the ARAC on occupant protection rulemaking, including both initial certification and continued airworthiness. The basic concept of occupant protection is to give all occupants the greatest possible chance to egress an aircraft without serious injury after a survivable emergency landing or accident. While the number of U.S. helicopter accidents and the corresponding accident rate over the past 10 years have steadily decreased, during that same time period data associated with fatal helicopter accidents and fatalities remains virtually unchanged. A number of regulations were promulgated in the 1980s and 1990s to address and greatly improve occupant protection in a survivable emergency landing or accident. These occupant protection improvements involve seat systems that reduce the likelihood of fatal injuries to the occupant in a crash (14 CFR 27.562, 27.785, 29.562, and 29.785); structural requirements that maintain a survivable volume and restrain large items of mass above and behind the occupant (14 CFR 27.561 and 29.561); and fuel systems that reduce the likelihood of an immediate post-crash fire (14 CFR 27.952 and 29.952). If the occupant protection improvement rules are not incorporated in new production helicopters, there will be no meaningful reduction in the number of fatalities in helicopter accidents.

Following a series of accidents involving post-crash fires, the Australian Civil Aviation Safety Authority asked the FAA for assistance in determining the airworthiness of certain helicopters. This request resulted in a collaborative post-crash fire/blunt force trauma study performed by the FAA's Rotorcraft Directorate and Civil Aerospace Medical Institute (CAMI). The data consisted of 97 fatal accidents involving U.S. registered, type-certificated helicopters in a five-year timeframe from 2008 to 2013. Part 27 rotorcraft comprised the largest mass of data (87 of 97 fatal accidents, 90% of the total) in the study. The post-crash fire portion of the study found that post-crash fires occurred in 30 of 76 (39%) of fatal accidents involving part 27 helicopters without fuel systems that meet the full crash resistance requirements of 14 CFR 27.952. The post-crash fire contributed to a fatality in 20% of these fatal accidents. While the data set for part 29 rotorcraft was much smaller (10 of 97 fatal accidents, 10% of the total), the results were comparable. Through the course of the study, the Rotorcraft Directorate further discovered that there were only about 16% of U.S. registered, type-certificated rotorcraft that fully complied with the fuel system crash resistance provisions in §§ 27.952 and 29.952, despite those rules having been in effect for 20 years at the time of the study.

In the time since increased rotorcraft occupant protection standards became effective as federal regulations, research efforts have studied injury patterns in fatal rotorcraft accidents. In April 2003, *Aviation, Space, and Environmental Medicine* published Narinder Taneja and Douglas A. Wiegmann's ''Analysis of Injuries Among Pilots Killed in Fatal Helicopter Accidents.'' Using autopsy data from 1993 to 1999, Taneja and Wiegmann analyzed the pattern of specific bony injuries (ribs, skull, and pelvis) and organ/visceral injuries (brain, lung, and heart) documented in 74 fatal rotorcraft accidents. They found blunt trauma as the cause of death in 88% of the cases, with the highest percentages of injuries to the head and core body regions. Among the implications cited in their study was, ''Protection of the occupants exposed to a crash is a realistic objective that can be achieved if crashworthiness becomes a primary element of initial helicopter design and future upgrade programs.''

The second component of the Rotorcraft Directorate/CAMI study involved blunt force trauma. Blunt force trauma accounted for cause of death in 92% of the 2008–2013 fatal accident data. In addition, blunt force trauma also was the cause of death in 80% of the part 27 fatal rotorcraft accidents where a post-crash fire occurred. The Rotorcraft Directorate and CAMI built their study using the framework and methodology previously established by Taneja and Wiegmann's 2003 study. Further, they used the percentages of bony injuries and organ/visceral injuries documented in Taneja and Wiegmann's study as a baseline for comparison. The intent was to see if a statistically significant change occurred in blunt force trauma injury patterns in fatal rotorcraft accidents in the 10 years since the previous study. They concluded there was no statistically significant difference across most categories of bony injuries and across all categories of organ/visceral injuries. The Rotorcraft Directorate further discovered that only 10% of U.S. registered, type-certificated rotorcraft complied with increased occupant protection measures related to blunt force trauma mandated in the §§ 27.562 and 29.562 rules, despite the rules being in effect for 25 years at the time of the study. The provisions of §§ 27.562 and 29.562 were specifically designed for increased protection of the head and core body regions, the same regions documented with the highest levels of injury in the fatal accident studies conducted by Taneja and Wiegmann and the Rotorcraft Directorate/CAMI.

Additional research found that about 9,000 occupants had been involved in U.S. helicopter accidents in the 25 years since §§ 27.562 and 29.562 became effective. Only 2% of helicopters in those accidents were compliant with §§ 27.562 and 29.562. Over 1,300 occupants were killed in accidents involving the 98% of helicopters that were not compliant with §§ 27.562 and 29.562.

The Task

The Rotorcraft Occupant Protection Working Group is tasked to:

1. Perform a cost-benefit analysis for incorporating the existing occupant protection standards 14 CFR 27.561, 27.562, 27.785, 27.952, 29.561, 29.562, 29.785, and 29.952 via §§ 27.2 and 29.2 for newly manufactured rotorcraft that addresses the following:

a. Estimate what the regulated parties would do differently as a result of the proposed regulation and how much it would cost.

b. Estimate the improvement in survivability of future accidents.

c. Estimate any other benefits (*e.g.,* reduced administrative burden) or costs

that would result from implementation of the occupant protection standards identified above.

2. Develop a cost-benefit analysis report containing the information explained in task 1 above.

3. After the FAA accepts and considers the cost benefit analysis report, the FAA will task the Rotorcraft Occupant Protection Working Group either to make specific written recommendations on how all or part of the existing occupant protection standards 14 CFR 27.561, 27.562, 27.785, 27.952, 29.561, 29.562, 29.785, and 29.952 should be made effective via §§ 27.2 and 29.2 for newly manufactured rotorcraft, or to propose new alternative performance-based occupant protection safety regulations for newly manufactured rotorcraft that will be effective via §§ 27.2 and 29.2.

4. If new alternative performance-based occupant protection safety regulations effective via §§ 27.2 and 29.2 are proposed, perform a cost-benefit analysis that addresses the following:

a. Estimate what the regulated parties would do differently as a result of the proposed regulation and how much it would cost.

b. Estimate the improvement in survivability of future accidents from the proposed recommendations.

c. Estimate any other benefits (*e.g.,* reduced administrative burden) or costs that would result from implementation of the recommendations.

5. Develop an initial report containing recommendations on the findings and results of the tasks explained above.

a. The initial recommendation report should document both majority and dissenting positions on the findings and the rationale for each position.

b. Any disagreements should be documented, including the rationale for each position and the reasons for the disagreement.

6. Complete the following after the FAA accepts the initial recommendation report identified in task 5:

a. Specifically advise and make written recommendations on incorporating rotorcraft occupant protection improvements and standards into the existing rotorcraft fleet. Occupant protection standards include either all or part of 14 CFR 27.561, 27.562, 27.785, 27.952, 29.561, 29.562, 29.785, and 29.952, or new alternative proposed performance-based regulations.

b. Develop an addendum report containing recommendations on the findings and results of the tasks explained above.

c. Document both majority and dissenting positions on the findings and the rationale for each position.

d. Any disagreements should be documented, including the rationale for each position and the reasons for the disagreement.

7. The working group may be reinstated to assist the ARAC in responding to the FAA's questions or concerns after the recommendation report has been submitted.

Schedule

This tasking notice requires three reports.

- The task 2 cost-benefit analysis report must be submitted to the FAA for review and acceptance no later than 6 months after publication of this notice in the **Federal Register**.
- The task 5 initial recommendation report must be submitted to the FAA for review and acceptance no later than 12 months after initiation of task 3 above.
- The task 6 addendum recommendation report must be submitted to the FAA for review and acceptance no later than 6 months after the initial recommendation report is submitted.

Working Group Activity

The Rotorcraft Occupant Protection Working Group must comply with the procedures adopted by the ARAC as follows:

1. Conduct a review and analysis of the assigned tasks and any other related materials or documents.

2. Draft and submit a work plan for completion of the task, including the rationale supporting such a plan, for consideration by the ARAC.

3. Provide a status report at each ARAC meeting.

4. Draft and submit the recommendation reports based on review and analysis of the assigned tasks.

5. Present the cost-benefit analysis report in task 2 at the ARAC meeting.

6. Present the initial recommendation report at the ARAC meeting.

7. Present the findings from the addendum recommendation report at the ARAC meeting.

Participation in the Working Group

The Rotorcraft Occupant Protection Working Group will be comprised of technical experts having an interest in the assigned task. A working group member need not be a member representative of the ARAC. The FAA would like a wide range of members (normal category rotorcraft manufacturers, transport category rotorcraft manufacturers, and rotorcraft operators from various segments of the industry such as oil and gas exploration, emergency medical services, and air tour operators) to ensure all aspects of the tasks are considered in development of the recommendations. The provisions of the August 13, 2014, Office of Management and Budget guidance, ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions'' (79 FR 47482), continues the ban on registered lobbyists participating on Agency Boards and Commissions if participating in their ''individual capacity.'' The revised guidance now allows registered lobbyists to participate on Agency Boards and Commissions in a ''representative capacity'' for the ''express purpose of providing a committee with the views of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry, sector, labor unions, or environmental groups, etc.) or state or local government.'' (For further information see Lobbying Disclosure Act of 1995 as amended, 2 U.S.C 1603, 1604, and 1605.)

If you wish to become a member of the Rotorcraft Occupant Protection Working Group, write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. The FAA must receive all requests by December 7, 2015. The ARAC and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must actively participate in the working group, attend all meetings, and provide written comments when requested. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management and those you may represent advised of working group activities and decisions to ensure the proposed technical solutions do not conflict with the position of those you represent. Once the working group has begun deliberations, members will not be added or substituted without the approval of the ARAC Chair, the FAA, including the Designated Federal Officer, and the Working Group Chair.

The Secretary of Transportation determined the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

The ARAC meetings are open to the public. However, meetings of the

Rotorcraft Occupant Protection Working Group are not open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on October 30, 2015.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2015–28151 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0053; Notice 2]

BMW of North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of Petition.

SUMMARY: BMW of North America, Inc. (BMW) has determined that certain model year (MY) 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars do not fully comply with paragraph S4.2.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 226, *Ejection Mitigation.* BMW has filed an appropriate report dated May 20, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Karen Nuschler, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5829, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 1, 2015 in the **Federal Register** (80 FR 52845). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2015–0053.''

II. Vehicles Involved: Affected are approximately 4,208 MY 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars manufactured from February 25, 2015 to April 24, 2015.

III. Noncompliance: BMW explains that written information describing the ejection mitigation countermeasure installed in the vehicles was not provided to the vehicle consumers as required by paragraph S4.2.3(a) of FMVSS No. 226.

IV. Rule Text: Paragraph S4.2.3 of FMVSS No. 226 requires in pertinent part:

S4.2.3 *Written information.*

(a) Vehicles with an ejection mitigation countermeasure that deploys in the event of a rollover must be described as such in the vehicle's owner manual or in other written information provided by the vehicle manufacturer to the consumer. . . .

V. Summary of BMW's Arguments: BMW stated its belief that the subject noncompliance in the affected vehicles is inconsequential to motor vehicle safety. A summary of its reasoning is provided as follows. Detailed explanations of its reasoning are included in its petition:

1. The vehicles are equipped with a countermeasure that meets the performance requirements of FMVSS No. 226.
2. The owner's manuals contain a description of the ejection mitigation countermeasure in the context of side impact.
3. The owner's manuals contain precautions related to the [ejection mitigation] system even though not required by FMVSS No. 226.
4. The [ejection mitigation] system uses the FMVSS No. 208 required readiness indicator, as allowed by FMVSS No. 226.
5. BMW has not received any customer complaints due to this issue.
6. BMW is not aware of any accidents or injuries due to this issue.
7. NHTSA may have granted similar manufacturer petitions re owner's manuals.
8. BMW has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 226.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt BMW from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: NHTSA believes that while written information was not provided to vehicle owners describing the installed head air bags (side curtain) as vehicle occupant ejection mitigation countermeasures that deploy in the event of a rollover, the owner's manuals for the affected vehicles otherwise effectively describe, and illustrate the location of, the head air bags. NHTSA also believes that the status of the head air bags is monitored by the vehicle's air bag readiness indicator intended to show operational readiness of the entire airbag system. Therefore, drivers should be alerted to a malfunction of the head air bags that are intended to provide ejection countermeasures in the event of a rollover event, and occupant protection in the event of a significant side impact event.

BMW has also reported that they have not received any complaints from vehicle owners regarding the subject noncompliance and that vehicle production was corrected so that the noncompliance did not occur in subsequent vehicles. *NHTSA's Decision:* In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion that the subject FMVSS No. 226 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted and BMW is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the Granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–28130 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0016; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2009 Ford F–150 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming model year (MY) 2009 Ford F–150 trucks that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the MY 2009 Ford F–150 truck) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 7, 2015.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How To Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), Inc. of Houston, Texas (Registered Importer R–90–005) has petitioned NHTSA to decide whether nonconforming MY 2009 Ford F–150 trucks are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are MY 2009 Ford F–150 trucks that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2009 Ford F–150 truck to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified MY 2009 Ford F–150 trucks, as originally manufactured, conform to many FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified MY 2009 Ford F–150 trucks are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices, and Associated Equipment,* 110 *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less,* 111 *Rearview Mirrors,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof panel System,* 119 *New Pneumatic Tires,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 138 *Tire Pressure Monitoring Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing*

Materials, 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the speedometer with the U.S.-model part, which includes the BRAKE telltale, and reprogramming of the speedometer.

Standard No. 138 *Tire Pressure Monitoring Systems:* Verification that programming matches U.S.-model programming.

Standard No. 208 *Occupant Crash Protection:* A U.S.-version of the owner's manual must be provided with the vehicle to meet the information requirements of the standard. Verification will be performed that programming of automatic restraint systems matches U.S.-model programming.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield post to meet the requirements of 49 CFR part 565. The petitioner also states that each vehicle will be inspected prior to importation for compliance with 49 CFR part 541 and modified if necessary.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–28129 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0006]

New Car Assessment Program (NCAP)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final decision.

SUMMARY: On January 28, 2015, NHTSA published a notice requesting comments on the agency's intention to recommend various vehicle models that are equipped with automatic emergency braking (AEB) systems that meet the agency's performance criteria to consumers through the agency's New Car Assessment Program (NCAP) and its Web site, *www.safercar.gov.* These systems can enhance the driver's ability to avoid or mitigate rear-end crashes. This notice announces NHTSA's decision to include AEB technologies as part of NCAP Recommended Advanced Technology Features, if the technologies meet NCAP performance criteria. The specific technologies included are crash imminent braking (CIB) and dynamic brake support (DBS).

DATES: These changes to the New Car Assessment Program are effective for the 2018 Model Year vehicles.

FOR FURTHER INFORMATION CONTACT: For technical issues: Dr. Abigail Morgan, Office of Crash Avoidance Standards, Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–122. For NCAP issues: Mr. Clarke Harper, Office of Crash Avoidance Standards, email: *Clarke.Harper@DOT.GOV,* Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–120.

The mailing address for these officials is as follows: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background
III. Summary of Request for Comments
IV. Response to Comments and Agency Decision
A. Harmonization
B. Rating System for Crash Avoidance Technologies in NCAP
C. Draft Test Procedures
D. Proposed Additions to Test Procedures
E. Proposed Additions to Test Procedures
F. Other Issues
V. Conclusion

I. Executive Summary

This notice announces the agency's decision to update the U.S. New Car Assessment Program (NCAP) to include a recommendation to motor vehicle consumers on vehicle models that have automatic emergency braking (AEB) systems that can substantially enhance the driver's ability to avoid rear-end crashes. NCAP recommends crash avoidance technologies, in addition to providing crashworthiness, rollover, and overall star ratings. Today, 3 crash avoidance technologies—forward collision warning, lane departure warning, and rearview video systems—are recommended by the agency if they meet NHTSA's performance specifications.

NHTSA is adding AEB as a recommended technology, which means that we now have tests for AEB. AEB refers to either crash imminent braking (CIB), dynamic brake support (DBS), or both on the same vehicle. CIB automatically applies vehicle brakes if the vehicle sensing system anticipates a potential rear impact with the vehicle in front of it. DBS applies more brake power if the sensing system determines that the driver has applied the brakes prior to a rear-end crash but estimates that the amount of braking is not sufficient to avoid the crash. NHTSA is also removing rearview video systems (RVS) as a recommended technology in Model Year 2019, because RVS is going to be required on all new vehicles manufactured on or after May 1, 2018, and that technology's presence in NCAP will no longer provide comparative information for consumers.

The vehicles that have Advanced Technologies recommended by NHTSA may be seen on the agency Web site *www.safercar.gov.*

II. Background

The National Highway Traffic Safety Administration's (NHTSA) New Car Assessment Program (NCAP) provides comparative safety rating information on new vehicles to assist consumers with their vehicle purchasing decisions. In addition to issuing star safety ratings based on the crashworthiness and rollover resistance of vehicle models, the agency also provides additional information to consumers by recommending certain advanced crash avoidance technologies on the agency's Web site, *www.safercar.gov.* For each vehicle make/model, the Web site currently shows the vehicle's 5-star crashworthiness and rollover resistance ratings and whether the vehicle model is equipped with and meets NHTSA's performance criteria for any of the three advanced crash avoidance safety technologies that the agency currently recommends to consumers. NHTSA began recommending advanced crash avoidance technologies to consumers

starting with the 2011 model year.[1] NHTSA has under consideration other ways of incorporating crash avoidance technologies into its NCAP program, but those changes are not a part of this notice.

The agency first included recommended advanced technologies as part of the NCAP upgrade that occurred as of the 2011 model year. These first technologies were electronic stability control (ESC), forward collision warning (FCW), and lane departure warning (LDW). Subsequently, in 2014, NHTSA replaced ESC, which is now mandatory for all new light vehicles, with another technology, rearview video systems (RVS).[2] FCW uses forward looking sensors to detect other vehicles ahead. If the vehicle is getting too close to another vehicle at too high of a speed, it warns the driver of an impending crash so the driver can brake or steer to avoid or mitigate the crash. LDW monitors lane markings on the road and cautions a driver of unintentional lane drift. RVS assists the driver in seeing whether there are any obstructions, particularly a person or people, in the area immediately behind the vehicle. RVS is typically installed in the rear of the vehicle and connected to a video screen visible to the driver.

The agency may recommend vehicle technologies to consumers as part of NCAP if the technology: (1) Addresses a major crash problem, (2) is supported by information that corroborates its potential or actual safety benefit, and (3) is able to be tested by repeatable performance tests and procedures to ensure a certain level of performance.

Rear-end crashes constitute a significant vehicle safety problem. In a detailed analysis of 2006–2008 crash data,[3] NHTSA determined that approximately 1,700,000 rear-end crashes involving passenger vehicles occur each year.[4] These crashes result in approximately 1,000 deaths and 700,000 injuries annually. The size of the safety problem has remained consistent since then. In 2012, the most recent year for which complete data are available, there were a total of 1,663,000 rear-end crashes. These rear-end crashes in 2012 resulted in 1,172 deaths and 706,000 injuries, which represent 3 percent of all fatalities and 30 percent of all injuries from motor vehicle crashes in 2012.[5] [6]

Collectively, NHTSA refers to CIB and DBS systems as automatic emergency braking (AEB) systems. Prior to the development of AEB systems, vehicles were equipped with forward collision warning systems, to warn drivers of pending frontal impacts. These FCW systems sensed vehicles in front, using radar, cameras or both. These CIB and DBS systems can use information from an FCW system's sensors to go beyond the warning and potentially help avoid or mitigate rear-end crashes. CIB systems provide automatic braking when forward-looking sensors indicate that a crash is imminent and the driver is not braking. DBS systems provide supplemental braking when sensors determine that driver-applied braking is insufficient to avoid an imminent crash. As part of its rear-end crash analysis, the agency concluded that AEB systems would have had a favorable impact on a little more than one-half of rear-end crashes.[7] The remaining crashes, which involved circumstances such as high speed crashes resulting in a fatality in the lead vehicle or one vehicle suddenly cutting in front of another vehicle, were not crashes that current AEB systems would be able to address.

The agency has conducted test track research to better understand the performance capabilities of these systems. The agency's work is documented in three reports, ''Forward-Looking Advanced Braking Technologies Research Report'' (June 2012) [8] ''Automatic Emergency Braking System Research Report'' (August 2014) [9] and ''NHTSA's 2014 Automatic Emergency Braking (AEB) Test Track Evaluations'' (May 2015).[10]

AEB technologies were among the topics included in an April 5, 2013 request for comments notice on a variety of potential areas for improvement of NCAP.[11] All of those commenting on the subject supported including CIB and DBS in NCAP. None of those submitting comments in response to the request for comments opposed adding CIB and DBS to NCAP. Some commenters stated generally that available research supports the agency's conclusion that these technologies are effective at reducing rear-end crashes, with some of those commenters citing relevant research they had conducted. No one was specifically opposed to including CIB and DBS in NCAP.

The agency found that CIB and DBS systems are commercially available on a number of different production vehicles and these systems can be tested successfully to defined performance measures. NHTSA has developed performance measures that address real-world situations to ensure that CIB and DBS systems address the rear-end crash safety. The agency believes that systems meeting these performance measures have the potential to help reduce the number of rear-end crashes as well as deaths and injuries that result from these crashes. Therefore, the agency is including CIB and DBS systems in NCAP as recommended crash avoidance technologies on *www.safercar.gov.*

III. Summary of Request for Comments

The January 28, 2015 request for comments notice that preceded this document sought public comment in the following four areas.

Draft test procedures:

- General response to the draft test procedures;
- Whether or not the draft test procedures' combination of test scenarios and test speeds provide an accurate representation of real-world CIB and DBS system performance;
- Whether or not any of the scenarios in the draft test procedures can be removed while still ensuring that the procedures still reflect an appropriate level of system performance—if so, which scenarios and why they can be removed;
- Whether or not the number of test trials per scenario can be reduced—if so, why and how; and
- How the draft test procedures can be improved—if so, which specific improvements are needed.

The strikeable surrogate vehicle (SSV) designed by NHTSA and planned for use in CIB and DBS testing:

[1] *See* 73 FR 40016.

[2] On April 7, 2014, NHTSA published a final rule (79 FR 19177) requiring rearview video systems (RVS). The rule provides a phase-in period that begins on May 1, 2016 and ends on May 1, 2018 when all new light vehicles will be required to be equipped with RVS. As was done with electronic stability control, RVS will no longer be an NCAP recommended technology after May 1, 2018, once RVS is required on all new light vehicles.

[3] These estimates were derived from NHTSA's 2006–2008 Fatality Analysis Reporting System (FARS) data and non-fatal cases in NHTSA's 2006–2008 National Automotive Sampling System General Estimates System (NASS/GES) data.

[4] The 1,700,000 total cited in the two NHTSA reports reflects only crashes in which the front of a passenger vehicle impacts the rear of another vehicle.

[5] See NHTSA's Traffic Safety Facts 2012, Page 70, *http://www-nrd.nhtsa.dot.gov/Pubs/812032.pdf.*

[6] The approximately 1,000 deaths per year in 2006–2008 were limited to two-vehicle crashes, as fatal crash data at the time did not contain detailed information on crashes involving three or more vehicles. This information was added starting with the 2010 data year, and the 1,172 deaths in 2012 occurred in crashes involving any number of vehicles.

[7] See ''Forward-Looking Advanced Braking Technologies Research Report'' (June 2012). (*http://www.Regulations.gov,* NHTSA 2012–0057–0001), page 12.

[8] See *http://www.Regulations.gov,* NHTSA 2012–0057–0001.

[9] See *http://www.Regulations.gov,* NHTSA 2012–0057–0037.

[10] DOT HS 812 166.

[11] See *http://www.Regulations.gov,* NHTSA 2012–0180.

• Whether or not there are specific elements of the SSV that would make it inappropriate for use in the agency's CIB and DBS performance evaluations—if so, what those elements are and why they represent a problem; and

• Whether or not the SSV will meet the needs for CIB and DBS evaluation for the foreseeable future—if not, why not, and what alternatives should be considered and why.

The planned DBS brake application strategy:

• Whether the two brake application methods defined in the DBS test procedure, those based on displacement or hybrid control, provide NHTSA with enough flexibility to accurately assess the performance of all DBS systems; and

• What specific refinements, if any, are needed to either application method?

CIB and DBS research:

• The agency wanted to know whether there is any recent research concerning CIB and DBS systems that is not reflected in the agency's research to date and, if so, what is that research

Twenty-one comments were received.[12] Most of the comments were from the automobile industry—vehicle manufacturers, associations of vehicle manufacturers, suppliers, and associations of suppliers. In addition, comments were received from another Federal government entity, an organization of insurance companies, and an association of motorcycle interests. Those in support included Advocates, Alliance, AGA, ASC, Bosch, CU, Continental, DENSO, Ford, Infineon, IIHS, Malik, MBUSA, MEMA, NADA, NTSB, Tesla, and TRW. Advocates supported using NCAP to encourage vehicle safety technologies, but indicated its preference for requiring AEB systems on new vehicles by regulation. Honda expressed its support for NCAP generally, but did not specifically support the addition of AEB systems to NCAP. Honda stated that it would like these systems to be rated. IIHS said that its research on the effectiveness of Volvo's City Safety system and Subaru's Eyesight system indicates that NHTSA may have ''vastly underestimated the benefit of AEB.'' Bosch said a 2009 study it conducted indicated DBS ''may be effective'' in reducing injury-related rear-end crashes by 58 percent and CIB by 74 percent.

The ASC, Bosch, IIHS, MEMA, and, TRW addressed the desirability of NHTSA harmonizing its AEB NCAP test procedures and other evaluation criteria with other consumer information/rating programs, particularly Euro NCAP. Other commenters urged harmonization with Euro NCAP with respect to specific details.

Many commenters (Alliance, AGA, ASC, Continental, Ford, Honda, IIHS, MEMA) stated that they would like NHTSA to harmonize the SSV used in NCAP with the target vehicle used in Euro NCAP Advanced Emergency Braking System (AEBS) tests. Commenters also asked for harmonization with specific technical areas such as brake application magnitude and rate, brake burnishing and test speeds.

NHTSA plans to establish minimum performance criteria in the two test procedures for CIB and DBS to be recommended to consumers in NCAP. Comments on these test procedures were broad and very detailed. Advocates suggested stronger criteria. Manufacturers suggested changes to various parts of the test procedures.

Several commenters argued against the introduction of another SSV to the vehicle testing landscape and urged NHTSA to adopt a preexisting SSV instead to avoid imposing added vehicle testing costs on the vehicle manufacturing industry. Specifically, AGA, ASC, Continental, Ford, Honda, IIHS, and Tesla asked NHTSA to specify the Allgemeiner Deutscher Automobil-Club e.V. (ADAC) target vehicle that is used by Euro NCAP and IIHS. Bosch supported harmonization of surrogate test vehicles generally.

The Alliance asked for further development of the SSV equipment and tow frame structure to eliminate the use of the lateral restraint track. The association asked that NHTSA harmonize the SSV propulsion system with that of the ADAC propulsion system used by Euro NCAP.

The Alliance said that since the new SSV is not readily available, its members have not been able to conduct a full set of tests to assess the repeatability and reproducibility of the SSV relative to the ADAC barrier or other commercially available test targets.

The Alliance requested additional clarification about the SSV initial test set-up to maintain the intended accuracy and repeatability of tests. Members of the Alliance also requested clarification regarding the definition of the target ''Zero Position'' coupled with the use of deformable foam at the rear bumper. Other SSV concerns raised by AGA were that the energy absorption of the SSV should be increased to minimize potential damage to the subject vehicle in the event of an impact, that the color of the lateral restraint track used in conjunction with the SSV be changed to avoid its being interpreted as being a lane marking by camera-based classification of lanes, that the possibility that the SSV could be biased toward radar systems, and how the SSV may appear to camera systems in various lighting conditions.

Some of the comments went beyond the changes discussed in the January 2015 notice. The AMA said that all AEB systems included in NCAP should be able to detect and register a motorcycle. If not, vehicle operators may become dependent on these new technologies and cause a crash, because the system did not detect and identify a smaller vehicle. Advocates, AGA, Bosch, CU, Continental, Honda, IIHS, MEMA, and NTSB said they would like a rating system for advanced crash avoidance technologies, including CIB and DBS, which reflects systems' effectiveness. Honda urged NHTSA to include pedestrian and head-on crashes among the types of crashes that are covered by NCAP evaluation of AEB systems in the future.

IV. Response to Comments and Agency Decisions

The majority of comments received were from the automobile industry. No commenter opposed including AEB systems in NCAP.

By including CIB and DBS systems in NCAP as Recommended Advanced Technologies, we will be providing consumers with information concerning advanced safety systems on new vehicles offered for sale in the United States. The vehicle models that meet the NCAP performance tests offer effective countermeasures to assist the driver in avoiding or mitigating rear-end crashes. In addition, the agency believes recognizing CIB and DBS systems that meet NCAP's performance measures will encourage consumers to purchase vehicles that are equipped with these systems and manufacturers will have an incentive to offer more vehicles with these systems.

[12] See *http://www.Regulations.gov,* NHTSA–2015–0006 for complete copies of comments submitted. Those submitting comments were: Advocates for Highway and Auto Safety (Advocates), Alliance of Automobile Manufacturers (Alliance), American Honda Motor Co., Inc. (Honda), American Motorcyclist Association (AMA), Association of Global Automakers, Inc. (AGA), Automotive Safety Council, Inc. (ASC), Consumers Union (CU), Continental Automotive Systems, Inc. (Continental), DENSO International America, Inc. (DENSO), Ford Motor Company (Ford), Infineon Technologies (Infineon), Insurance Institute for Highway Safety (IIHS), Malik Engineering Corp. (Malik), Mercedes-Benz USA, LLC (MBUSA), Motor and Equipment Manufacturers Association (MEMA), National Automobile Dealers Association (NADA), National Transportation Safety Board (NTSB), Robert Bosch, LLC (Bosch), Subaru of America (Subaru), Tesla, and TRW Automotive (TRW).

Comments focused on the details of how the inclusion of AEB systems into NCAP should be administered. The agency's responses to the comments received are below.

A. Harmonization

The Alliance, AGA, ASC, Continental, Ford, Honda, IIHS, and MEMA stated that they would like NHTSA to harmonize the SSV used in NCAP with the target vehicle used in Euro NCAP. Some commenters requested that NHTSA use the Euro NCAP towing system. They also wanted similar performance criteria, such as identical test scenarios, identical speeds, and identical tolerances.

NHTSA has carefully examined Euro NCAP specification and procedures for AEB technologies. The agency has decided against redirecting the program toward harmonization for several reasons, as discussed in more detail below.

For AEB systems and their application to the U.S. market, NHTSA's benefit estimation and test track performance evaluations began five years ago. This work is documented in three reports, ''Forward-Looking Advanced Braking Technologies Research Report'' (June 2012), ''Automatic Emergency Braking System Research Report'' (August 2014), and ''NHTSA's 2014 Automatic Emergency Braking (AEB) Test Track Evaluations'' (May 2015) with accompanying draft CIB and DBS test procedures.

Early into its test track AEB evaluations, NHTSA staff members met with representatives of Euro NCAP. Among the matters discussed at that time was the need for a realistic-appearing, robust test target that accurately emulated an actual vehicle. Specific attributes included a need to (1) be ''realistic'' (*i.e.,* be interpreted the same as an actual vehicle) to systems using radar, lidar, cameras, and/or infrared sensors to assess the potential threat of a rear-end crash; (2) be robust (able to withstand repeated impacts with little to no change in shape over time); (3) not impose harm to the test driver(s) or damage to the test vehicle under evaluation; and (4) be capable of being accurately and repeatably constructed.

Euro NCAP, as of 2014, included AEB systems in the technologies it rates in its ''Safety Assist'' assessments. The ratings for ''Safety Assist'' systems are in turn combined with ratings for adult occupant protection, child occupant protection, and pedestrian protection to determine a vehicle's overall rating. Euro NCAP assessments of AEB systems adopted the use of a target vehicle developed by ADAC. Known as the Euro NCAP Vehicle Target (EVT), this target is comprised of an inflatable and foam-based frame with PVC cover. The outside of the cover features a rear-aspect image of an actual car and retro-reflective film over the taillights. Internally, the EVT includes a combination of shapes and materials selected to be provide realistic radar return characteristics. To provide longitudinal motion, the EVT is towed.

At the time of its initial AEB evaluations, NHTSA attempted to evaluate the EVT device. We attempted to purchase an EVT from ADAC, but we were ultimately unable to obtain the device and its propulsion system. To avoid research program delays, NHTSA decided to develop and manufacturer its own strikeable surrogate vehicle. Like the EVT, the design goal of the NHTSA equipment was to be as safe, realistic, and functional as possible. The NHTSA SSV and tow equipment are both commercially available, and the drawings for the equipment are publicly available.

NHTSA has developed a carbon fiber strikeable surrogate vehicle (SSV) that uses original equipment taillights, reflectors, brake lights and a simulated license plate. These features help define the SSV so that it will be interpreted by a vehicle's AEB sensing system as being an actual vehicle. We believe that the SSV is a target vehicle that better mimics real vehicles than other target vehicles because its radar signature more closely resembles that of an actual vehicle. We will be using the SSV in the AEB validation testing to confirm that AEB systems meet the agency's performance criteria.

Manufacturers do not need to use the SSV to generate and submit data in support of their AEB systems that are recommended to consumers on *www.safercar.gov.* However, if the vehicle cannot satisfy the minimum performance criteria of the AEB NCAP program when tested by, the vehicle will not be able to retain its credit for the recommendation of AEB system by NCAP.

We will continue to look for ways in which U.S. NCAP and other consumer vehicle safety information programs around the world, particularly Australasian NCAP, Euro NCAP and the Insurance Institute for Highway Safety can harmonize and complement each other. We expect one of the benefits of the U.S. NCAP and other NCAP programs having different test procedures will be that these programs will eventually have data that could support how best to modify these programs harmonize some elements of the programs while retaining other elements that are unique and necessary to each programs.

B. Rating System for Cash Avoidance Technologies in NCAP

Advocates, AGA, Bosch, CU, Continental, Honda, IIHS, MEMA, and NTSB said they would like a rating system for advanced technologies, including CIB and DBS, which reflects systems' effectiveness. AGA said CIB and DBS should each be rated separately. AGA pointed out that some CIB and DBS systems already in the marketplace would not pass the NCAP performance criteria, but would still provide safety benefits. AGA stated that information regarding these safety benefits would not reach consumers under the current pass/fail approach. AGA further noted that Euro NCAP gives credit to vehicles for the tests they do pass.

In the January 28, 2015 request for comments, the agency sought comment on our plans to add AEB to the list of Recommended Advanced Technologies, a feature which appears on the agency's Web site *www.safercar.gov,* but did not seek comments on whether such a rating should appear on motor vehicles.

The agency fully recognizes that published requests for comments provide an opportunity for the public to address not only issues specifically raised in the request for comments, but also to express concerns in other areas. We will consider these comments in evaluating future changes to NCAP.

C. Draft Test Procedures [13]

1. AEB Performance Criteria Stringency

While supporting NHTSA's plan to establish minimum performance criteria that AEB systems must meet to be recommended to consumers in NCAP, Advocates criticized the planned AEB performance criteria as being insufficiently stringent. The Advocates' comments focused on the speeds at which Euro NCAP testing is conducted, including:

- Speeds up to 31 mph (50 kilometers per hour (km/h)) such that 19 percent of the possible points for Euro NCAP AEB are awarded for performance at approach speeds above the planned NHTSA NCAP testing.
- Lead vehicle stopped scenarios are tested at subject vehicle speeds of a range of 6 to 31 mph (10 to 50 km/h), as compared with the planned NHTSA NCAP lead vehicle stopped test which will be conducted at a single speed of

[13] See *http://www.Regulations.gov,* NHTSA–2012–0057–0038 for copies of the test procedures that were the basis of comments received.

25 mph (40 km/h) and permit impact at speeds up to 15 mph (24 km/h).

The Advocates further noted that Euro NCAP is proposing to incorporate additional, more stringent AEB tests and ratings in its star rating system beginning in 2016. These will include:

- Lead vehicle stopped scenarios at subject vehicle (SV) speeds up to 50 mph (80 km/h).
- Lead vehicle moving slower tests with a SV speed of 19 to 50 mph (30 to 80km/h) approaching a principal other vehicle (POV) moving at 12 mph (20 km/h), for a closing speed of 7 to 38 mph (11 to 61 km/h). Advocates noted that the planned NHTSA approach would include lead vehicle moving slower tests with SV/POV speeds of 25/10 mph (40/16 km/h) and 45/20 mph (72/32 km/h), for a maximum closing speed of 25 mph (40 km/h).
- Lead vehicle braking tests with SV/POV speeds at 31/31 mph (50/50 km/h) with a lead vehicle deceleration of 0.2 to 0.6g (2 and 6 meters per second squared [m/s^2]).

Conversely, the Alliance suggested we reduce the stringency of the performance criteria by deleting the lead vehicle stopped scenarios entirely.

The proposed NCAP test scenarios and test speeds are in part based on crash statistics, field operational tests, and testing experience. In developing the scenarios and test speeds for this test program we considered work done to develop the forward collision warning performance tests. In reviewing the information concerning crashes, we noted that the most common rear-end pre-crash scenario is the Lead-Vehicle-Stopped, at 16 percent of all light vehicle rear-end crashes (975,000 crashes per year).[14]

In evaluating the test speeds we considered the practicality of safely performing crash avoidance testing without damaging test vehicles and/or equipment should an impact with the test target occur during testing. Testing vehicles at speeds over 45 mph (72 km/h) may have safety and practicality issues. Testing at speeds over 45 mph (72 km/h), the speed used in NCAP's forward collision warning test, could potentially cause a safety hazard to the test driver and the test engineers. The problem arises if the vehicle being tested fails to perform as expected. For the FCW tests, warning system failure is not a problem because the nature of the test allows the test driver to steer away from the principal other vehicle, without any vehicle-to-vehicle contact. However, for the AEB tests, there can be no evasive steering. At speeds over 45 mph (72 km/h), we believe that the test vehicles in the AEB program might experience frontal impact of the subject vehicle into the principal other vehicle if there is a system failure or speed reduction that does not result in a reduction of velocity of 25 mph (40 km/h). This may be a hazard to the test drivers and to people around the test track. Also potential front end damage at higher speeds, for the same reasons, may have unacceptable test program delays or make completion of the tests impractical. If front end damage to the test vehicle occurs, the agency would have to repair the test vehicle and recalibrate its sensing system. This might take weeks to repair and to restart the testing.

Another upper speed limitation is the practicality of running the tests. For example, the Lead Vehicle Decelerating test becomes difficult. The SSV rides on a 1500-ft (457 m) monorail to constrain its lateral position within the test lane, an attribute that helps improve the accuracy and repeatability that the slower moving and decelerating lead vehicle scenarios may be performed. However, this track length is too short to safely accelerate the SSV to 45 mph (72 km/h), establish a steady state SV-to-SSV headway (to insure consistent test input conditions), then safely decelerate the SSV to a stop at 0.3g; conditions like those specified in the FCW NCAP decelerating lead vehicle test scenario. These logistic restrictions have prevented NHTSA from evaluating the durability of the SSV when subjected to the forces of being towed at 45 mph (72 km/h). To address these concerns, the NCAP CIB and DBS Decelerating Lead Vehicle tests are designed to be performed from 35 mph (56 km/h).

We believe the test vehicle speeds specified in this program, (25, 35 and 45 mph) (40, 56 and 72 km/h) represent a large percentage of severe injuries and fatalities and represent the upper limit of the stringency of currently available test equipment.

We are therefore retaining the test speeds in the test procedures.

2. Brake Activation in DBS Testing, Profile, Rate and Magnitude

a) Brake Input Profile Selection

The Alliance suggests that because of the differences in DBS design and performance abilities among vehicles (*i.e.* brake pads and rotors, tires, suspension, etc.), the vehicle manufacturers should be allowed to specify the brake input. (Brake input does not apply to the CIB test because the CIB test does not include brake input in the subject vehicle.) Vehicle manufactures thus far have taken several approaches to DBS system activation based on brake pedal position, force applied, displacement, application rate time-to-collision, or a combination of these characteristics. All of these characteristics can represent how a driver reacts in a panic stop, versus a routine stop. The Alliance suggests the agency should use the same characteristic used by the vehicle manufacturer, to assure the system is activated the way the manufacturer has intended. Conversely they indicate the agency should not dictate a specific application style and create an unrealistic triggering condition.

In the previous version of the DBS test procedures (August 2014), commenters pointed out that the brake characterization process used would typically result in decelerations that exceeded the allowable 0.3g. In order to address this concern, NHTSA evaluated a revised characterization process that now include a series of iterative steps designed to more accurately determine the brake application magnitudes capable of achieving the same baseline (braking without the effect of DBS) deceleration of 0.4g for all vehicles. This deceleration level is very close to the deceleration realized just prior to actual rear-end crashes, and is consistent with the application magnitude used by Euro NCAP during its test track-based DBS evaluations. This process is included, in great detail, in the updated version of the DBS test procedure.

(b) Brake Application Rate

The Alliance pointed out that the brake pedal application rate of 279 mm/s maximum for DBS activation differs from Euro NCAP, where the application rate can be specified by a manufacturer as long as it is within a range of 200 to 400 mm/s (8 to 16 in/s). Noting that there will always be differences in dynamic abilities between vehicles, the Alliance said that specifying the rate to 279 mm/s increases the DBS system's sensitivity and can lead to more false activations. The Alliance suggested that NCAP harmonize with Euro NCAP to allow manufacturers the option to specify a brake pedal application rate limit beyond 279 mm/s, up to 400 mm/s.

MBUSA provided a bit more detail in its comments. MBUSA noted that values above 360 mm/s are more representative of emergency braking situations and will be addressed in vehicle designs using conventional brake assist rather than AEB.

[14] "Pre-Crash Scenario Typology for Crash Avoidance Research", DOT HS 810 767, April 2007, Table 13.

In a preliminary version of its DBS test procedure, NHTSA specified a brake application rate of 320 mm/s. Feedback from industry suggested this was too high, indicating it was at or near the application rate used as the trigger for conventional brake assist. This is problematic because the agency wants to provide NCAP credit for DBS, not for conventional brake assist, if the vehicle is so-equipped. To address this problem, the application rate was reduced to 7 in/s (178 mm/s) in the June 2012 draft DBS test procedure. Feedback from vehicle manufactures was that this reduction to 178 mm/s went too low. A system able to activate DBS with such a brake application rate on the test track may potentially result in unintended activations during real-world driving. As an alternative, multiple vehicle manufacturers suggested the application rate be increased to 10 in/s (254 ± 25.4 mm/s). This value was implemented in the August 2014 draft DBS test procedure.

The Euro NCAP procedure specifies a range of brake pedal application speed of 7.9 to 15.8 in/s (200–400 mm/s). MBUSA noted that values significantly above 14.2 in/s (360 mm/s) are more representative of emergency braking situations and are addressed by conventional brake assist not using forward looking sensor technology.

Information provided over the course of this program has caused us to initially select a value less than 360 mm/s and greater than 178 mm/s. We recommend 254 ± 25.4 mm/s, and we have no substantive basis to change this value again. Moreover, this value is well within the range of the Euro NCAP specification. The value of 254 mm/s appears a reasonable representation of the activation of DBS in an attempt to stop, rather than slow down, but not fast enough to represent an aggressive emergency panic stop of greater than 360 mm/s.

We are retaining the proposed values of 254 ± 25.4 mm/s (10 in/s ± 0.1 in/s) for the brake pedal application rate on the DBS test.

(c) Brake Application Magnitude

The Alliance commented that the braking deceleration threshold should be 0.4g (4.0 m/s^2) or higher. Citing Euro NCAP's specification for pedal displacement to generate a deceleration of 0.4g (4.0 m/s^2), The Alliance said using brake performance of at least 0.3g (3 m/s^2) deceleration as a threshold for DBS activation, as in the draft NCAP test procedure, will lead to calibrations too sensitive and generate excessive false positives or overreliance on the system.

The Alliance said the threshold for DBS intervention should be toward the upper acceptable deceleration rates for adaptive cruise control systems. These upper rates are up to 0.5g (5 m/s^2) at lower speeds and up to 0.35g (3.5 m/s^2) at higher speeds. The Alliance believes that a lower position for 0.3g (3 m/s^2) will lead to calibrations too sensitive in the real world and will generate excessive false positives or overreliance on the system.

MBUSA said NHTSA's proposed magnitude of 0.3g (3 m/s^2) more closely resembles standard braking. It recommended brake pedal application magnitude of near 0.4g (4 m/s^2) that truly represents a hazard braking situation. MBUSA said that according to its field test data, the median brake amplitudes that occur ahead of real-world DBS activations are closer to 0.425g (4.3 m/s^2). MBUSA noted that for Euro NCAP DBS testing, a brake magnitude of 0.4g (4 m/s^2) is used.

The brake characterization process described in NHTSA's August 2014 draft DBS test procedure was intended to provide a simple, practical, and objective way to determine the application magnitudes used for the agency's DBS system evaluations. In this process, a programmable brake controller slowly applies the SV brake with a pedal velocity of 1 in/s (25 mm/s) from a speed of 45 mph (72 km/h). Linear regression is then applied to the deceleration data from 0.25 to 0.55g to determine the brake pedal displacement and application force needed to achieve 0.3g. These steps are straight-forward and the per-vehicle output is very repeatable. However, when these outputs are used in conjunction with the brake pedal application rate used to evaluate DBS (*i.e.,* rates ten times faster than used for characterization), the actual decelerations typically exceed 0.3g. Although this is not undesirable per se (crash data suggest the braking realized just prior to a rear-end crash is closer to 0.4g), the extent to which these differences exist has been shown to depend on the interaction of vehicle, brake application method, and test speed.[15]

To address this concern, NHTSA has revised the characterization process to include a series of iterative steps designed to more accurately determine the brake application magnitudes capable of achieving the same baseline (braking without the effect of DBS) deceleration of 0.4g for all vehicles. The deceleration level is very close to the deceleration observed just prior to many actual rear-end crashes,[16] and is consistent with the application magnitude used by Euro NCAP during its test track-based DBS evaluations. Vehicle manufacturers have told NHTSA that encouraging DBS systems designed to activate in response to inputs capable of producing 0.4g, not 0.3g, deceleration will reduce the potential for unintended DBS activations from occurring during real-world driving.

NHTSA will adopt its revised brake characterization process, and include it as part of the DBS procedure. This process will ensure baseline braking for each test speed, (25, 35, and 45 mph) will be capable of producing 0.4 ± 0.025g.

3. Use of Human Test Driver Versus Braking Robot

TRW advocated the use of a human driver in DBS testing to reduce the test setup time and reduce the testing costs. Bosch supports the test procedures as currently written calling for the use of a braking robot in both CIB and DBS testing.

While the NHTSA AEB test procedures can be performed with human drivers, satisfying the brake application specifications in the DBS test procedures would be challenging for a human driver. The agency acknowledges that some test drivers are capable of performing most or all of the maneuvers in this program within the specifications in the test procedures. However, we believe a programmable (*i.e.* robotic) brake controller can more accurately reproduce the numerous braking application specifications debated in this notice. Moreover, as these technologies evolve and the algorithms are refined to create earlier, more aggressive responses to pending crashes, while at the same time avoiding false positives, the specifications for the test parameters may become more complex and more precise. The agency will continue to conduct all of the DBS NCAP tests using a brake robot.

Manufacturers, suppliers and test laboratories working for these entities may choose not to use a brake robot, nor do they need to follow the test procedures exactly. However they should be confident their alternative methods demonstrate their systems will pass NHTSA's tests because NHTSA will conduct confirmation testing as outlined above. If a system fails NHTSA's confirmation testing, the

[15] See *http://www.Regulations.gov*, NHTSA 2012–0057–0037.

[16] See *http://www.Regulations.gov*, NHTSA 2012–0057–0037.

vehicle in question will not continue to receive credit for its DBS system.

4. Brake Burnishing

NHTSA indicated we plan to use the brake burnishing procedure from Federal Motor Vehicle Safety Standard (FMVSS) No. 135, ''Light vehicle brake systems.'' IIHS said this is more pre-test brake applications than is needed. IIHS said its research shows that brake performance can be stabilized for AEB testing with considerably less effort. It cited a test series of its own involving seven vehicle models with brand new brakes in which AEB performance stabilized after conducting 60 or fewer of the stops prescribed in FMVSS No. 135. IIHS said its AEB test results after all 200 brake burnishing stops were not appreciably different from those conducted after following the abbreviated procedure described in FMVSS No. 126, ''Electronic stability control systems.''

Ford urged NHTSA to adopt the Euro NCAP's brake burnishing procedure and tire characterization from the Euro NCAP AEB protocol, which it said can be completed in a few hours.

Tesla said the test procedures' specification for a full FMVSS No. 135 brake burnish is not clearly explained. They asked about how often the burnishing had to be conducted and how the brakes are to be cooled.

FMVSS No. 135 ''Light vehicle brake systems'' is NHTSA's light vehicle brake performance standard. The purpose of the standard is to ensure safe braking performance under normal and emergency driving conditions. The burnish procedure contained in FMVSS No. 135 is designed to ensure the brakes perform at their optimum level for the given test condition and to ensure that test result variability is minimized. The burnish procedure in FMVSS No. 135 includes 200 stops from a speed of 80 km/h (49.7 mph) with sufficient brake pedal force to achieve a constant deceleration of 3.0 m/s^2 (0.3g). It also specifies a brake pad temperature range during testing.

The commenters suggested reducing the burnishing for two reasons. First, they want to reduce the testing burden. The IIHS states that their research shows that the foundation brake performance can be stabilized after considerably less effort. Their testing showed performance stabilization after 60 stops. Second, others want the procedure to be harmonized with the Euro NCAP. The Euro NCAP brake burnish procedure includes 13 stops total and a cool-down and is otherwise identical to the brake conditioning in FMVSS No. 126.

The agency has considered these comments. The agency believes that a full 200-stop burnishing procedure is critical to ensuring run-to-run repeatability of braking performance during AEB testing and also ensures that the vehicle's brakes performance does not change as the test progresses. The intent of the 200-stop burnishing is deemed the appropriate procedure for ensuring repeatability of brake performance in FMVSS No. 135, the agency's light vehicle brake system safety standard. The performance measured in these AEB tests relies on the vehicle's braking system to reduce speed in order to mitigate or avoid a crash with the test target. Since the agency has adopted the 200-stop procedure as the benchmark for repeatable brake performance, dropping the number of stops might create a repeatability situation for some brake system designs and therefore a repeatability situation for some AEB systems. Therefore, the agency will test AEB consistently with its light vehicle brake system tests in FMVSS No. 135.

Tesla said the need for a full FMVSS No. 135 brake burnish is not clearly explained. They interpreted the test procedure to specify brake burnishing before each and every test run.

Tesla misunderstands the test procedure. NHTSA will perform the 200-stop brake burnish only one time prior to any testing unless any brake system pads, rotors or drums are replaced, in which case the 200-stop burnish will be repeated. After the initial burnish, additional lower-speed brake applications are done only to bring the brake temperatures up to the specified temperate range for testing.

Tesla also suggested that NHTSA should better explain how, and to what extent, the agency expects the brakes to be cooled before conducting each individual test run and series of runs. Tesla said adding these cooling procedures will have test performance implications.

The process of driving the vehicle until the brake cools below a temperature between 65 °C (149 °F) and 100 °C (212 °F) or drive the vehicle for 1.24 miles (2 km), whichever comes first, has been an accepted practice in brake testing such as in FMVSS No. 135 testing. It is the brake temperature at the time of the test, not how that temperature was obtained, that is the reportedly critical characteristic in brake performance. Moreover, specifying an overly-detailed procedure may not result in desired temperature. The amount of heating or cooling may be affected by the vehicle design and the ambient conditions of the testing. Alterations in the process may be needed to achieve the temperature range.

For the AEB test procedures, NHTSA is maintaining its use of the brake burnish procedure and the initial brake temperature range currently used in its light vehicle brake standard, FMVSS No. 135.

5. Feasibility and Tolerances

TRW said the test procedures may not completely cover the control and tolerance around the deceleration of the POV during the Lead Vehicle Decelerating (LVD) portions of the test. It cited as an example, that brakes were applied to a level providing deceleration of 0.3g with a tolerance of +/− 0.03g, but the ability to control that parameter was not among the list of items used for the validity of test criteria, nor is it present in the test procedure for how to monitor and control that parameter for test validity.

The agency disagrees with TRW that the parameter was not among the list of items used for the validity of a test criteria. The test procedure for this parameter is described in the section titled ''POV Brake Application. The test procedure provided details of this specification, such as the beginning or onset of the deceleration period, the nominal constant deceleration, the time to achieve the 0.3g deceleration, and the average tolerance of the deceleration after the nominal 0.3g deceleration is achieved, and the point at which the measurement is finished. We believe TRW is stating that this description of the deceleration parameters is not itemized in the list of 10 items specified in the section ''SV Approach to the Decelerating POV''. This list contains items that must be controlled during the entire test, not just during the deceleration period. Since the deceleration does not occur during the entire test we will not be adding the specification to this list. The fact that the specifications are listed makes these deceleration specifications necessary for a valid test, even though the word ''valid'' does not appear in the section called ''POV Brake Application''.

TRW states that the test procedures do not specify how the test laboratory will monitor the declaration parameters. NHTSA has recommended in Table 2 of the test procedures that the contractor will need to have an accelerometer to measure the longitudinal deceleration of the SV and POV. These instrumentation recommendations include specifications for the range, resolution and accuracy of these instruments. The test procedure does not specify how the contractor is to monitor or control the acceleration

during this test. As much as possible, the agency specifies performance specifications, not design specifications. We depend on the expertise of the contractor to achieve these performance goals. We then monitor the output of this performance.

6. Lead Vehicle Stopped Tests (Scenarios)

MEMA supported the planned AEB test scenarios as representative of typical, real-world driving occurrences. It said the scenarios are appropriate ways to evaluate CIB and DBS systems.

The Alliance said the lead vehicle stopped test should be deleted and the agency should only uses the lead vehicle deceleration to a stop test because 50 percent of police-reported cases rear-end crashes coded as lead stopped vehicle are actually lead vehicle decelerating to a stop. They argued such a change would permit more affordable systems and would reduce false activations.

In the August 2014 research report,[17] we adjusted estimates of AEB-relevant rear-end crashes by splitting the estimated number of police-reported lead-vehicle-stopped crashes evenly between lead vehicle stopped and lead vehicle decelerating to a stop. This change was made based on comments to the 2013 AEB request for comments and additional analysis of the crash data.

The use of the lead stopped vehicle scenarios is very important. Even if 50 percent of the lead-vehicle stopped crashes are re-classified as lead vehicle decelerating to a stop, hundreds of thousands of lead-vehicle stopped crashes still occur each year. For this reason, and to be consistent with the Euro NCAP tests, NHTSA does not believe it is appropriate to exclude the lead-vehicle stopped scenario from the CIB and DBS performance evaluation.

Based on the test track testing we have conducted since 2013, we have found that vehicles able to satisfy our LVS evaluation criteria also do so for the LVD–S test scenario. However, not all vehicles that pass our LVD–S pass the LVS scenarios.

Therefore we have decided to reduce the test burden by removing the lead vehicle deceleration to a stop (LVD–S) test and retaining the lead vehicle stopped (LVS) test.

7. False Positive Tests (Scenarios)

AGA, ASC and TRW said only radar-based AEB systems will react to NHTSA's steel trench plate based false positive test, whereas other types of systems, camera- and lidar-based for example, will not be affected. AGA said that unless a test that could challenge both camera and radar systems can be identified, the false positive test should be dropped. MEMA also noted that since radar systems are sensitive to the steel trench plate false positive test, this may impact the comparative nature of radar versus other systems such as camera or lidar sensors. MEMA encouraged NHTSA to evaluate the procedure and continue to make further improvements to avoid any potential test bias.

TRW suggested two other possible false positive tests, one that would reflect ''the most typically observed false-positive AEB event'' a dynamic passing situation and the other in which the test vehicle drives between two stationary vehicles. Bosch said there is no single test that will fully address the problem of false activations.

The Crash Avoidance Metrics Partnership (CAMP) Crash Imminent Braking (CIB) Consortium endeavored to define minimum performance specifications and objective tests for vehicles equipped with FCW and CIB systems. While assessing the performance of various system configurations and capabilities, the CAMP CIB Consortium also identified real-world scenarios capable of eliciting a CIB false positive.[18] Additionally, two scenarios from an ISO 22839 ''Intelligent transport systems—forward vehicle collision mitigation systems—Operation, performance, and verification requirements'' (draft) were used to evaluate false positive tests, two tests with vehicles in an adjacent lane. The CAMP study originally documented real world situations that could be used to challenge the performance of the systems, such as an object in roadway, an object in a roadway at a curve entrance or exit, a roadside stationary object, overhead signs, bridges, short radius turns, non-vehicle and vehicle shadows, and target vehicles turning away.[19] NHTSA performed a test program of six of the CAMP-identified scenarios that could produce a positive. The eight maneuvers selected and tested by NHTSA in considering a false-positive test were decelerating vehicle in an adjacent lane—straight road, decelerating vehicle in an adjacent lane—curved road, driving under an overhead bridge, driving over Botts' Dots in the roadway, driving over a steel trench plate, a stationary vehicle at a curve entrance, a stationary vehicle at a curve exit, and a stationary roadside vehicle.

During testing we found that all CIB activations presently known by NHTSA are either preceded by or are coincident with FCW alerts. For the testing, we use the FCW warning as a surrogate for the CIB and DBS activations. Of the maneuvers used in the study, FCW activations were observed during the conduct of four scenarios: Object in roadway—steel trench plate, stationary vehicle at curve entrance, stationary roadside vehicles, and decelerating vehicle in an adjacent lane of a curve. Of the maneuvers capable of producing an FCW alert, CIB false positives were observed only during certain Object in Roadway—Steel Trench Plate tests, and for only one vehicle. The vehicle producing the CIB false-positives did so for 100 percent of the object in roadway—steel trench plate tests trials. No FCW or CIB activations were observed during the decelerating vehicle in an adjacent lane (straight), driving under an overhead bridge, objects in roadway—Botts' Dots, and stationary vehicle at curve exit maneuvers.

The steel trench plate was the easiest to set up, the least complex to perform, and a realistic test because the scenario is encountered during real world driving. Also, the steel trench plates are similar to some metal gratings found on bridges. The steel trench plate used in this program is believed to impose similar demands on the system functionality, albeit with better test track practicality (*i.e.,* cost, expediency, and availability).

Both the agency and some commenters believe that a false-positive test should be included in this program. Conversely, commenters state that the steel trench plate test is biased against radar systems.

The agency will retain the steel trench plate false-positive test in this program and will continue to monitor vehicle owner complaints of false positive activations. The agency has received consumer complaints of false-positives of these AEB systems. This program should make an effort to reduce false-positives in the field. We believe a false-positive test is important to be included in the performance tests for these technologies. We disagree that the steel trench plate is biased against radar systems. The agency establishes performance-based tests. The purpose of the performance specifications in this program is to discern and discourage systems that do not perform sufficiently in real-world scenarios. If the steel trench plate identifies a notable

[17] *http://www.Regulations.gov,* Docket NHTSA–2012–0057–0037.

[18] ''Evaluation of CIB System Susceptibility to Non-Threatening Driving Scenarios on the Test Track'', July 2013, DOT HS 811 795.

[19] ''Objective Tests for Automatic Crash Imminent Braking (CIB) Systems Appendices Volume 2 of 2'', September 2011, DOT HS 811 521A.

performance weakness in system, that weakness should be pointed out to consumers.

It is impossible to recreate every possible source of false-positive activations experienced during real-world driving. The steel trench plate tests are included as one significant common source of false positives during our CIB and DBS test track evaluations. We encourage vehicle manufactures to include identified false-positive scenarios in system development. If in the future, other scenarios become prevalent and are brought to our attention through consumer complaints, we will consider including them in our test protocol.

8. Steel Plate Weight

Noting that the steel trench plate currently specified in the test weighs 1.7 tons and is difficult to put in place, AGA urged the agency to allow an alternative plate if manufacturers can verify its performance. Concerning the weight of the steel trench plate, the test procedures do not specify this plate to be positioned on a part of the test track used for other tests. The plate is not installed or embedded, merely laid on top of a road surface. We do not see a need to be concerned with weight or the size of this test item. We are not developing a lighter weight version of this plate at this time.

9. DBS False Activation Test Brake Release

The Alliance requested that the brake application protocol and equipment for the DBS steel trench plate scenario test procedure should provide specification for a pedal release by the driver during the false positive test. The Alliance states that some systems have mechanisms that allow the driver to release the DBS response if a false activation occurs. One of the simplest and most intuitive mechanisms is for the driver to release the brake pedal. This is not in the DBS false positive test.

The agency does not agree with the Alliance's recommendation that a way for the driver to override false positives should be provided in the test scenario. The purpose of the false-positive test is to ensure that they do not occur during this performance test. If the vehicle's DBS system activates in reaction to the steel trench plate, then this is the kind of false-positive for which the test procedure is designed to identify. The agency feels that the potential consequences of a false positive are sufficient to warrant a test failure.

The agency has decided not to add a brake release action to the false-positive test procedures.

10. CIB False Activation Test Pass/Fail Criteria

The Alliance and Bosch commented that the allowable CIB steel plate test deceleration threshold of 0.25g was too low. Bosch and the Alliance observed that some current state-of-the-art forward collision warning (FCW) portion of these AEB systems in the market use a brake jerk to warn the driver. The majority of the current brake-jerk applications for FCW use a range of 0.3g–0.4g and the maximum speed reduction normally does not exceed 3 mph (5 km/h), Bosch said. Bosch suggested increasing the threshold of the CIB false activation failure to 0.4g or using a maximum speed reduction, rather than peak deceleration rate, as the key factor for determining a pass/fail result for this test. Setting the fail point of the false activation test at 0.25g would restrict haptic pedal warning design to below 0.25g.

The steel plate test is intended to evaluate CIB performance. This test is not intended to evaluate a haptic FCW capable of producing a peak deceleration of at least 0.25g before completion of the test maneuver. To make this distinction clear, we will raise the false positive threshold to a peak deceleration of 0.50g for CIB, and 150 percent of that realized with foundation brakes during baseline braking for DBS.

11. Pass/Fail Criteria for the Performance Tests

The Alliance, Honda, AGA and Ford said that the determination that AEB technologies will pass each of the tests in the test procedure seven out of eight times should be changed to be consistent with the five passes out of seven trials that is specified by the NCAP forward collision warning (FCW) test procedures. The Alliance and Ford noted that the agency did not provide data to support the seven out of eight criterion approach. Ford presented the results of a coin toss experiment, which it said indicated that the five out of seven criteria covers 93.8 percent of all possible outcomes, a level whose robustness compares favorably to the 99.6 percent of all possible outcomes covered by the seven out of eight criterion.

Tesla said the planned test procedures include too many tests.

NHTSA notes that for the FCW NCAP, the vehicle must pass five out of seven trials of a specific test scenario, to pass that scenario. The vehicle must pass all scenarios to be recommended.

The agency believes the current FCW test procedure criterion of passing five out of seven tests has successfully discriminated between functional systems versus non-functional systems. Allowing two failures out of seven attempts affords some flexibility in including emerging technologies into the NCAP program. For example, NHTSA test laboratories have experienced unpredictable vehicle responses, due to the vehicle algorithm designs, rather than the test protocol. Test laboratories have seen systems that improve their performance with use, systems degrading and shutting down when they do not see other cars, and systems failing to re-activate if the vehicle is not cycled through an ignition cycle.

To be in better alignment with the FCW NCAP tests, we are changing the pass rate for the CIB and DBS tests used for NCAP to five out of seven tests within a scenario.

12. Vehicle Test Weight/Weight-Distribution

AGA said the current test protocol allows testing a vehicle up to the vehicle's gross vehicle weight rating (GVWR). The Alliance noted that the Euro NCAP AEB test protocol defines the vehicle weight condition as ±1% of the sum of the unladen curb mass, plus 440 lb (200 kg). AGA asked that the test protocol be amended to include an upper weight limit, similar to the way that Euro NCAP's AEB test specifies the vehicle to be loaded with no more than 440 lb (200 kg). Specifically, the Alliance recommended replacing the current language in Section 8.3.7 of the current CIB and DBS test procedures with:

> ''7. The vehicle weight shall be within 1% of the sum of the unloaded vehicle weight (UVW) plus 200kg comprised of driver, instrumentation, experimenter (if required), and ballast as required. The front/rear axle load distribution shall be within 5% of that of the original UVW plus 100% fuel load. Where required, ballast shall be placed on the floor behind the passenger front seat or if necessary in the front passenger foot well area. All ballast shall be secured in a way that prevents it from becoming dislodged during test conduct.''

The agency inventoried the current loads used at our test laboratory. The instrumentation and equipment currently used weighs approximately 170 lb (77 kg). Allowing two occupants in the vehicle could push the total load over 440 lb (200 kg) upper bound suggested by AGA and he Alliance.

The agency would like to reserve the flexibility of having an additional person in the vehicle during testing to assist in the testing process, observe the tests and perhaps train on the testing

process. Also, we measured the effects of our standard load of one driver plus the instrumentation and equipment on weight distribution, and found that the percentage of weight on the front axle tended to increase by about 1 percent, on average. We assume adding a passenger in the rear seat would be approximately the same. This is well within the 5 percent variance from the unloaded weight as suggested by the Alliance.

We have considered the comments that vehicle weight and weight distribution will have a large effect on the performance of CIB systems. We believe that this comment concerns both the vehicle sensing system alignment and braking performance repeatability. If it is true that weight and weight distribution consistent with predictable consumer usage have a large effect on the performance of CIB systems, this is a concern of the reliability of these systems to consumers.

The agency will specify a maximum of 610 lb (277 kg) loading in these test programs. This will allow some test equipment and personnel flexibility, while still maintaining some reasonable cap on the loading changes. We also note that we may raise this limit on a case-by-case basis and in consultation with the vehicle manufacturer, if there is a need for additional equipment or an additional person that we have not anticipated at this time.

13. Lateral Offset of SV and SSV; Test Vehicle Yaw Rate

AGA urged the agency to adopt the +/−1 ft (0.3 m) lateral offset and 1 degree per second yaw rate specifications that were in previous versions of the test procedures as opposed to the +/−2 ft (0.6 m) in the latest version to improve test accuracy and better reflect anticipated real world conditions. DENSO agreed that the 1 foot lateral offset (0.3 m) and 1 degree per second yaw rate should be restored. MEMA also noted the change in yaw and lateral orientation of the SV and POV from the 2012 draft test procedures to the 2014 test procedure draft and asked for clarification. The Alliance noted that the allowable vehicle yaw rate in each test run has been increased to +/−2 degrees per second from +/−1 degree per second in the previous versions of the test procedures. Bosch recommended that NHTSA consider using a steering robot or some other means of controlling the lateral offset.

Confirming this tolerance range may be difficult with the ADAC EVT surrogate used by Euro NCAP and other institutions because the surrogate's position relative to the road or the subject vehicle is not directly measured. The measurement equipment is stored in the tow vehicle, not in the ADAC surrogate.

Review of the NHTSA's 2014 AEB test data indicate that decreasing the lateral displacement tolerance from ±2 ft to ±1 ft (±0.6 m to ±0.3 m) should not be problematic. Of the 491 tests performed, only 13 (2.7 percent) had SV lateral deviations greater than 1 ft (0.3 m). Those that did ranged from 1.06 to 1.21 ft (0.32 m to 0.37 m). The use of the SSV monorail makes conducting the test within the allowable 1-ft lateral displacement this feasible because the SSV position is controlled by the monorail.

Through testing conducted by the NCAP contractor, we have determined that we should be able to satisfy the tighter tolerance. Testing performed by NHTSA's VRTC support this finding. We believe we can perform this testing with a human driver steering the vehicle, rather than a steering robot.

For SV yaw rate, we will tighten the test tolerance to ±1 deg/sec. For the SV and POV, we will tighten the test tolerance to ±1 ft (±0.3 m) relative to the center of the travel lane. The lateral tolerance between the centerline of the SV and the centerline of the POV will be tightened to ±1 ft (0.3 m). Additionally, we will be filtering these data channels with a 3 Hz digital filter (versus the 6 Hz used previously) to eliminate short duration data spikes that would invalidate runs that are otherwise valid. We are also eliminating the lateral offset and yaw rate validity specifications for the brake characterization (12.2.1.5 and 6) and false positive baseline tests (12.6.1.5 and 6) of the DBS test procedure. This data is not needed to ensure detection and braking repeatability; with no POV in these tests, it is not necessary to be in the exact center of the lane, for example.

14. Headway Tolerance

Subaru recommended in its comment that NHTSA adopt a headway tolerance of 5 ft (1.5 m) in the test procedures. No explanation of why this is needed was provided in the comments. The headway tolerance is the allowable variance in the longitudinal distance between the front of the subject vehicle and the rear of the principal other vehicle ahead of it as the two vehicles move. The current tolerance is ±8 ft (2.4 m).

A review of our test data reveals a 5 feet (1.5 m) tolerance is too tight unless the agency were committed to fully-automated AEB testing is conducted. At this time we do not plan to fully automate the two test vehicles (the SV and the vehicle towing the POV). The 8 ft (2.4 m) tolerance currently specified in our AEB procedures for the LVD tests is the same used for FCW NCAP testing. We are not aware of this tolerance causing any problems in AEB testing. We will leave the tolerance at 8 ft (2.4 m).

15. Speed Range, Upper and Lower Limits

The Alliance, AGA, Continental, Ford, Honda, IIHS, and MBUSA said the activation limits of the test procedures are too high at the upper end and too low at the lower end or otherwise took issue with the speed parameters of the test procedures.

AGA objected to specifying systems to operate up to 99.4 mph, noting that 80 percent of crashes covered by these systems occur at speeds of 50 mph or less. The high speed will preclude systems that are very effective and will create safety hazards for test drivers and test tracks, AGA added.

Continental said although it is listed as a definition, the CIB/DBS active speed range is described as a performance specification, which they said makes it unclear if NHTSA's intent that the definition speed range must be met in order to receive the NCAP recommendation. If this is the case Continental said it would be necessary to define the associated performance criteria to meet the specification that the system must remain active, especially at the maximum speed, to achieve the balance between effectiveness and false positives at these specified higher speeds.

As suggested by Continental's comments, the upper and lower activation limits were intended to define the AEB systems under consideration. There is no need to define these systems in the test procedure with a reference to their upper and lower activation limits. The agency hopes that the systems made available on light vehicles sold in the United States will be active at these speeds. However, the primary focus is to assure that AEB systems meet the specifications of the test procedures and activate at the speeds at which an AEB system can reasonably be expected to avoid or mitigate a rear end crash. Therefore, the references to the upper and lower activation limits will be removed from the NCAP AEB test procedures.

16. DBS Throttle Release Specification

The Alliance states the current throttle release specification within 0.5 seconds from the onset of the FCW warning will result in test results that

are different between manufacturers. This specification in the DBS test procedure was established to simulate the human action of removing the foot from the throttle and placing it on the brake. In the test setup, the test driver releases the throttle at a specific time to collision relative to the DBS brake robot braking initiating the brake application. System design strategies across manufacturers vary on how to ascertain when a driver needs assistance and are often based on driver inputs on the steering wheel and pedals. The Alliance suggests that to avoid future interference with the optimization of warning development, we should consider other options.

The Alliance requested that the agency consider the following options:

Maintain Throttle Position to the Onset of Brake Application: The agency believes this is not possible for vehicles such as the Infiniti Q50. For this vehicle, part of the FCW is a haptic throttle pedal that pushes back up against the driver's foot. This change in pedal position would violate a constant pedal position criterion. While it may be possible to hold the throttle pedal position fixed with robotic control, NHTSA has not actually evaluated the concept, and the agency does not plan to use a robot on subject vehicle throttle applications during the FCW and/or AEB performance testing.

Throttle Release Relative to a Braking Initiation Time to Collision (TTC): In this approach the driver monitors the SV-to-POV headway, and responds at the correct instant. Although NHTSA has experience with this technique,[20] the agency has concerns about incorporating it into the LVS, LVM, and LVD scenarios used to evaluate DBS because the agency does not intend to automate SV throttle applications for these tests. Since the brake applications specified in NHTSA's DBS test procedure are each initiated at a specific TTC, this approach would also cause the throttle release to occur at a specific TTC. If this causes the commanded throttle release occur after the FCW is presented, it may not be possible for the driver to maintain a constant throttle pedal position between issuance of the FCW and the commanded throttle release point. The driver maintaining a constant throttle may result in the SV-to-POV headway distance changing and move out of the specified headway tolerance. While this may be possible with robotic control of the throttle, NHTSA has not actually evaluated the concept.

OEM Defined Throttle Release Timing: NHTSA would like to minimize vehicle manufacturers' input on how their vehicles should be evaluated.

The agency will not make a test procedure change at this time. We believe it is possible for the SV driver to repeatably release the throttle pedal within 0.5 s of the FCW, and that any reduction of vehicle speed between the time of the throttle pedal release and the onset of the brake application is within the test procedure specifications. Human factors research indicates that when presented with an FCW in a rear-end crash scenario, driver's typically (1) release the throttle pedal then (2) apply the brakes.[21] Therefore, the speed reduction that occurs between these two points in time has strong real-world relevance.

D. Suggested Additions to Test Procedures

1. Accounting for Regenerative Braking

Tesla expressed concern that the test procedures as currently written do not account for totally or partially electric vehicles that utilize regenerative braking to recharge batteries. Tesla urged NHTSA to clarify protocols for EV and hybrid vehicles, specifically regarding regenerative braking.

Regenerative braking is an energy-preservation system used to convert kinetic (movement) energy back to another form, which in the case of an electric vehicle, is used to charge the battery. The reason it is called ''braking'' is that the vehicle is forced to decelerate by this regenerative system, once the driver's foot is taken off of the throttle. This system is independent of the standard brake system but the result is the same; the vehicle slows down.

NHTSA's direct experience with testing a vehicle equipped with AEB and regenerative braking has been limited to the BMW i3. As expected, once the driver released the throttle pedal in response the FCW alert, regenerative braking did indeed slow the vehicle at a greater rate than for other vehicles not so equipped with regenerative braking. This had the effect of reducing maneuver severity since the SV speed at the time of AEB intervention was less than for vehicles not so-equipped. This is not considered problematic.

For vehicles where the driver can select the magnitude of the vehicle's regenerative braking (*e.g.,* the Tesla Model S), the vehicle's AEB system will be evaluated in its default mode (as originally configured by the vehicle manufacturer).

2. Customer-Adjustable FCW Settings

The Alliance noted that in some CIB and DBS applications, system performance may take into account the warning timing setting of the FCW system when the FCW system allows the consumer to manually set the warning threshold. To clarify, the Alliance recommended that the following language, which is adapted from the FCW NCAP test procedure (Section 12.0), be included in the CIB and DBS NCAP test procedure: ''If the FCW system provides a warning timing adjustment for the driver, at least one setting must meet the criterion of the test procedure.''

In its previous work involving FCW, the agency has allowed vehicle manufacturers to configure the systems with multiple performance level modes. This provided vehicle manufacturers flexibility in designing consumer acceptable configurations. The test procedure allowed an FCW mode that provides the earliest alert if the timing can be selected and used during agency testing. Additionally, the test procedures do not include resetting to the original setting after ignition cycles.

NHTSA believes that as a consumer information program, we should test the vehicles as delivered. We also believe the performance level settings of the FCW systems within the AEB test program should now be set similar to the AEB. The Alliance requested that we have language in the test procedure specifying that if there are adjustments to the FCW system, one setting must meet the criterion of the test procedure. Vehicle manufacturers may provide multiple settings for the FCW systems. However, the agency will only use the factory default setting for both the FCW and the AEB systems in the AEB program.

3. Sensor Axis Re-Alignment

The Alliance commented that when the SV hits the SSV in some trials, the impact may misalign the system's sensors. To ensure baseline performance in each trial, the Alliance asked that the test procedure be modified to allow the vehicle manufacturer representatives or test technicians to inspect and, if needed, re-align the sensor axis after each instance of contact between the subject vehicle and the SSV.

[20] NHTSA's false positive DBS tests are performed in the presence of the steel trench plate, since this plate does not cause the FCW to activate for many light vehicles, the DBS test procedure includes a provision for the SV driver to release the throttle at a fixed TTC if the FCW does not activate before a TTC = 2.1s.

[21] ''Development of an FCW Algorithm Evaluation Methodology With Evaluation of Three Alert Algorithms—Final Report,'' June 2009 Figure 5. DOT HS 811 145

NHTSA has seen two cases of sensor misalignment during the initial development of this program. In one case, the subject vehicle had visible grill damage because the AEB system did not activate and the test vehicle hit the SSV at full speed. In another case, the vehicle sensing system shut down after numerous runs; inspection also revealed visible grill damage to the subject vehicle. In both cases, the vehicles were returned to an authorized dealer, repaired and then returned to the test facility.

The NCAP test program has instituted two new procedural improvements to monitor for system damage. First, we began testing with less-severe tests, such as the lead vehicle moving test first, to determine if the vehicle system is capable of passing any of the tests. Second, we have instituted more rigorous visual between-vehicle inspections by the contractor during the testing. Based on our observations in testing, we believe systems that have sensor damage will likely show visible grill damage.

With the improvements in the AEB systems and refinement of our test protocol, we do not believe sensor misalignments will be a significant problem. We invite vehicle manufacturer representatives to attend each of our tests. We reserve the right to work with the vehicle manufacturers on a one-on-one basis if we have problems with the vehicles during the tests.

4. Multiple Events—Minimum and Maximum Time Between Events

The Alliance and Ford asked that the AEB test procedures specify a minimum time of 90 seconds and a maximum time of 10 minutes between each test run as in Euro NCAP AEBS test procedures. Some AEB systems initiate a fail-safe suppression mechanism when multiple activations are triggered in a short time. Most systems can be activated again with an ignition key cycle. In most cases activation of the suppression mechanism can be avoided by including a time interval between individual AEB activations or by cycling the ignition. The current test procedure addresses this by checking for diagnostic test codes (DTCs) to determine if any system suppression or error codes have occurred with the sensing system software.

The agency agrees that there should be a minimum of 90 seconds between test runs and will modify the AEB test procedures to state this explicitly. We recognize that the algorithms in these vehicles look for conditions that are illogical, such as multiple activations in short periods of time, and within a single ignition cycle. The time needed to allow the subject vehicle brakes to cool and the test equipment to be reset between each test trial has always exceeded 90 seconds in the agency's testing experience. The agency will also specify in the test procedures that the vehicle ignition be cycled after every test run.

The agency believes a maximum time between test runs of 10 minutes is too short to be feasible. The test engineers need sufficient time to review data, inspect the test equipment and set up for the next test run. Also recall that the test engineers need time to ensure the vehicle brake temperatures are within specification and the brake system is ready for the next test run. Additionally, it is impractical to specify that all of the tests must be completed within 10 minute cycles while conversely specify that testing be discontinued if ambient conditions are out of specifications. At this time, we are unaware of any algorithm-based reason why testing must be resumed in less than 10 minutes.

5. Time-to-Collision (TTC) Definition

The Alliance observed that the TTC values used in the test procedures are calculated in the same manner as they are in the current NCAP FCW test procedure, but noted that the TTC calculation equations are not included in the draft CIB and DBS test procedures. The Alliance asked that, for clarification purposes, the TTC equations that appear in Section 17.0 of the NHTSA NCAP FCW test procedure dated February 2013 be added to the CIB and DBS test procedures.

The agency acknowledges that the TTC calculations for the FCW test procedure are the same as these test procedures. The TTC calculations that are included in the NCAP FCW test procedures will be added to the AEB test procedures, as requested in the comments. This will make it clear that the TTC equations apply to the AEB test procedures as well.

E. Strikeable Surrogate Vehicle (SSV)

1. Harmonization Urged

NHTSA's strikeable surrogate vehicle (SSV) was discussed earlier in this notice. Multiple commenters encouraged NHTSA to harmonize with Euro NCAP and to use the ADAC EVT in lieu of the SSV. The commenters had concerns about the use of the SSV. They asked NHTSA to establish a maintenance process for the SSV. They questioned whether parts such as the MY 2011 Ford Fiesta vehicle's taillights, rear bumper reflectors and third brake light can be a part of the SSV indefinitely (*i.e.,* will parts continue to be built). The Alliance, Ford, and Continental took a moderate position, supporting calls for harmonization but acknowledging all the work that went into developing the SSV. Other commenters proposed NHTSA could potentially use the SSV target in conjunction with the EVT propulsion system used by Euro NCAP. Concern was also expressed over the SSV setup, the number of facilities capable of performing the actual test maneuvers, the additional test costs, and the problem of damage to the subject vehicles.

AGA said NHTSA could provide an option for manufacturers to use an alternative test devices of Euro NCAP or IIHS. Both Euro NCAP and IIHA use ADAC EVT.

Tail light availability is not expected to be a problem for the foreseeable future. However, if this should this become an issue, simulated taillights, an updated SSV shell, or potentially other changes could be made to replace the current model.

Overall, the AEB system sensors interpret the SSV appears to sensors as a genuine vehicle. Nearly all vehicle manufacturers and many suppliers have assessed how the SSV appears to the sensors used for their AEB systems. The results of these scans have been very favorable.

Although the SSV has been designed to be as durable as possible, its various components may need to be repaired or replaced over time. As with all other known surrogate vehicles used for AEB testing, the frequency of repair or replacement is strongly dependent on how the surrogate is used, particularly the number of high speed impacts sustained during testing.

With regards to availability, the specifications needed to construct the SSV are in the public domain.[22] Multiple sets of the SSV and the tow system have been manufactured and sold to vehicle manufactures and test facilities. The SSV can be manufactured by anyone using these specifications. With regard to other issues like cost and convenience of use, we feel the SSV is within the range of practicality as a test system. In relation to other motor vehicle test systems, the SSV system is reasonably priced and can be moved from test facility to test facility.

While we appreciate the concerns about the SSV expressed in the comments, we will continue to specify

[22] *http://www.regulations.gov,* Docket NHTSA–2012–0057.

the SSV in the NCAP AEB test procedures that NHTSA will use to confirm through spot checks that vehicles with AEB technologies and for which a manufacturer has submitted supporting data meet NCAP performance criteria. As noted previously this does not require use of the SSV by manufacturers for their own testing.

2. Repeatability/Reproducibility

The Alliance said because the SSV is not readily available, its members have not been able to conduct a full set of tests to assess the repeatability and reproducibility of the SSV in comparison with other commercially available test targets.

NHTSA is aware that the SSV is a relatively new test device and that every interested entity may not have had a chance to perform a comprehensive series of SSV evaluations or seen how it is actually used. However the specifications needed to construct the SSV are in the public domain and multiple SSVs have been manufactured and sold to vehicle manufacturers and test facilities. A test report describing the SSV repeatability work performed with a Jeep Grand Cherokee has recently been released.[23]

3. Lateral Restraint Track (LRT)

Commenters were concerned with the lateral restraint track (LRT). They felt the LRT was not needed. The permanent installation of the LRT used up track space and made it hard to move testing activities to another test track.

Some commenters indicated that if the LRT used to keep the SSV centered in its travel lane is white, it may affect AEB performance. This is because some camera-based AEB systems consider lane width in their control algorithms, and these algorithms may not perform correctly if the LRT is confused for a solid white lane line. Although NHTSA test data does not appear to indicate this is a common problem, the NHTSA test contractor is using a black LRT to address this potential issue. The black LRT appears more like a uniform tar strip that has been used to seal a long crack in the center of the travel lane pavement, a feature present on real-world roads.

NHTSA appreciates these concerns but believes the continued use of the LRT is important. LRT is designed to insure several things, including that the SSV will be constrained within a tight tolerance to optimize test accuracy and repeatability. Using the LRT to absolutely keep the path of the SSV within the center of the lane of travel, in conjunction with the lateral tolerances defined in the CIB and DBS test procedures, will allow the agency to test AEB systems in a situation where one vehicle is approached by another vehicle from directly behind. To reduce the potential for unnecessary interventions, some AEB systems contain algorithms that can adjust onset of the automatic brake activation as a function of lateral deviation from the center of the POV. This is because it will take less time for the driver to steer around the POV if the lateral position of the SV is biased away from its centerline. Although this may help to minimize nuisance activations in the real-world, the same algorithms may contribute to test variability during AEB NCAP evaluations if excessive lateral offset exists between the SV and POV. Since the use of the LRT prevents this from occurring, it is expected the agency's tests will allow AEB systems to best demonstrate their crash avoidance or mitigate capabilities.

Ford suggested that NHTSA use the ADAC EVT propulsion system with the SSV to increase feasibility for manufacturers. NHTSA believe the inherent design differences between the SSV and ADAC surrogates makes using the ADAC EVT propulsion system with the SSV a considerable challenge. Design changes to the SSV and/or ADAC EVT rig would be needed. It is not possible to simply substitute the SSV for the ADAC EVT surrogate on the ADAC rig as Ford suggests. Even if the ADAC EVT could be adapted, and even though it appears to track well behind a tow vehicle, the precise position of the ADAC EVT is not measured, so the lateral offset cannot be quantified.

Commenters expressed concern on the allowable lateral offset and yaw rate tolerance in the AEB test procedures placing considerable emphasis on the importance of narrowing the tolerances in these areas. AGA said the lateral offset and yaw rate in August 2014 draft test procedures (+/- 2 ft (0.3 m) lateral offset and +/- 2 deg/s yaw rate) can create a delay in AEB system response that could affect a system's performance during and AEB test. DENSO agreed that a higher tolerance in lateral offset and yaw rate tends to decrease forward looking sensor detection performance. The Alliance too weighed in on this saying, that ''the variability in lateral offset is expected to have a significant impact on test reproducibility and system performance and resultant rating,'' adding that the yaw rate should be +/- 1 deg/s to be consistent with the FCW test procedure given the fact that AEB systems use the same sensors as FCW systems. As discussed earlier, we have agreed to tighten the yaw rate and lateral offset tolerance. This makes the tight control provided by the LRT even more important to the performance of these tests.

Until the agency has an indication that an alternative approach to moving the SSV down a test track can ensure the narrow tolerances for lateral offset and yaw rate, the LRT will remain in the AEB test procedures. Our contractor has already installed a black LRT. Thought this does not completely disguise the restraint track, it is close to being masked for a camera-based AEB system.

4. What is the rear of the SSV? (Zero Position)

NHTSA considers the rearmost portion of the SSV, or the ''zero position,'' to be the back of the foam bumper. The Alliance suggested the rearmost part of the SSV should be defined by its carbon fiber body, not its foam bumper. The Alliance said it has observed SV-to-SSV measurement errors of as much as 40 cm (15.7 in), and attributes them to their vehicle's sensors not being able to consistently detect the reflective panel located between the SSV's bumper foam and its cover.

It has always been the agency's intention to make the rear of the SSV foam bumper detectable to radar while still having its radar return characteristics be as realistic as possible. This is the reason NHTSA installed a radar-reflective panel between the SSV's 8 in (20.3 cm) deep foam bumper and its cover; the panel is specifically used to help radar-based systems define the rearmost part of the SSV since the foam is essentially invisible to radar. We are presently working to identify the extent to which AEB systems have problems determining the overall rearmost position of the SSV. NHTSA considers the outside rear surface of foam bumper, immediately adjacent to the radar-reflective material to be the ''zero position'' in its CIB and DBS tests, and is considering ways to better allow AEB systems to identify it.

5. Energy Absorption, Radar System Bias

Other concerns mentioned by commenters include design changes to the SSV: Increasing energy absorption and minimizing a perceived bias towards radar systems based on the SSV's appearance in certain lighting conditions which may be challenging for camera systems. We believe the SSV appears to be a real vehicle to most

[23] Forkenbrock, GJ & Snyder, AS (2015, May) NHTSA's 2014 Automatic Emergency Braking (AEB) Test Track Evaluation (Report No. DOT HS 812 166). Washington DC, National Highway Traffic Safety Administration.

current AEB systems, regardless of what sensor or set of sensors the systems uses, and that the SSV elicits AEB responses representative of how the systems will perform in real world driving situations. The ability of the SSV to withstand SV-to-POV impacts appears to be adequate if the subject vehicles being evaluated produces even minimal speed reductions to mitigate them. We continue to evaluate SSV performance and will consider improvements.

Some commenters indicated NHTSA should increase the padding to the SSV to reduce the likelihood of damage to the test equipment or to the SV during an SV-to-POV impact. When designing the SSV, we attempted to balance realism, strikeability, and durability. The body structure and frame of the SSV are constructed from carbon fiber to make them stiff (so that the shape remains constant like a real car), strong, and light weight. To enable SV-to-POV impacts, the SSV frame has design elements to accommodate severe impact forces and accelerations and an 8 in (20.3 cm) deep foam bumper to attenuate the initial impact pulse. We are concerned that simply adding more padding to the rear of the SSV will reduce its realistic appearance, and potentially affect AEB system performance. Therefore, to address the potential need for additional SSV strikeability, the agency is presently considering an option to work with individual vehicle manufacturers to add strategically-placed foam to the SV front bumper to supplement the foam installed on the rear of the SSV. At this time, no changes to the appearance of the SSV are planned. Since temporary padding added to the subject vehicle does not alter that characteristics of the SSV nor affect the distance of the SSV to the vehicle sensors, we will not be adjust the zeroing procedure in the test procedure to compensate for this one-time padding addition.

With regards to sensor bias, the SSV has been designed to be as realistic as possible to all known sensors used by AEB systems. While it is true that the SSV has a strong radar presence, use of the white body color and numerous high-contrast features (*e.g.,* actual tail lights and bumper reflectors, simulated license plate, dark rear window, etc.) was intended to make it as apparent as possible to camera and lidar-based systems as well. Aside from inclement weather and driving into the sun, conditions explicitly disallowed by NHTSA's CIB and DBS test procedures, sensor limitations capable of adversely affecting the real-world detection, classification, and response of a SV to actual vehicles during real-world driving may also affect the ability of the SV to properly respond to the SSV. The agency considers this an AEB system limitation, not an SSV flaw.

F. Other Issues

1. Non-Ideal Conditions—Exclude Away From Sun as Well

NHTSA's CIB and DBS test procedures both include a set of environmental restrictions designed to ensure that proper system functionality is realized during a vehicle's evaluation. One such restriction prohibits the SV and POV from being oriented into the sun when it is oriented 15 degrees or less from horizontal, since this can cause inoperability due to ''washout'' (temporary sensor blindness) in camera-based systems.

DENSO commented that, in addition to prohibiting testing with the test vehicles oriented toward the sun when the sun is at a very low angle (15 degrees or less from horizontal) to avoid camera ''washout'' or system inoperability, the test procedures should also prohibit testing with vehicles oriented away from the sun (with the sun at low angle) which would harmonize this issue with Euro NCAP test procedure. MEMA agreed that wash out conditions experienced in low sun angle conditions for SV and POV oriented toward the sun may also occur when they are oriented away from the sun.

To date, the agency's testing does not indicate that a low sun angle from the rear will adversely affect AEB system performance. Moreover, one of the agency's testing contractors indicates that restricting the sun angle behind as well as in front of the test vehicle will significantly reduce the hours per day that testing may be performed. If our ongoing experience suggests that this is a problem for vehicles equipped with a particular sensor or sensor set, we will consider making adjustments.

2. Multiple Safety Systems

TRW inquired as to how safety systems other than AEB systems on a test vehicle would be configured during AEB testing. The company asked whether there would be provisions in the test procedure for turning off certain safety features in order to make the testing repeatable. It gave as an example some pre-crash systems that may be activated based on these tests.

Due to the complexity and variance of vehicle designs the agency will deal with system conflicts on a one-on-one basis. The agency does not specify or recommend that vehicle manufacturers design and include cut-off provisions for the sole purpose of performing AEB tests.

3. Motorcycles

The AMA said that all AEB systems included in NCAP should be able to detect and register a motorcycle. If not, vehicle operators may become dependent on these new technologies and cause a crash, because the system did not detect and identify a smaller vehicle, the organization said.

AEB systems, while relatively sophisticated and available in the American new vehicle marketplace, are still nonetheless in the early stages of their development. Some may be able to detect motorcycles. Some may not be able to do so. Eventually, the sensitivity of these systems may increase to the point where detecting a motorcycle is commonplace among systems.

The agency believes it would be benefit to highway safety move forward with this program at this time, even though it does not include motorcycle detection. By including AEB systems among the advanced crash avoidance technologies it recommends to consumers in NCAP, the agency expects more and more manufacturers to equip more and more new vehicles with these systems. As a result, many rear-end crashes and the resulting injuries and deaths will be avoided. The agency believes it will be beneficial to take this step even if the systems involved are not as capable of recognizing motorcycles today.

We also do not have reason to believe that AEB systems are the type of technology likely to encourage over-reliance by drivers. DBS is activated based on driver braking input, and CIB is activated when for one reason or another, the driver has not begun to apply the brake. We do not think that in either scenario the driver is likely to drive differently under the assumption that the AEB system will perform the driver's task.

The agency will continue to follow the ongoing development and enhancement of AEB systems and look for opportunities to encourage the development and deployment of systems that detect motorcycles.

4. How To Account for CIB/DBS Interaction

Honda asked how the interrelationship between CIB and DBS should be treated, in situations in which CIB activates before the driver applies the brakes and DBS never activates.

The brake applications used for DBS evaluations are activated at a specific point in time prior to an imminent

collision with a lead vehicle (time-to-collision) regardless of whether CIB has been activated or not. If CIB activates before DBS, the initial test speed and, thus, the severity of the test would effectively be reduced.

TRW observed that one potential future trend to watch is that as industry confidence and capability to provide CIB functionality increases and the amount of vehicle deceleration is allowed to increase and be applied earlier in the process, the need for DBS as a separate feature may diminish. The potential goal of DBS testing would become one of proving a driver intervention during an AEB event does not detract from the event's outcome, TRW said.

At this time, the agency is aware that many light vehicle DBS systems supply higher levels of braking at earlier activation times for the supplemental brake input compared to the automatic braking of CIB systems. Based on this understanding of current system design, our NCAP AEB test criteria for DBS evaluates crash avoidance resulting from higher levels of deceleration, whereas our CIB test criteria evaluates crash mitigation (with the exception of the CIB lead vehicle moving SV: 25 mph/POV: 10 mph (SV:40 km/h/POV: 16 km/h) scenario, for which crash avoidance is required). NHTSA will keep the speed reduction evaluation criteria as planned for the CIB and DBS tests.

Unless the agency uncovers a reason to be concerned about how the performance metrics of a test protocol may affect system performance in vehicles equipped with both CIB and DBS, the agency will recognize an AEB equipped vehicle as long as it passes the criteria of a given protocol, whether that occurs as a result of the activation of the particular system or a combination of systems.

5. Issues Beyond the Scope of This Notice

Some commenters raised topics outside the scope of the notice, and they will not be addressed here.

These include: A suggested two-stage approach to adding technologies to NCAP, a suggested minimum AEB performance regulation that would function in concert with NCAP, conflicts between rating systems that could cause consumer confusion, other technologies that should be added to NCAP in the future, and a call for flashing brake lights to alert trailing drivers that an AEB system has been activated.

Other topics raised may be addressed as the agency's experience with AEB systems expands over time. These topics include: Using different equipment, including a different surrogate vehicle; a call to study the interaction of the proposed CIB/DBS systems with tests for FMVSS Nos. 208 and 214 to assess whether such features should be enabled during testing and what the effect may be; a suggestion that the agency should consider the role electronic data recorders (EDRs) may play in assessing AEB false positive field performance; and concern as to how safety systems on a test vehicle other than AEB systems would be dealt with during AEB testing, such as some pre-crash systems that may be activated based on these tests.

A suggestion was made that the agency should consider the potential interactions of AEB systems with vehicle-to-vehicle (V2V) communications technology, both in how AEB tests might be performed and what the performance specifications for those tests should be. The agency is monitoring the interaction of these capabilities.

V. Conclusion

For all the reasons stated above, we believe that it is appropriate to update NCAP to include crash imminent braking and dynamic brake support systems as Recommended Advanced Technologies.

Starting with Model Year 2018 vehicles, we will include AEB systems as a recommended technology and test such systems.

(Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.95.)

Issued in Washington, DC, on: October 21, 2015.

Under authority delegated in 49 CFR 1.95.

Mark R. Rosekind,

Administrator.

[FR Doc. 2015–28052 Filed 11–4–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35760]

Hainesport Industrial Railroad, LLC—Corporate Family Transaction Exemption

AGENCY: Surface Transportation Board.

ACTION: Correction to Notice of Exemption.

On August 26, 2013, Hainesport Industrial Railroad, LLC (Hainesport), a Class III railroad, filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction pursuant to which Hainesport would transfer ownership and operation of a line of railroad, described as the East Line, in Hainesport, N.J., to a corporate affiliate, Hainesport Secondary Railroad, LLC (Hainesport Secondary).[1] The notice was served and published in the **Federal Register** on September 11, 2013 (78 FR 55,776), and became effective on September 25, 2013.

On August 6, 2015, Hainesport filed a petition to correct or amend the notice. According to Hainesport, the map provided with its notice incorrectly depicted the East Line. Thus, Hainesport requests that the Board substitute the map identified as Exhibit A to its petition for the map submitted in the notice. This correction is recognized here. All remaining information from the September 11, 2013 notice remains unchanged.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: November 2, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–28190 Filed 11–4–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERAN AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veteran Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) all agencies are required to publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Freedom of Information Act (FOIA) Records—VA'' 119VA005R1C.

DATES: Comments on the amendment of this system of records must be received no later than December 7, 2015. If no public comment is received, the new

[1] In a notice served on July 16, 2015, the Board approved a verified notice of exemption filed by Hainesport, Tunnel Hill Partners, LP (Tunnel), and New Amsterdam & Seneca Railroad Company (NAS), for Tunnel, which owns NAS, to acquire control of Hainesport. *Tunnel Hill Partners, LP—Acquis. of Control Exemption—Hainesport Indus. R.R.,* FD 35942 (STB served July 16, 2015).

system will become effective December 7, 2015.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov* by mail or hand-delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Director VA FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7453.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)), notice is hereby given that the Department of Veterans Affairs (VA) is amending an existing system of records entitled ''Freedom of Information Act (FOIA) Records—VA'' (119VA005R1C). The amended system of records is adding a Routine Use number 12, amending Categories of Individuals Covered by the System, Categories of Records in the System and Exemptions Claimed for the System.

The notice of intent to publish, and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

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, approved this document on October 15, 2015, for publication.

Dated: October 21, 2015.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

119VA005R1C

SYSTEM NAME:

Freedom of Information Act (FOIA) Records—VA

SYSTEM LOCATION:

Records are maintained at the VA Central Office FOIA Offices, 810 Vermont Avenue NW., Washington, DC 20420; AINS, Inc., 1355 Piccard Drive, Rockville, MD 20850, and all VA field facilities. A list of the field facilities may be found at the following Internet address: *http://www2.va.gov/directory/guide/home.asp.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with VA:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

c. All persons who have requested records from VA under the provisions of the Freedom of Information Act (FOIA); all persons whose requests for records have been referred to VA by other Federal agencies; and all persons who have submitted appeals to the Secretary of VA under the provisions of the FOIA.

d. All persons about whom information has been requested under the provisions of the FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals to VA for:

a. Information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under VA's Privacy Act regulations regarding requests for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

c. Name, home address, telephone number, email address, FOIA case numbers assigned to individual cases, and appeals, FOIA requests and appeals, responses to requests (including unredacted and redacted responsive records), determinations of appeals, correspondence with requesters and with other persons who have contacted VA in connection with requests or appeals other than requesters or other memoranda and correspondence in connection with requests or appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

The Privacy Act of 1974 (5 U.S.C. 552a); the Freedom of Information Act, as amended (5 U.S.C. 552); 5 U.S.C. 301; and 38 U.S.C. 501.

PURPOSE(S):

The system is maintained for the purpose of processing an individual's record request made under the provisions of the Freedom of Information and Privacy Acts. These records are also used by VA to prepare reports required by the Freedom of Information and Privacy Acts to the Office of Management and Budget and the Department of Justice. The proposed system of records will assist the Department of Veterans Affairs in carrying out its responsibilities under the Freedom of Information and Privacy Acts. The records maintained in the proposed system can originate in both paper and electronic format.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System information may be accessed and used by authorized VA employees, with a legitimate need to know, to conduct duties associated with the management and operation of the FOIA–PA program. Information may also be disclosed as a routine use for the following purposes:

1. VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

2. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is

relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

3. VA may disclose information from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

4. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44 U.S.C.

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

6. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

7. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

10. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. To the National Archives and Records Administration Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(b), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data are maintained on Direct Access Storage Devices at AINS Inc., 1355 Piccard Drive, Rockville, Maryland. AINS Inc. stores registry tapes for disaster back up at the storage location. Registry tapes for disaster back up are also maintained at an off-site location. VA Central Office and VA field facilities also maintain paper reports and electronic data.

RETRIEVABILITY:

Records are indexed by name of requester, date and any other identifier deemed appropriate.

SAFEGUARDS:

This list of safeguards furnished in this System of Records is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information.

All records are maintained in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information, including protection from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks and password protection identification features.

Authorized personnel are required to take annual VA mandatory data privacy and security training. Access to data storage areas is restricted to authorized VA employees or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. File areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Contractors and their subcontractors who access the data are

required to maintain the same level of security as VA staff. Access to electronic files is controlled by using an individually unique password entered in combination with an individually unique user identification code.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. Routine records will be disposed of when the agency determines they are no longer needed for administrative, legal, audit or other operational purposes. These retention and disposal statements are pursuant to the National Archives and Records Administration (NARA) General Record Schedules GRS–20, item 1c and GRS 24, item 6a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where the request or appeal was submitted or to the Director, FOIA Service (005R1C), 810 Vermont Avenue NW., Washington, DC 20420. Such requests must contain a reasonable description of the records requested. Inquires should also include the following:

a. Name

b. Telephone Number and Return Address

c. Date of Request or Appeal

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records maintained under his or her name may write or visit the nearest VA facility or write to their regional VA Public Liaison/FOIA officer listed at *http://www.foia.va.gov/FOIA_Contacts.asp.*

CONTESTING RECORDS PROCEDURES:

(See ''Record Access Procedures above.'')

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the following: requests and administrative appeals submitted by individuals and organizations pursuant to the FOIA and Privacy Acts; VA personnel assigned to handle such requests and appeals; Agency records searched and identified as responsive to such requests and appeals; and requests referred by Agencies or other entities concerning VA records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, VA hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records of which they are a part.

[FR Doc. 2015–28184 Filed 11–4–15; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 214 November 5, 2015

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 409, 424, and 484

Medicare and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484

[CMS–1625–F]

RIN 0938–AS46

Medicare and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will update Home Health Prospective Payment System (HH PPS) rates, including the national, standardized 60-day episode payment rates, the national per-visit rates, and the non-routine medical supply (NRS) conversion factor under the Medicare prospective payment system for home health agencies (HHAs), effective for episodes ending on or after January 1, 2016. As required by the Affordable Care Act, this rule implements the 3rd year of the 4-year phase-in of the rebasing adjustments to the HH PPS payment rates. This rule updates the HH PPS case-mix weights using the most current, complete data available at the time of rulemaking and provides a clarification regarding the use of the ''initial encounter'' seventh character applicable to certain ICD–10–CM code categories. This final rule will also finalize reductions to the national, standardized 60-day episode payment rate in CY 2016, CY 2017, and CY 2018 of 0.97 percent in each year to account for estimated case-mix growth unrelated to increases in patient acuity (nominal case-mix growth) between CY 2012 and CY 2014. In addition, this rule implements a HH value-based purchasing (HHVBP) model, beginning January 1, 2016, in which all Medicare-certified HHAs in selected states will be required to participate. Finally, this rule finalizes minor changes to the home health quality reporting program and minor technical regulations text changes.

DATES: *Effective Date:* These regulations are effective on January 1, 2016.

FOR FURTHER INFORMATION CONTACT: For general information about the HH PPS please send your inquiry via email to: *HomehealthPolicy@cms.hhs.gov.* Michelle Brazil, (410) 786–1648 or Theresa White, (410) 786–2394 for information about the HH quality reporting program. Lori Teichman, (410) 786–6684, for information about HHCAHPS. Robert Flemming, (844) 280–5628, or send your inquiry via email to *HHVBPquestions@cms.hhs.gov* for information about the HHVBP Model.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose
B. Summary of the Major Provisions
C. Summary of Costs and Benefits
II. Background
A. Statutory Background
B. System for Payment of Home Health Services
C. Updates to the Home Health Prospective Payment System
D. Advancing Health Information Exchange
III. Provisions of the Proposed Rule and Response to Comments
A. Monitoring for Potential Impacts—Affordable Care Act Rebasing Adjustments
B. CY 2016 HH PPS Case-Mix Weights and Reduction to the National, Standardized 60-day Episode Payment Rate to Account for Nominal Case-Mix Growth
1. CY 2016 HH PPS Case-Mix Weights
2. Reduction to the National, Standardized 60-day Episode Payment Rate to Account for Nominal Case-Mix Growth
3. Clarification Regarding the Use of the ''Initial Encounter'' Seventh Character, Applicable to Certain ICD–10–CM Code Categories, under the HH PPS
C. CY 2016 Home Health Rate Update
1. CY 2016 Home Health Market Basket Update
2. CY 2016 Home Health Wage Index
3. CY 2016 Annual Payment Update
D. Payments for High-Cost Outliers Under the HH PPS
E. Report to the Congress on the Home Health Study Required by Section 3131(d) of the Affordable Care Act and an Update on Subsequent Research and Analysis
F. Technical Regulations Text Changes
IV. Provisions of the Home Health Value-Based Purchasing (HHVBP) Model and Response to Comments
A. Background
B. Overview
C. Selection Methodology
1. Identifying a Geographic Demarcation Area Overview of the Randomized Selection Methodology for States
D. Performance Assessment and Payment Periods
1. Performance Reports
2. Payment Adjustment Timeline
E. Quality Measures
1. Objectives
2. Methodology for Selection of Quality Measures
3. Selected Measures
4. Additional Information on HHCAHPS
5. New Measures
6. HHVBP Model's Four Classifications
7. Weighting
F. Performance Scoring Methodology
1. Performance Calculation Parameters
2. Considerations for Calculating the Total Performance Score
3. Additional Considerations for the HHVBP Total Performance Scores
4. Setting Performance Benchmarks and Thresholds
5. Calculating Achievement and Improvement Points
6. Scoring Methodology for New Measures
7. Minimum Number of Cases for Outcome and Clinical Quality Measures
G. The Payment Adjustment Methodology
H. Preview and Period To Request Recalculation
I. Evaluation
V. Provisions of the Home Health Care Quality Reporting Program (HH QRP) and Response to Comments
A. Background and Statutory Authority
B. General Considerations Used for the Selection of Quality Measures for the HH QRP
C. HH QRP Quality Measures and Measures Under Consideration for Future Years
D. Form, Manner, and Timing of OASIS Data Submission and OASIS Data for Annual Payment Update
1. Statutory Authority
2. Home Health Quality Reporting Program Requirements for CY 2016 Payment and Subsequent Years
3. Previously Established Pay-for-Reporting Performance Requirement for Submission of OASIS Quality Data
E. Home Health Care CAHPS Survey (HHCAHPS)
1. Background and Description of HHCAHPS
2. HHCAHPS Oversight Activities
3. HHCAHPS Requirements for the CY 2016 APU
4. HHCAHPS Requirements for the CY 2017 APU
5. HHCAHPS Requirements for the CY 2018 APU
6. HHCAHPS Reconsideration and Appeals Process
7. Summary
F. Public Display of Home Health Quality Data for the HH QRP
VI. Collection of Information Requirements
VII. Regulatory Impact Analysis
VIII. Federalism Analysis

Acronyms

In addition, because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ACH LOS Acute Care Hospital Length of Stay
ADL Activities of Daily Living
APU Annual Payment Update
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
CAD Coronary Artery Disease
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CASPER Certification and Survey Provider Enhanced Reports

CHF Congestive Heart Failure
CMI Case-Mix Index
CMP Civil Money Penalty
CMS Centers for Medicare & Medicaid Services
CoPs Conditions of Participation
COPD Chronic Obstructive Pulmonary Disease
CVD Cardiovascular Disease
CY Calendar Year
DM Diabetes Mellitus
DRA Deficit Reduction Act of 2005, Pub. L. 109–171, enacted February 8, 2006
FDL Fixed Dollar Loss
FI Fiscal Intermediaries
FR Federal Register
FY Fiscal Year
HAVEN Home Assessment Validation and Entry System
HCC Hierarchical Condition Categories
HCIS Health Care Information System
HH Home Health
HHA Home Health Agency
HHCAHPS Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey
HH PPS Home Health Prospective Payment System
HHRG Home Health Resource Group
HHVBP Home Health Value-Based Purchasing
HIPPS Health Insurance Prospective Payment System
HVBP Hospital Value-Based Purchasing
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification
ICD–10–CM International Classification of Diseases, Tenth Revision, Clinical Modification
IH Inpatient Hospitalization
IMPACT Act Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185)
IRF Inpatient Rehabilitation Facility
LEF Linear Exchange Function
LTCH Long-Term Care Hospital
LUPA Low-Utilization Payment Adjustment
MEPS Medical Expenditures Panel Survey
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, enacted December 8, 2003
MSA Metropolitan Statistical Area
MSS Medical Social Services
NQF National Quality Forum
NQS National Quality Strategy
NRS Non-Routine Supplies
OASIS Outcome and Assessment Information Set
OBRA Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987
OCESAA Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. 105–277, enacted October 21, 1998
OES Occupational Employment Statistics
OIG Office of Inspector General
OT Occupational Therapy
OMB Office of Management and Budget
MFP Multifactor productivity
PAMA Protecting Access to Medicare Act of 2014
PAC–PRD Post-Acute Care Payment Reform Demonstration
PEP Partial Episode Payment Adjustment
PT Physical Therapy
PY Performance Year
PRRB Provider Reimbursement Review Board
QAP Quality Assurance Plan
RAP Request for Anticipated Payment
RF Renal Failure
RFA Regulatory Flexibility Act, Pub. L. 96–354
RHHIs Regional Home Health Intermediaries
RIA Regulatory Impact Analysis
SAF Standard Analytic File
SLP Speech-Language Pathology
SN Skilled Nursing
SNF Skilled Nursing Facility
TPS Total Performance Score
UMRA Unfunded Mandates Reform Act of 1995.
VBP Value-Based Purchasing

I. Executive Summary

A. Purpose

This final rule will update the payment rates for HHAs for calendar year (CY) 2016, as required under section 1895(b) of the Social Security Act (the Act). This reflects the 3rd year of the 4-year phase-in of the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit rates, and the NRS conversion factor finalized in the CY 2014 HH PPS final rule (78 FR 72256), as required under section 3131(a) of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the ''Affordable Care Act'').

This rule will update the case-mix weights under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act and provides a clarification regarding the use of the ''initial encounter'' seventh character applicable to certain ICD–10–CM code categories. This final rule will finalize reductions to the national, standardized 60-day episode payment rate in CY 2016, CY 2017, and CY 2018 of 0.97 percent in each year to account for case-mix growth unrelated to increases in patient acuity (nominal case-mix growth) between CY 2012 and CY 2014 under the authority of section 1895(b)(3)(B)(iv) of the Act. In addition, this rule finalizes our proposal to implement an HH Value-Based Purchasing (VBP) model, in which certain Medicare-certified HHAs are required to participate, beginning January 1, 2016 under the authority of section 1115A of the Act. Finally, this rule will finalize changes to the home health quality reporting program requirements under section 1895(b)(3)(B)(v)(II) of the Act and will finalize minor technical regulations text changes in 42 CFR parts 409, 424, and 484 to better align the payment requirements with recent statutory and regulatory changes for home health services.

B. Summary of the Major Provisions

As required by section 3131(a) of the Affordable Care Act, and finalized in the CY 2014 HH final rule, ''Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses'' (78 FR 77256, December 2, 2013), we are implementing the 3rd year of the 4-year phase-in of the rebasing adjustments to the national, standardized 60-day episode payment amount, the national per-visit rates and the NRS conversion factor in section III.C.3. The rebasing adjustments for CY 2016 will reduce the national, standardized 60-day episode payment amount by $80.95, increase the national per-visit payment amounts by 3.5 percent of the national per-visit payment amounts in CY 2010 with the increases ranging from $1.79 for home health aide services to $6.34 for medical social services, and reduce the NRS conversion factor by 2.82 percent.

In the CY 2015 HH PPS final rule (79 FR 66072), we finalized our proposal to recalibrate the case-mix weights every year with more current data. In section III.B.1 of this rule, we are recalibrating the HH PPS case-mix weights, using the most current cost and utilization data available, in a budget neutral manner. In addition, in section III.B.2 of this rule, we are finalizing reductions to the national, standardized 60-day episode payment rate in CY 2016, CY 2017, and CY 2018 of 0.97 percent in each year to account for estimated case-mix growth unrelated to increases in patient acuity (nominal case-mix growth) between CY 2012 and CY 2014. In section III.B.3 of this rule we are providing a clarification regarding the use of the ''initial encounter'' seventh character, applicable to certain ICD–10–CM code categories, under the HH PPS. In section III.C.1 of this rule, we are updating the payment rates under the HH PPS by the home health payment update percentage of 1.9 percent (using the 2010-based Home Health Agency (HHA) market basket update of 2.3 percent, minus 0.4 percentage point for productivity as required by section 1895(b)(3)(B)(vi)(I) of the Act. In the CY 2015 final rule (79 FR 66083 through 66087), we incorporated new geographic area designations, set out in a February 28, 2013 Office of Management and Budget

(OMB) bulletin, into the home health wage index. For CY 2015, we implemented a wage index transition policy consisting of a 50/50 blend of the old geographic area delineations and the new geographic area delineations. In section III.C.2 of this rule, we will update the CY 2016 home health wage index using solely the new geographic area designations. In section III.D of this final rule, we discuss payments for high cost outliers. In section III.E, we are finalizing several technical corrections in 42 CFR parts 409, 424, and 484, to better align the payment requirements with recent statutory and regulatory changes for home health services. The sections include §§ 409.43(e), 424.22(a), 484.205(d), 484.205(e), 484.220, 484.225, 484.230, 484.240(b), 484.240(e), 484.240(f), 484.245.

In section IV of this rule, we are finalizing our proposal to implement a HHVBP model that will begin on January 1, 2016. Medicare-certified HHAs selected for inclusion in the HHVBP model will be required to compete for payment adjustments to their current PPS reimbursements based on quality performance. A competing HHA is defined as an agency that has a current Medicare certification and that is being paid by CMS for home health care delivered within any of the states selected in accordance with the HHVBP Model's selection methodology.

Finally, section V of this rule includes changes to the home health quality reporting program, including one new quality measure, the establishment of a minimum threshold for submission of Outcome and Assessment Information Set (OASIS) assessments for purposes of quality reporting compliance, and submission dates for Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey (HHCAHPS) Survey through CY 2018.

C. Summary of Costs and Transfers

TABLE 1—SUMMARY OF COSTS AND TRANSFERS

Provision description	Costs	Transfers
CY 2016 HH PPS Payment Rate Update	.....	The overall economic impact of the HH PPS payment rate update is an estimated −$260 million (−1.4 percent) in payments to HHAs.
CY 2016 HHVBP Model	.....	The overall economic impact of the HHVBP model provision for CY 2018 through 2022 is an estimated $380 million in total savings from a reduction in unnecessary hospitalizations and SNF usage as a result of greater quality improvements in the HH industry. As for payments to HHAs, there are no aggregate increases or decreases to the HHAs competing in the model.

II. Background

A. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare HH services. Section 4603 of the BBA mandated the development of the HH PPS. Until the implementation of the HH PPS on October 1, 2000, HHAs received payment under a retrospective reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered HH services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services.'' Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires the following: (1) The computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level. Under section 1895(b)(4)(C) of the Act, the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers due to unusual variations in the type or amount of medically necessary care. Section 3131(b)(2) of the Patient Protection and Affordable Care Act of 2010 (the Affordable Care Act) (Pub. L. 111–148, enacted March 23, 2010) revised section 1895(b)(5) of the Act so that total outlier payments in a given year would not exceed 2.5 percent of total payments projected or estimated. The provision also made permanent a 10 percent agency-level outlier payment cap.

In accordance with the statute, as amended by the BBA, we published a final rule in the July 3, 2000 **Federal Register** (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for HH services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for HH services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of HH services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the HH market basket percentage increase is reduced by 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65884, 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

The Affordable Care Act made additional changes to the HH PPS. One of the changes in section 3131 of the Affordable Care Act is the amendment to section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) as amended by section 5201(b) of the DRA. Section 421(a) of the MMA, as amended by section 3131 of the Affordable Care Act, requires that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016. Section 210 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Public Law 114–10) amended section 421(a) of the MMA to extend the rural add-on for two more years. Section 421(a) of the MMA, as amended by section 210 of the MACRA, requires that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act, for HH services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2018.

B. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode rate includes the six HH disciplines (skilled nursing, HH aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine supplies (NRS) is no longer part of the national standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section II.D.4.e). Payment for durable medical equipment covered under the HH benefit is made outside the HH PPS payment system. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification system to assign patients to a home health resource group (HHRG). The clinical severity level, functional severity level, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument and are used to place the patient in a particular HHRG. Each HHRG has an associated case-mix weight which is used in calculating the payment for an episode.

For episodes with four or fewer visits, Medicare pays national per-visit rates based on the discipline(s) providing the services. An episode consisting of four or fewer visits within a 60-day period receives what is referred to as a low-utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

C. Updates to the Home Health Prospective Payment System

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register.** The August 29, 2007 final rule with comment period set forth an update to the 60-day national episode rates and the national per-visit rates under the HH PPS for CY 2008. The CY 2008 HH PPS final rule included an analysis performed on CY 2005 HH claims data, which indicated a 12.78 percent increase in the observed case-mix since 2000. Case-mix represents the variations in conditions of the patient population served by the HHAs. Subsequently, a more detailed analysis was performed on the 2005 case-mix data to evaluate if any portion of the 12.78 percent increase was associated with a change in the actual clinical condition of HH patients. We examined data on demographics, family severity, and non-HH Part A Medicare expenditures to predict the average case-mix weight for 2005. We identified 8.03 percent of the total case-mix change as real, and therefore, decreased the 12.78 percent of total case-mix change by 8.03 percent to get a final nominal case-mix increase measure of 11.75 percent ($0.1278*(1-0.0803)=0.1175$).

To account for the changes in case-mix that were not related to an underlying change in patient health status, we implemented a reduction, over 4 years, to the national, standardized 60-day episode payment rates. That reduction was to be 2.75 percent per year for 3 years beginning in CY 2008 and 2.71 percent for the fourth year in CY 2011. In the CY 2011 HH PPS final rule (76 FR 68532), we updated our analyses of case-mix change and finalized a reduction of 3.79 percent, instead of 2.71 percent, for CY 2011 and deferred finalizing a payment reduction for CY 2012 until further study of the case-mix change data and methodology was completed.

In the CY 2012 HH PPS final rule (76 FR 68526), we updated the 60-day national episode rates and the national per-visit rates. In addition, as discussed in the CY 2012 HH PPS final rule (76 FR 68528), our analysis indicated that there was a 22.59 percent increase in overall case-mix from 2000 to 2009 and that only 15.76 percent of that overall observed case-mix percentage increase was due to real case-mix change. As a result of our analysis, we identified a 19.03 percent nominal increase in case-mix. At that time, to fully account for the 19.03 percent nominal case-mix growth identified from 2000 to 2009, we finalized a 3.79 percent payment reduction in CY 2012 and a 1.32 percent payment reduction for CY 2013.

In the CY 2013 HH PPS final rule (77 FR 67078), we implemented a 1.32 percent reduction to the payment rates for CY 2013 to account for nominal case-mix growth from 2000 through 2010. When taking into account the total measure of case-mix change (23.90 percent) and the 15.97 percent of total case-mix change estimated as real from 2000 to 2010, we obtained a final nominal case-mix change measure of 20.08 percent from 2000 to 2010 ($0.2390*(1-0.1597)=0.2008$). To fully account for the remainder of the 20.08 percent increase in nominal case-mix beyond that which was accounted for in previous payment reductions, we estimated that the percentage reduction to the national, standardized 60-day episode rates for nominal case-mix change would be 2.18 percent. Although we considered proposing a 2.18 percent reduction to account for the remaining increase in measured nominal case-mix, we finalized the 1.32 percent payment reduction to the national, standardized

60-day episode rates in the CY 2012 HH PPS final rule (76 FR 68532).

Section 3131(a) of the Affordable Care Act requires that, beginning in CY 2014, we apply an adjustment to the national, standardized 60-day episode rate and other amounts that reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. Additionally, we must phase in any adjustment over a 4 year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) as of the date of enactment of the Affordable Care Act, and fully implement the rebasing adjustments by CY 2017. The statute specifies that the maximum rebasing adjustment is to be no more than 3.5 percent per year of the CY 2010 rates. Therefore, in the CY 2014 HH PPS final rule (78 FR 72256) for each year, CY 2014 through CY 2017, we finalized a fixed-dollar reduction to the national, standardized 60-day episode payment rate of $80.95 per year, increases to the national per-visit payment rates per year as reflected in Table 2, and a decrease to the NRS conversion factor of 2.82 percent per year. We also finalized three separate LUPA add-on factors for skilled nursing, physical therapy, and speech-language pathology and removed 170 diagnosis codes from assignment to diagnosis groups in the HH PPS Grouper. In the CY 2015 HH PPS final rule (79 FR 66032), we implemented the 2nd year of the 4 year phase-in of the rebasing adjustments to the HH PPS payment rates and made changes to the HH PPS case-mix weights. In addition, we simplified the face-to-face encounter regulatory requirements and the therapy reassessment timeframes.

TABLE 2—MAXIMUM ADJUSTMENTS TO THE NATIONAL PER-VISIT PAYMENT RATES

[Not to exceed 3.5 percent of the amount(s) in CY 2010]

	2010 National per-visit payment rates	Maximum adjustments per year (CY 2014 through CY 2017)
Skilled Nursing	$113.01	$3.96
Home Health Aide	51.18	1.79
Physical Therapy	123.57	4.32
Occupational Therapy	124.40	4.35
Speech-Language Pathology	134.27	4.70
Medical Social Services	181.16	6.34

D. Advancing Health Information Exchange

HHS 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. As discussed in the August 2013 Statement ''Principles and Strategies for Accelerating Health Information Exchange'' (available at *http://www.healthit.gov/sites/default/files/acceleratinghieprinciples_strategy.pdf*), HHS believes that all individuals, their families, their healthcare and social service providers, and payers should have consistent and timely access to health information in a standardized format that can be securely exchanged between the patient, providers, and others involved in the individual's care. Health IT that facilitates the secure, efficient, and effective sharing and use of health-related information when and where it is needed is an important tool for settings across the continuum of care, including home health. While home health providers are not eligible for the Medicare and Medicaid EHR Incentive Programs, effective adoption and use of health information exchange and health IT tools will be essential as these settings seek to improve quality and lower costs through initiatives such as value-based purchasing.

The Office of the National Coordinator for Health Information Technology (ONC) has released a document entitled ''Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap'' (available at *https://www.healthit.gov/sites/default/files/hie-interoperability/nationwide-interoperability-roadmap-final-version-1.0.pdf*). In the near term, the Roadmap focuses on actions that will enable individuals and providers across the care continuum to send, receive, find, and use a common set of electronic clinical information at the nationwide level by the end of 2017. The Roadmap's goals also align with the Improving Medicare Post-Acute Care Transformation Act of 2014 (Pub. L. 113–185) (IMPACT Act), which requires assessment data to be standardized and interoperable to allow for exchange of the data. Moreover, the vision described in the draft Roadmap significantly expands the types of electronic health information, information sources, and information users well beyond clinical information derived from electronic health records (EHRs). The Roadmap identifies four critical pathways that health IT stakeholders should focus on now in order to create a foundation for long-term success: (1) Improve technical standards and implementation guidance for priority data domains and associated elements; (2) rapidly shift and align federal, state, and commercial payment policies from fee-for-service to value-based models to stimulate the demand for interoperability; (3) clarify and align federal and state privacy and security requirements that enable interoperability; and (4) align and promote the use of consistent policies and business practices that support interoperability, in coordination with stakeholders. In addition, ONC has released the draft version of the 2016 Interoperability Standards Advisory (available at *https://www.healthit.gov/standards-advisory/2016*), which provides a list of the best available standards and implementation specifications to enable priority health information exchange functions. Providers, payers, and vendors are encouraged to take these ''best available standards'' into account as they implement interoperable health information exchange across the continuum of care, including care settings such as behavioral health, long-term and post-acute care, and home and community-based service providers.

We encourage stakeholders to utilize health information exchange and certified health IT to effectively and efficiently help providers improve internal care delivery practices, engage patients in their care, support management of care across the continuum, enable the reporting of

electronically specified clinical quality measures (eCQMs), and improve efficiencies and reduce unnecessary costs. As adoption of certified health IT increases and interoperability standards continue to mature, HHS will seek to reinforce standards through relevant policies and programs.

III. Provisions of the Proposed Rule and Responses to Comments

We received 118 timely comments from the public. The following sections, arranged by subject area, include a summary of the public comments received, and our responses.

A. Monitoring for Potential Impacts—Affordable Care Act Rebasing Adjustments

In the CY 2016 HH PPS proposed rule (80 FR 39840), we provided a summary of analysis conducted on FY 2013 HHA cost report data and how such data, if used, would impact our estimate of the percentage difference between Medicare payments and HHA costs. In addition, we also provided a summary of MedPAC's Report to the Congress on home health payment rebasing and presented information on Medicare home health utilization using CY 2014 HHA claims data (the 1st year of the 4 year phase-in of the rebasing adjustments mandated by section 3131(a) the Affordable Care Act). We will continue to monitor the impact of future payment and policy changes and will provide the industry with periodic updates on our analysis in future rulemaking and/or announcements on the HHA Center Web page at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html.*

B. CY 2016 HH PPS Case-Mix Weights and Reduction to the National, Standardized 60-day Episode Payment Rate to Account for Nominal Case-Mix Growth

1. CY 2016 HH PPS Case-Mix Weights

For CY 2014, as part of the rebasing effort mandated by the Affordable Care Act, we reset the HH PPS case-mix weights, lowering the average case-mix weight to 1.0000. To lower the HH PPS case-mix weights to 1.0000, each HH PPS case-mix weight was decreased by the same factor (1.3464), thereby maintaining the same relative values between the weights. This ''resetting'' of the HH PPS case-mix weights was done in a budget neutral manner by inflating the national, standardized 60-day episode rate by the same factor (1.3464) that was used to decrease the weights. For CY 2015, we finalized a policy to annually recalibrate the HH PPS case-mix weights—adjusting the weights relative to one another—using the most current, complete data available. To recalibrate the HH PPS case-mix weights for CY 2016, we propose to use the same methodology finalized in the CY 2008 HH PPS final rule (72 FR 49762), the CY 2012 HH PPS final rule (76 FR 68526), and the CY 2015 HH PPS final rule (79 FR 66032). Annual recalibration of the HH PPS case-mix weights ensures that the case-mix weights reflect, as accurately as possible, current home health resource use and changes in utilization patterns.

To generate the proposed CY 2016 HH PPS case-mix weights, we used CY 2014 home health claims data (as of December 31, 2014) with linked OASIS data. For this CY 2016 HH PPS final rule, we used CY 2014 home health claims data (as of June 30, 2015) with linked OASIS data to generate the final CY 2016 HH PPS case-mix weights. These data are the most current and complete data available at this time. The tables below have been revised to reflect the results using the updated data. The process we used to calculate the HH PPS case-mix weights are outlined below.

Step 1: Re-estimate the four-equation model to determine the clinical and functional points for an episode using wage-weighted minutes of care as our dependent variable for resource use. The wage-weighted minutes of care are determined using the Bureau of Labor Statistics national hourly wage (covering May 2014) plus fringe rates (covering December 2014) for the six home health disciplines and the minutes per visit from the claim. The points for each of the variables for each leg of the model, updated with CY 2014 data, are shown in Table 3. The points for the clinical variables are added together to determine an episode's clinical score. The points for the functional variables are added together to determine an episode's functional score.

TABLE 3: Case-Mix Adjustment Variables and Scores

Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
CLINICAL DIMENSION					
1	Primary or Other Diagnosis = Blindness/Low Vision				
2	Primary or Other Diagnosis = Blood disorders		6		2
3	Primary or Other Diagnosis = Cancer, selected benign neoplasms		7		7
4	Primary Diagnosis = Diabetes		7		4
5	Other Diagnosis = Diabetes	1			
6	Primary or Other Diagnosis = Dysphagia ***AND*** Primary or Other Diagnosis = Neuro 3 – Stroke	3	16	1	9
7	Primary or Other Diagnosis = Dysphagia ***AND*** M1030 (Therapy at home) = 3 (Enteral)	1	10	1	10
8	Primary or Other Diagnosis = Gastrointestinal disorders				
9	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** M1630 (ostomy)= 1 or 2		6		6
10	Primary or Other Diagnosis = Gastrointestinal disorders ***AND*** Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis, ***OR*** Neuro 2 - Peripheral neurological disorders, ***OR*** Neuro 3 - Stroke, ***OR*** Neuro 4 - Multiple Sclerosis			1	
11	Primary or Other Diagnosis = Heart Disease OR Hypertension	1			
12	Primary Diagnosis = Neuro 1 - Brain disorders and paralysis	3	11	6	11
13	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***AND*** M1840 (Toilet transfer) = 2 or more		2		2

Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
14	Primary or Other Diagnosis = Neuro 1 - Brain disorders and paralysis ***OR*** Neuro 2 - Peripheral neurological disorders ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	2	7	1	6
15	Primary or Other Diagnosis = Neuro 3 - Stroke	3	9	2	7
16	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3		5		
17	Primary or Other Diagnosis = Neuro 3 - Stroke ***AND*** M1860 (Ambulation) = 4 or more				
18	Primary or Other Diagnosis = Neuro 4 - Multiple Sclerosis ***AND AT LEAST ONE OF THE FOLLOWING:*** M1830 (Bathing) = 2 or more ***OR*** M1840 (Toilet transfer) = 2 or more ***OR*** M1850 (Transferring) = 2 or more ***OR*** M1860 (Ambulation) = 4 or more	3	10	7	10
19	Primary or Other Diagnosis = Ortho 1 - Leg Disorders or Gait Disorders ***AND*** M1324 (most problematic pressure ulcer stage)= 1, 2, 3 or 4	8	1	8	1
20	Primary or Other Diagnosis = Ortho 1 - Leg OR Ortho 2 - Other orthopedic disorders ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	3		3	
21	Primary or Other Diagnosis = Psych 1 – Affective and other psychoses, depression				
22	Primary or Other Diagnosis = Psych 2 - Degenerative and other organic psychiatric disorders				
23	Primary or Other Diagnosis = Pulmonary disorders				

Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
24	Primary or Other Diagnosis = Pulmonary disorders ***AND*** M1860 (Ambulation) = 1 or more				
25	Primary Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications	3	19	8	19
26	Other Diagnosis = Skin 1 - Traumatic wounds, burns, post-operative complications	6	16	8	13
27	Primary or Other Diagnosis = Skin 1 -Traumatic wounds, burns, and post-operative complications ***OR*** Skin 2 – Ulcers and other skin conditions ***AND*** M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)	4			
28	Primary or Other Diagnosis = Skin 2 - Ulcers and other skin conditions	2	17	9	17
29	Primary or Other Diagnosis = Tracheostomy	3	17	3	17
30	Primary or Other Diagnosis = Urostomy/Cystostomy		19		12
31	M1030 (Therapy at home) = 1 (IV/Infusion) or 2 (Parenteral)		17	6	17
32	M1030 (Therapy at home) = 3 (Enteral)		15		5
33	M1200 (Vision) = 1 or more				
34	M1242 (Pain)= 3 or 4	2		1	
35	M1308 = Two or more pressure ulcers at stage 3 or 4	5	5	5	14
36	M1324 (Most problematic pressure ulcer stage)= 1 or 2	4	19	7	17
37	M1324 (Most problematic pressure ulcer stage)= 3 or 4	8	33	11	27
38	M1334 (Stasis ulcer status)= 2	4	13	8	13
39	M1334 (Stasis ulcer status)= 3	7	17	10	17
40	M1342 (Surgical wound status)= 2	2	8	5	13
41	M1342 (Surgical wound status)= 3	1	7	5	8
42	M1400 (Dyspnea) = 2, 3, or 4		1		1
43	M1620 (Bowel Incontinence) = 2 to 5		4		4
44	M1630 (Ostomy)= 1 or 2	4	12	2	7
45	M2030 (Injectable Drug Use) = 0, 1, 2, or 3				
FUNCTIONAL DIMENSION					
46	M1810 or M1820 (Dressing upper or lower body)= 1, 2, or 3	2		1	
47	M1830 (Bathing) = 2 or more	6	2	5	
48	M1840 (Toilet transferring) = 2 or more	1	4	1	1

Case-Mix Adjustment Variables and Scores					
	Episode number within sequence of adjacent episodes	1 or 2	1 or 2	3+	3+
	Therapy visits	0-13	14+	0-13	14+
	EQUATION:	*1*	*2*	*3*	*4*
49	M1850 (Transferring) = 2 or more	3	2	1	
50	M1860 (Ambulation) = 1, 2 or 3	7		4	
51	M1860 (Ambulation) = 4 or more	7	9	6	7

Source: CY 2014 Medicare claims data for episodes ending on or before December 31, 2014 (as of June 30, 2015) for which we had a linked OASIS assessment. LUPA episodes, outlier episodes, and episodes with SCIC or PEP adjustments were excluded.

Note(s): Points are additive; however, points may not be given for the same line item in the table more than once.

Please see Medicare Home Health Diagnosis Coding guidance at: http://www.cms.hhs.gov/HomeHealthPPS/03_coding&billing.asp for definitions of primary and secondary diagnoses.

In updating the four-equation model for CY 2016 using 2014 data (the last update to the four-equation model for CY 2015 used 2013 data), there were few changes to the point values for the variables in the four-equation model. These relatively minor changes reflect the change in the relationship between the grouper variables and resource use between 2013 and 2014. The CY 2016 four-equation model resulted in 124 point-giving variables being used in the model (as compared to the 120 point-giving variables for the 2015 recalibration). There were eight variables that were added to the model and four variables that were dropped from the model due to the absence of additional resources associated with the variable. The points for 24 variables increased in the CY 2016 four-equation model and the points for 38 variables decreased in the CY 2016 4-equation model. There were 54 variables with the same point values.

Step 2: Re-define the clinical and functional thresholds so they are reflective of the new points associated with the CY 2016 four-equation model. After estimating the points for each of the variables and summing the clinical and functional points for each episode, we look at the distribution of the clinical score and functional score, breaking the episodes into different steps. The categorizations for the steps are as follows:

In updating the four-equation model for CY 2016 using 2014 data (the last update to the four-equation model for CY 2015 used 2013 data), there were few changes to the point values for the variables in the four-equation model. These relatively minor changes reflect the change in the relationship between the grouper variables and resource use between 2013 and 2014. The CY 2016 four-equation model resulted in 124 point-giving variables being used in the model (as compared to the 120 point-giving variables for the 2015 recalibration). There were eight variables that were added to the model and four variables that were dropped from the model due to the absence of additional resources associated with the variable. The points for 24 variables increased in the CY 2016 four-equation model and the points for 38 variables decreased in the CY 2016 4-equation model. There were 54 variables with the same point values.

Step 2: Re-define the clinical and functional thresholds so they are reflective of the new points associated with the CY 2016 four-equation model. After estimating the points for each of the variables and summing the clinical and functional points for each episode, we look at the distribution of the clinical score and functional score, breaking the episodes into different steps. The categorizations for the steps are as follows:

- Step 1: First and second episodes, 0–13 therapy visits.
- Step 2.1: First and second episodes, 14–19 therapy visits.
- Step 2.2: Third episodes and beyond, 14–19 therapy visits.
- Step 3: Third episodes and beyond, 0–13 therapy visits.
- Step 4: Episodes with 20+ therapy visits.

We then divide the distribution of the clinical score for episodes within a step such that a third of episodes are classified as low clinical score, a third of episodes are classified as medium clinical score, and a third of episodes are classified as high clinical score. The same approach is then done looking at the functional score. It was not always possible to evenly divide the episodes within each step into thirds due to many episodes being clustered around one particular score.[1] Also, we looked at the average resource use associated with each clinical and functional score and used that to guide where we placed our thresholds. We tried to group scores with similar average resource use within the same level (even if it meant that more or less than a third of episodes were placed within a level). The new thresholds, based off of the CY 2016 four-equation model points are shown in Table 4.

[1] For Step 1, 54% of episodes were in the medium functional level (All with score 15). For Step 2.1, 77.2% of episodes were in the low functional level (Most with score 2 and 4). For Step 2.2, 67.1% of episodes were in the low functional level (All with score 0). For Step 3, 60.9% of episodes were in the medium functional level (Most with score 10). For Step 4, 49.8% of episodes were in the low functional level (Most with score 2).

TABLE 4—CY 2016 CLINICAL AND FUNCTIONAL THRESHOLDS

		1st and 2nd Episodes		3rd+ Episodes		All episodes
		0 to 13 therapy visits	14 to 19 therapy visits	0 to 13 therapy visits	14 to 19 therapy visits	20+ therapy visits
Grouping Step:		1	2.1	3	2.2	4
Equation(s) used to calculate points: (see Table 3)		1	2	3	4	(2&4)
Dimension	Severity Level.					
Clinical	C1	0 to 1	0 to 1	0	0 to 3	0 to 3
	C2	2 to 3	2 to 7	1	4 to 12	4 to 16
	C3	4+	8+	2+	13+	17+
Functional	F1	0 to 14	0 to 6	0 to 6	0	0 to 2
	F2	15	7 to 13	7 to 10	1 to 7	3 to 6
	F3	16+	14+	11+	8+	7+

Step 3: Once the clinical and functional thresholds are determined and each episode is assigned a clinical and functional level, the payment regression is estimated with an episode's wage-weighted minutes of care as the dependent variable. Independent variables in the model are indicators for the step of the episode as well as the clinical and functional levels within each step of the episode. Like the four-equation model, the payment regression model is also estimated with robust standard errors that are clustered at the beneficiary level. Table 5 shows the regression coefficients for the variables in the payment regression model updated with CY 2014 data. The R-squared value for the payment regression model is 0.4822 (an increase from 0.4680 for the CY 2015 recalibration).

TABLE 5—PAYMENT REGRESSION MODEL

Variable description	New payment regression coefficients
Step 1, Clinical Score Medium	$24.69
Step 1, Clinical Score High	$59.72
Step 1, Functional Score Medium	$76.46
Step 1, Functional Score High	$114.89
Step 2.1, Clinical Score Medium	$68.55
Step 2.1, Clinical Score High	$156.28
Step 2.1, Functional Score Medium	$34.15
Step 2.1, Functional Score High	$87.13
Step 2.2, Clinical Score Medium	$61.06
Step 2.2, Clinical Score High	$211.40
Step 2.2, Functional Score Medium	$10.90
Step 2.2, Functional Score High	$70.39
Step 3, Clinical Score Medium	$10.27
Step 3, Clinical Score High	$91.72
Step 3, Functional Score Medium	$56.53
Step 3, Functional Score High	$87.94
Step 4, Clinical Score Medium	$72.66
Step 4, Clinical Score High	$238.69
Step 4, Functional Score Medium	$15.65
Step 4, Functional Score High	$65.68
Step 2.1, 1st and 2nd Episodes, 14 to 19 Therapy Visits	$479.21
Step 2.2, 3rd+ Episodes, 14 to 19 Therapy Visits	$505.35
Step 3, 3rd+ Episodes, 0–13 Therapy Visits	−$76.20
Step 4, All Episodes, 20+ Therapy Visits	$930.06
Intercept	$391.33

Source: CY 2014 Medicare claims data for episodes ending on or before December 31, 2014 (as of June 30, 2015) for which we had a linked OASIS assessment.

Step 4: We use the coefficients from the payment regression model to predict each episode's wage-weighted minutes of care (resource use). We then divide these predicted values by the mean of the dependent variable (that is, the average wage-weighted minutes of care across all episodes used in the payment regression). This division constructs the weight for each episode, which is simply the ratio of the episode's predicted wage-weighted minutes of care divided by the average wage-weighted minutes of care in the sample. Each episode is then aggregated into one of the 153 home health resource groups (HHRGs) and the ''raw'' weight for each HHRG was calculated as the average of the episode weights within the HHRG.

Step 5: The weights associated with 0 to 5 therapy visits are then increased by 3.75 percent, the weights associated with 14–15 therapy visits are decreased by 2.5 percent, and the weights associated with 20+ therapy visits are decreased by 5 percent. These adjustments to the case-mix weights were finalized in the CY 2012 HH PPS final rule (76 FR 68557) and were done

to address MedPAC's concerns that the HH PPS overvalues therapy episodes and undervalues non-therapy episodes and to better aligned the case-mix weights with episode costs estimated from cost report data.[2]

Step 6: After the adjustments in step 5 are applied to the raw weights, the weights are further adjusted to create an increase in the payment weights for the therapy visit steps between the therapy thresholds. Weights with the same clinical severity level, functional severity level, and early/later episode status were grouped together. Then within those groups, the weights for each therapy step between thresholds are gradually increased. We do this by interpolating between the main thresholds on the model (from 0–5 to 14–15 therapy visits, and from 14–15 to 20+ therapy visits). We use a linear model to implement the interpolation so the payment weight increase for each step between the thresholds (such as the increase between 0–5 therapy visits and 6 therapy visits and the increase between 6 therapy visits and 7–9 therapy visits) are constant. This interpolation is the identical to the process finalized in the CY 2012 HH PPS final rule (76 FR 68555).

Step 7: The interpolated weights are then adjusted so that the average case-mix for the weights is equal to 1.0000.[3] This last step creates the CY 2016 case-mix weights shown in Table 6.

TABLE 6: FINAL CY 2016 CASE-MIX PAYMENT WEIGHTS

Payment group	Step (episode and/or therapy visit ranges)	Clinical and functional levels (1 = Low; 2 = Medium; 3= High)	Final CY 2016 case-mix weights
10111	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F1S1	0.5908
10112	1st and 2nd Episodes, 6 Therapy Visits	C1F1S2	0.7197
10113	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F1S3	0.8485
10114	1st and 2nd Episodes, 10 Therapy Visits	C1F1S4	0.9774
10115	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F1S5	1.1063
10121	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F2S1	0.7062
10122	1st and 2nd Episodes, 6 Therapy Visits	C1F2S2	0.8217
10123	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F2S3	0.9372
10124	1st and 2nd Episodes, 10 Therapy Visits	C1F2S4	1.0527
10125	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F2S5	1.1681
10131	1st and 2nd Episodes, 0 to 5 Therapy Visits	C1F3S1	0.7643
10132	1st and 2nd Episodes, 6 Therapy Visits	C1F3S2	0.8832
10133	1st and 2nd Episodes, 7 to 9 Therapy Visits	C1F3S3	1.0021
10134	1st and 2nd Episodes, 10 Therapy Visits	C1F3S4	1.1210
10135	1st and 2nd Episodes, 11 to 13 Therapy Visits	C1F3S5	1.2399
10211	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F1S1	0.6281
10212	1st and 2nd Episodes, 6 Therapy Visits	C2F1S2	0.7690
10213	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F1S3	0.9098
10214	1st and 2nd Episodes, 10 Therapy Visits	C2F1S4	1.0507
10215	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F1S5	1.1915
10221	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F2S1	0.7435
10222	1st and 2nd Episodes, 6 Therapy Visits	C2F2S2	0.8710
10223	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F2S3	0.9985
10224	1st and 2nd Episodes, 10 Therapy Visits	C2F2S4	1.1259
10225	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F2S5	1.2534
10231	1st and 2nd Episodes, 0 to 5 Therapy Visits	C2F3S1	0.8016
10232	1st and 2nd Episodes, 6 Therapy Visits	C2F3S2	0.9325
10233	1st and 2nd Episodes, 7 to 9 Therapy Visits	C2F3S3	1.0633
10234	1st and 2nd Episodes, 10 Therapy Visits	C2F3S4	1.1942
10235	1st and 2nd Episodes, 11 to 13 Therapy Visits	C2F3S5	1.3251
10311	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F1S1	0.6810
10312	1st and 2nd Episodes, 6 Therapy Visits	C3F1S2	0.8362
10313	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F1S3	0.9913
10314	1st and 2nd Episodes, 10 Therapy Visits	C3F1S4	1.1465
10315	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F1S5	1.3017
10321	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F2S1	0.7964
10322	1st and 2nd Episodes, 6 Therapy Visits	C3F2S2	0.9382
10323	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F2S3	1.0800
10324	1st and 2nd Episodes, 10 Therapy Visits	C3F2S4	1.2218
10325	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F2S5	1.3635
10331	1st and 2nd Episodes, 0 to 5 Therapy Visits	C3F3S1	0.8544
10332	1st and 2nd Episodes, 6 Therapy Visits	C3F3S2	0.9996
10333	1st and 2nd Episodes, 7 to 9 Therapy Visits	C3F3S3	1.1449
10334	1st and 2nd Episodes, 10 Therapy Visits	C3F3S4	1.2901
10335	1st and 2nd Episodes, 11 to 13 Therapy Visits	C3F3S5	1.4353
21111	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F1S1	1.2351
21112	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F1S2	1.4323
21113	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F1S3	1.6296
21121	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F2S1	1.2836
21122	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F2S2	1.4719

[2] Medicare Payment Advisory Commission (MedPAC), *Report to the Congress: Medicare Payment Policy*. March 2011, P. 176.

[3] When computing the average, we compute a weighted average, assigning a value of one to each normal episode and a value equal to the episode length divided by 60 for PEPs.

TABLE 6: FINAL CY 2016 CASE-MIX PAYMENT WEIGHTS—Continued

Payment group	Step (episode and/or therapy visit ranges)	Clinical and functional levels (1 = Low; 2 = Medium; 3= High)	Final CY 2016 case-mix weights
21123	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F2S3	1.6601
21131	1st and 2nd Episodes, 14 to 15 Therapy Visits	C1F3S1	1.3588
21132	1st and 2nd Episodes, 16 to 17 Therapy Visits	C1F3S2	1.5450
21133	1st and 2nd Episodes, 18 to 19 Therapy Visits	C1F3S3	1.7313
21211	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F1S1	1.3324
21212	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F1S2	1.5307
21213	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F1S3	1.7289
21221	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F2S1	1.3809
21222	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F2S2	1.5702
21223	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F2S3	1.7595
21231	1st and 2nd Episodes, 14 to 15 Therapy Visits	C2F3S1	1.4560
21232	1st and 2nd Episodes, 16 to 17 Therapy Visits	C2F3S2	1.6434
21233	1st and 2nd Episodes, 18 to 19 Therapy Visits	C2F3S3	1.8307
21311	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F1S1	1.4569
21312	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F1S2	1.6902
21313	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F1S3	1.9234
21321	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F2S1	1.5053
21322	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F2S2	1.7297
21323	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F2S3	1.9540
21331	1st and 2nd Episodes, 14 to 15 Therapy Visits	C3F3S1	1.5805
21332	1st and 2nd Episodes, 16 to 17 Therapy Visits	C3F3S2	1.8028
21333	1st and 2nd Episodes, 18 to 19 Therapy Visits	C3F3S3	2.0252
22111	3rd+ Episodes, 14 to 15 Therapy Visits	C1F1S1	1.2722
22112	3rd+ Episodes, 16 to 17 Therapy Visits	C1F1S2	1.4571
22113	3rd+ Episodes, 18 to 19 Therapy Visits	C1F1S3	1.6419
22121	3rd+ Episodes, 14 to 15 Therapy Visits	C1F2S1	1.2877
22122	3rd+ Episodes, 16 to 17 Therapy Visits	C1F2S2	1.4746
22123	3rd+ Episodes, 18 to 19 Therapy Visits	C1F2S3	1.6615
22131	3rd+ Episodes, 14 to 15 Therapy Visits	C1F3S1	1.3721
22132	3rd+ Episodes, 16 to 17 Therapy Visits	C1F3S2	1.5539
22133	3rd+ Episodes, 18 to 19 Therapy Visits	C1F3S3	1.7357
22211	3rd+ Episodes, 14 to 15 Therapy Visits	C2F1S1	1.3589
22212	3rd+ Episodes, 16 to 17 Therapy Visits	C2F1S2	1.5483
22213	3rd+ Episodes, 18 to 19 Therapy Visits	C2F1S3	1.7378
22221	3rd+ Episodes, 14 to 15 Therapy Visits	C2F2S1	1.3743
22222	3rd+ Episodes, 16 to 17 Therapy Visits	C2F2S2	1.5658
22223	3rd+ Episodes, 18 to 19 Therapy Visits	C2F2S3	1.7573
22231	3rd+ Episodes, 14 to 15 Therapy Visits	C2F3S1	1.4587
22232	3rd+ Episodes, 16 to 17 Therapy Visits	C2F3S2	1.6452
22233	3rd+ Episodes, 18 to 19 Therapy Visits	C2F3S3	1.8316
22311	3rd+ Episodes, 14 to 15 Therapy Visits	C3F1S1	1.5722
22312	3rd+ Episodes, 16 to 17 Therapy Visits	C3F1S2	1.7670
22313	3rd+ Episodes, 18 to 19 Therapy Visits	C3F1S3	1.9619
22321	3rd+ Episodes, 14 to 15 Therapy Visits	C3F2S1	1.5876
22322	3rd+ Episodes, 16 to 17 Therapy Visits	C3F2S2	1.7845
22323	3rd+ Episodes, 18 to 19 Therapy Visits	C3F2S3	1.9815
22331	3rd+ Episodes, 14 to 15 Therapy Visits	C3F3S1	1.6721
22332	3rd+ Episodes, 16 to 17 Therapy Visits	C3F3S2	1.8639
22333	3rd+ Episodes, 18 to 19 Therapy Visits	C3F3S3	2.0557
30111	3rd+ Episodes, 0 to 5 Therapy Visits	C1F1S1	0.4758
30112	3rd+ Episodes, 6 Therapy Visits	C1F1S2	0.6351
30113	3rd+ Episodes, 7 to 9 Therapy Visits	C1F1S3	0.7944
30114	3rd+ Episodes, 10 Therapy Visits	C1F1S4	0.9536
30115	3rd+ Episodes, 11 to 13 Therapy Visits	C1F1S5	1.1129
30121	3rd+ Episodes, 0 to 5 Therapy Visits	C1F2S1	0.5611
30122	3rd+ Episodes, 6 Therapy Visits	C1F2S2	0.7064
30123	3rd+ Episodes, 7 to 9 Therapy Visits	C1F2S3	0.8518
30124	3rd+ Episodes, 10 Therapy Visits	C1F2S4	0.9971
30125	3rd+ Episodes, 11 to 13 Therapy Visits	C1F2S5	1.1424
30131	3rd+ Episodes, 0 to 5 Therapy Visits	C1F3S1	0.6085
30132	3rd+ Episodes, 6 Therapy Visits	C1F3S2	0.7613
30133	3rd+ Episodes, 7 to 9 Therapy Visits	C1F3S3	0.9140
30134	3rd+ Episodes, 10 Therapy Visits	C1F3S4	1.0667
30135	3rd+ Episodes, 11 to 13 Therapy Visits	C1F3S5	1.2194
30211	3rd+ Episodes, 0 to 5 Therapy Visits	C2F1S1	0.4913
30212	3rd+ Episodes, 6 Therapy Visits	C2F1S2	0.6648
30213	3rd+ Episodes, 7 to 9 Therapy Visits	C2F1S3	0.8383
30214	3rd+ Episodes, 10 Therapy Visits	C2F1S4	1.0118
30215	3rd+ Episodes, 11 to 13 Therapy Visits	C2F1S5	1.1854

TABLE 6: FINAL CY 2016 CASE-MIX PAYMENT WEIGHTS—Continued

Payment group	Step (episode and/or therapy visit ranges)	Clinical and functional levels (1 = Low; 2 = Medium; 3= High)	Final CY 2016 case-mix weights
30221	3rd+ Episodes, 0 to 5 Therapy Visits	C2F2S1	0.5766
30222	3rd+ Episodes, 6 Therapy Visits	C2F2S2	0.7362
30223	3rd+ Episodes, 7 to 9 Therapy Visits	C2F2S3	0.8957
30224	3rd+ Episodes, 10 Therapy Visits	C2F2S4	1.0553
30225	3rd+ Episodes, 11 to 13 Therapy Visits	C2F2S5	1.2148
30231	3rd+ Episodes, 0 to 5 Therapy Visits	C2F3S1	0.6241
30232	3rd+ Episodes, 6 Therapy Visits	C2F3S2	0.7910
30233	3rd+ Episodes, 7 to 9 Therapy Visits	C2F3S3	0.9579
30234	3rd+ Episodes, 10 Therapy Visits	C2F3S4	1.1249
30235	3rd+ Episodes, 11 to 13 Therapy Visits	C2F3S5	1.2918
30311	3rd+ Episodes, 0 to 5 Therapy Visits	C3F1S1	0.6143
30312	3rd+ Episodes, 6 Therapy Visits	C3F1S2	0.8058
30313	3rd+ Episodes, 7 to 9 Therapy Visits	C3F1S3	0.9974
30314	3rd+ Episodes, 10 Therapy Visits	C3F1S4	1.1890
30315	3rd+ Episodes, 11 to 13 Therapy Visits	C3F1S5	1.3806
30321	3rd+ Episodes, 0 to 5 Therapy Visits	C3F2S1	0.6996
30322	3rd+ Episodes, 6 Therapy Visits	C3F2S2	0.8772
30323	3rd+ Episodes, 7 to 9 Therapy Visits	C3F2S3	1.0548
30324	3rd+ Episodes, 10 Therapy Visits	C3F2S4	1.2324
30325	3rd+ Episodes, 11 to 13 Therapy Visits	C3F2S5	1.4100
30331	3rd+ Episodes, 0 to 5 Therapy Visits	C3F3S1	0.7470
30332	3rd+ Episodes, 6 Therapy Visits	C3F3S2	0.9320
30333	3rd+ Episodes, 7 to 9 Therapy Visits	C3F3S3	1.1170
30334	3rd+ Episodes, 10 Therapy Visits	C3F3S4	1.3020
30335	3rd+ Episodes, 11 to 13 Therapy Visits	C3F3S5	1.4870
40111	All Episodes, 20+ Therapy Visits	C1F1S1	1.8268
40121	All Episodes, 20+ Therapy Visits	C1F2S1	1.8484
40131	All Episodes, 20+ Therapy Visits	C1F3S1	1.9176
40211	All Episodes, 20+ Therapy Visits	C2F1S1	1.9272
40221	All Episodes, 20+ Therapy Visits	C2F2S1	1.9488
40231	All Episodes, 20+ Therapy Visits	C2F3S1	2.0180
40311	All Episodes, 20+ Therapy Visits	C3F1S1	2.1567
40321	All Episodes, 20+ Therapy Visits	C3F2S1	2.1784
40331	All Episodes, 20+ Therapy Visits	C3F3S1	2.2475

To ensure the changes to the HH PPS case-mix weights are implemented in a budget neutral manner, we apply a case-mix budget neutrality factor to the CY 2016 national, standardized 60-day episode payment rate (see section III.C.3. of this final rule). The case-mix budget neutrality factor is calculated as the ratio of total payments when the CY 2016 HH PPS grouper and case-mix weights (developed using CY 2014 claims data) are applied to CY 2014 utilization (claims) data to total payments when the CY 2015 HH PPS grouper and case-mix weights (developed using CY 2013 claims data) are applied to CY 2014 utilization data. Using CY 2014 claims data as of December 31, 2014, we calculated the case-mix budget neutrality factor for CY 2016 to be 1.0141. Updating our analysis with 2014 claims data as of June 30, 2015, we calculated a final case-mix budget neutrality factor for CY 2016 of 1.0187.

The following is a summary of the comments and our responses to comments on the CY 2016 case-mix weights.

Comment: One commenter noted that the case-mix weights were increased 3.75 percent for 0–5 therapy visits, decreased by 2.5 percent for 14–15 therapy visits, and decreased 5 percent for 20+ therapy visits to address MedPAC's concerns that the therapy episodes are over-valued and non-therapy episodes are undervalued, but stated that a therapist's salary and benefits costs are higher than those same costs for nursing, due to the overall market for therapists and the greater difficulty in retaining them in the home health environment versus other health care settings. Additionally, the commenter noted that patients requiring 20+ therapy visits typically have functional deficits in multiple domains, requiring the expertise of multiple therapy disciplines (PT/OT/ST) to address, justifying the higher case mix.

Response: As we noted in the CY 2015 HH PPS final rule, these adjustments to the case-mix weights are the same adjustments finalized in the CY 2012 HH PPS final rule (76 FR 68557). As the commenter correctly noted, these adjustments were made, in part, to address MedPAC's concerns that the HH PPS overvalues therapy episodes and undervalues non-therapy episodes (March 2011 MedPAC Report to the Congress: Medicare Payment Policy, p.176). However, we further note that these adjustments also better aligned the case-mix weights with episode costs estimated from cost report data (79 FR 66061).

Comment: One commenter stated that they are pleased that CMS used updated claims and cost data to recalibrate all of the case-mix weights. However, the commenter went on to state that they were somewhat confused that high-therapy episodes tend to get increased case-mix weights, even though CMS has stated its intention that therapy visit volume should have less impact on the weights. One commenter noted that CMS did not provide sufficient transparency of the details and methods used to recalibrate the HH PPS case-mix weights in its discussion in the proposed rule. In addition, CMS provided little justification for recalibrating the case-mix weights just 1

year following the recalibration of case-mix weights in CY 2015 and a mere 3 years since the recalibration for the CY 2012 HH PPS final rule. The commenter noted that this proposed recalibration reduces the case weights for 117 HHRGs or 76 percent of the 153 HHRGs. Another commenter stated that analysis of the case mix weight changes from 2014 through 2016 indicates an average decrease of 1.52 percent in each HIPPS code weight. The commenter stated that they believe that these changes alone have produced an overall decrease in the case mix scoring of episodes since 2013. Specifically, applying the 2016 case mix weights to the HHA's 2014 episodes would produce a decrease in overall case mix weight of 4.7 percent and from 2014–2016, the overall case-mix weight was reduced by 7.2 percent for certain HIPPS codes.

Response: As stated in the CY 2015 HH PPS final rule, the methodology used to recalibrate the weights is identical to the methodology used in the CY 2012 recalibration except for the minor exceptions as noted in the CY 2015 HH PPS proposed and final rules (79 FR 38366 and 79 FR 66032). We encourage commenters to refer to the CY 2012 HH PPS proposed and final rules (76 FR 40988 and 76 FR 68526) and the CY 2012 technical report on our home page at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html* for additional information about the recalibration methodology.

As we noted in the CY 2015 HH PPS final rule (79 FR 66067), decreases in the case-mix weights for the low therapy case-mix groups and increases in the case-mix weights for the high therapy case-mix groups is generally attributable to shifts away from the use of home health aides and a shift to either more nursing or more therapy care across all therapy groups. While some of the low therapy groups did add more skilled nursing visits, most of the high therapy groups added more occupational therapy (OT) and speech-language pathology (SLP), which have substantially higher Bureau of Labor Statistics (BLS) average hourly wage values compared to skilled nursing. In addition, while the average number of total visits per episode has decreased overall, it decreased disproportionately more for the no/low therapy case-mix groups. These utilization changes result in changes to the weights observed by the commenter, specifically, the decreases in the case-mix weights for the low or no therapy groups and increases in the case-mix weights for the high therapy groups.

Comparing the final CY 2016 HH PPS case-mix weights (Table 5) to the final CY 2015 HH PPS case-mix weights (79 FR 66062), the case-mix weights change very little, with most case-mix weights either increasing or decreasing by 1 to 2 percent with no case-mix weights increasing by more than 3 percent or decreasing by more than 4 percent. The aggregate decreases in the case-mix weights are offset by the case-mix budget neutrality factor, which is applied to the national, standardized 60-day episode payment rate. In other words, although the case-mix weights themselves may increase or decrease from year-to-year, we correspondingly offset any estimated decreases in total payments under the HH PPS, as result of the case-mix recalibration, by applying a budget neutrality factor to the national, standardized 60-day episode payment rate. For CY 2016, the case-mix budget neutrality factor will be 1.87 percent as described above. For CY 2015, the case-mix budget neutrality factor was 3.66 percent (79 FR 66088). In addition, when the CY 2014 case-mix weights were reset to 1.0000 by decreasing the case-mix weights by 1.3464, we correspondingly increased the national, standardized 60-day episode payment rate by the same factor (1.3464) as part of the rebasing of the HH PPS payment rates required by the Affordable Care Act (78 FR 72273). The recalibration of the case-mix weights is not intended to increase or decrease overall HH PPS payments, but rather is used to update the relative differences in resource use amongst the 153 groups in the HH PPS case-mix system and maintain the level of aggregate payments before application of any other adjustments.

Final Decision: We will finalize the recalibration of the HH PPS case-mix weights as proposed. The CY 2016 scores for the case-mix variables, the clinical and functional thresholds, and the case-mix weights were developed using complete CY 2014 claims data as of June 30, 2015. We note that we finalized the recalibration methodology and the proposal to annually recalibrate the HH PPS case-mix weights in the CY 2015 HH PPS final rule (79 FR 66072). No additional proposals were made with regard to the recalibration methodology in the CY 2016 HH PPS proposed rule.

2. Reduction to the National, Standardized 60-day Episode Payment Rate to Account for Nominal Case-Mix Growth

Section 1895(b)(3)(B)(iv) of the Act gives the Secretary the authority to implement payment reductions for nominal case-mix growth (that is, case-mix growth unrelated to changes in patient acuity). Previously, we accounted for nominal case-mix growth through case-mix reductions implemented from 2008 through 2013 (76 FR 68528–68543). As stated in the 2013 final rule, the goal of the reductions for nominal case-mix growth is to better align payments with real changes in patient severity (77 FR 67077). Our analysis of data from CY 2000 through CY 2010 found that only 15.97 percent of the total case-mix change was real and 84.03 percent of total case-mix change was nominal (77 FR 41553). In the CY 2015 HH PPS final rule (79 FR 66032), we estimated that total case-mix increased by 2.76 percent between CY 2012 and CY 2013 and in applying the 15.97 percent estimate of real case-mix growth to the estimate of total case-mix growth, we estimated nominal case-mix growth to be 2.32 percent ($2.76 - (2.76 \times 0.1597)$). However, for 2015, we did not implement a reduction to the 2015 national, standardized 60-day episode payment amount to account for nominal case-mix growth, but stated that we would continue to monitor case-mix growth and may consider proposing nominal case-mix reductions in the future. Since the publication of 2015 HH PPS final rule (79 FR 66032), MedPAC reported on their assessment of the impact of the mandated rebasing adjustments on quality of and beneficiary access to home health care as required by section 3131(a) of the Affordable Care Act. As noted in section III.A.2 of the proposed rule, MedPAC concluded that quality of care and beneficiary access to care are unlikely to be negatively affected by the rebasing adjustments. For the proposed rule, we further estimated that case-mix increased by 1.41 percent between CY 2013 and CY 2014 using preliminary CY 2014 home health claims data (as of December 31, 2014) with linked OASIS data. In applying the 15.97 percent estimate of real case-mix growth to the total estimated case-mix growth from CY 2013 to CY 2014 (1.41 percent), we estimated that nominal case-mix growth to be 1.18 percent ($1.41 - (1.41 \times 0.1597)$). Given the observed nominal case-mix growth of 2.32 percent in 2013 and 1.18 percent in 2014, we estimated that the reduction to offset the nominal case-mix growth for these 2 years would be 3.41 percent ($1 - 1/(1.0232 \times 1.0118) = 0.0341$).

We proposed to implement this 3.41 percent reduction in equal increments over 2 years. Specifically, we proposed to apply a 1.72 percent ($1 - 1/(1.0232$

$\times 1.0118)^{1/2} = 1.72$ percent) reduction to the national, standardized 60-day episode payment rate each year for 2 years, CY 2016 and CY 2017, under the ongoing authority of section 1895(b)(3)(B)(iv) of the Act. In the proposed rule, we noted that proposed reductions to the national, standardized 60-day episode payment rate in CY 2016 and in CY 2017 to account for nominal case-mix growth are separate from the rebasing adjustments finalized in CY 2014 under section 1895(b)(3)(A)(iii) of the Act, which were calculated using CY 2012 claims and CY 2011 HHA cost report data (which was the most current, complete data at the time of the CY 2014 HH PPS proposed and final rules).

In updating our analysis for the final rule and in reassessing our methodology in response to comments, as discussed further below in this section, we used a more familiar methodology (one used in the past) to measure case-mix growth. We first calculated the average case-mix index for 2012, 2013, and 2014 before comparing the average case-mix index for CY 2012 to CY 2013 and the average case-mix index for CY 2013 to CY 2014 to calculate the total case-mix growth between the years. To make the comparison between the 2013 average case-mix index and the 2014 average case-mix index, we had to inflate the 2014 average case-mix index (multiply it by 1.3464) before doing the comparison. We inflated the 2014 average case-mix index by 1.3464 to offset the decrease by that same factor when the CY 2014 case-mix weights were reset to 1.0000 in the CY 2014 HH PPS final rule (78 FR 72256). By first calculating the average case-mix index for 2012, 2013, and 2014 before comparing the average case-mix index for CY 2012 to CY 2013 and then comparing the average case-mix index for CY 2013 to CY 2014 to calculate the total case-mix growth between the years, we used a more familiar methodology than what was done for the CY 2015 HH PPS final rule and the CY 2016 HH PPS proposed rule. In those rules, we instead simulated total payments using case-mix weights from 2 consecutive years (used to calculate the case-mix budget neutrality factor when recalibrating the case-mix weights) and isolated the portion of the budget neutrality factor that was due to changes in case-mix. Calculating the average case-mix index in a given year, and comparing indices across years, better aligns with how CMS historically measured case-mix growth in previous years and is a methodology that was thoroughly vetted in previous rulemaking. In addition, we believe that this more familiar methodology results in a more straightforward measure of case-mix growth between 2012 and 2014, given that annual recalibration of the case-mix weights did not begin until CY 2015.

Using this methodology, we estimate that the average case-mix for 2012 was 1.3610 and that the average case-mix for 2013 was 1.3900.[4] Dividing the average case-mix for 2013 by the average case-mix for 2012, we obtain a total case-mix growth estimate from 2012 to 2013 of 2.13 percent (1.3900/1.3610 = 1.0213), compared to 2.76 percent in the proposed rule. We estimate that the average case-mix for 2014 was 1.0465. We note that in 2014, we decreased all of the case-mix weights uniformly by 1.3464. Therefore, in order to make a comparison between the 2014 average case-mix weight and the 2013 average case-mix weight, we multiplied the 1.0465 estimate by 1.3464 ($1.0465 \times 1.3464 = 1.4090$). We then divided the average case-mix for 2014 by the average case-mix for 2013 to obtain a total case-mix growth estimate from 2013 to 2014 of 1.37 percent (1.4090/1.3900 = 1.0137), compared to 1.41 percent in the proposed rule.

Using the 2.13 percent estimate of total case-mix growth between CY 2012 and CY 2013, we estimate nominal case-mix growth to be 1.79 percent ($2.13 - (2.13 \times 0.1597) = 1.79$). Similarly, using the 1.37 percent estimate of total case-mix growth between CY 2013 and CY 2014, we estimate nominal case-mix growth to be 1.15 percent ($1.37 - (1.37 \times 0.1597) = 1.15$). Using the updated estimates of case-mix growth between 2012 and 2013 and between 2013 and 2014, we estimate that the reduction to the national, standardized 60-day episode payment rate needed to offset the nominal case-mix growth from 2012 through 2014 would be 2.88 percent ($1 - 1/(1.0179 \times 1.0115) = 0.0288$). If we finalized the 2 year phase-in described in the proposed rule, we would need to implement a reduction of 1.45 percent to the national, standardized 60-day episode payment rate each year for 2 years, CY 2016 and CY 2017, to account for nominal case-mix growth from 2012 through 2014 ($1 - 1/(1.0179 \times 1.0115)^{1/2} = 0.0145$).

In the CY 2016 HH PPS proposed rule, we solicited comments on the proposed reduction to the national, standardized 60-day episode payment amount in CY 2016 and in CY 2017 to account for nominal case-mix growth from CY 2012 through CY 2014 and the associated changes in the regulations text at § 484.220 in section VII. The following is a summary of the comments and our responses.

Comment: MedPAC supported the proposed case-mix reductions and stated that the Commission has long held that it is necessary for CMS to make adjustments to account for nominal case-mix growth to prevent overpayments.

Response: We thank MedPAC for their support.

Comment: Several commenters expressed concern with the methodology used to determine case-mix growth from CY 2012 to CY 2014 and the portion of such growth that is nominal versus real. Specifically, commenters stated that the percent change in real case-mix used to calculate the proposed nominal case-mix reductions is not reflective of the real case-mix growth between 2012 and 2014. Commenters stated that patients are entering into home health at a much higher acuity level than in previous years and cited a number of statistics to support their statements. Commenters also disagreed with the use of the percent change in real case-mix used in the case-mix reduction calculations as it was based on data from 2000–2010 and applied to the total case mix growth from 2012 to 2014. They stated that no adjustments should be considered until CMS conducts a thorough analysis of real and nominal changes in case mix through evaluation of changes that occurred during the actual years of concern (2012–2014) with respect to the proposed adjustment and any adjustments that might be considered in future years. They further stated that CMS should have the data and tools to perform an updated analysis of the percentage of real versus nominal case-mix growth between 2012 and 2014 and they noted that the historical analyses conducted by CMS demonstrate that the level of ''nominal'' case mix weight change is not consistent from year to year. While some commenters urged CMS to update its analysis to determine the percentage of real versus nominal case-mix growth for CY 2012 through CY 2014, other commenters stated that out of the 921 variables used in such analyses, there are only four drivers of real case-mix growth and implied that CMS' analysis was not reliable or comprehensive enough. Some commenters stated that the adjustments to payments should be based on current data informed by clinical evaluation. Finally, one commenter stated that CMS should not implement the proposed case-mix reductions and not propose

[4] We include outlier episodes in the calculation along with normal episodes and PEPs. We note that the case-mix for PEP episodes are downward weighted based on the length of the home health episode.

any additional case-mix reductions in the future.

Response: We believe the percent change in real case-mix used in the case-mix reduction calculations, which is based on analysis of 2000 through 2010 data, is a stable proxy for the real case-mix growth between 2012 and 2014. Our analysis of data has not indicated that real case-mix change between 2012 through 2014 is greater than the change in real case-mix between 2000 and 2010. In fact, our analysis of claims data has shown a decrease in the number of total visits per episode between 2012 and 2014. Furthermore, our analysis of 2012 and 2013 cost report data showed that the cost per episode has decreased each year.

In addition, we note that there is prior precedent for applying historical estimates of real case-mix growth on more current data to set payment rates. In the rate year (RY) 2008 and the RY 2009 LTCH final rules, an estimate of the percentage of real case-mix growth from a prior time period was applied to the total case-mix growth from FY 2004 to FY 2005 and from FY2005 to FY 2006 in determining the RY 2008 and RY 2009 federal rate updates (72 FR 26889 and 73 FR 26805).

With regard to the recommendation that the estimates should be informed by clinical evaluation, we note that CMS' case-mix change model, developed by Abt Associates, only includes a few variables that are derived from OASIS assessments (measures of patient living arrangement) because the OASIS items can be affected by changes in coding practices. It is not practical to consider other types of home health clinical data (for example, from medical charts) in the model given the resources available.

We note that as a result of the comments we received expressing concerns about our methodology and questioning the case-mix growth estimates we presented in the proposed rule, we did re-evaluate the methodology to determine total case-mix growth and are moving forward with a more familiar, and slightly more accurate, methodology (one used in the past) to measure case-mix growth (as described above). The methodology results in the calculation of a 1.45 percent reduction each year in CY 2016 and CY 2017 to account for nominal case-mix growth from 2012 to 2014 (instead of the 1.72 percent reduction described in the CY 2016 proposed rule).

Comment: A commenter stated that their analyses suggest that all of the historical increases have been driven by increased therapy utilization that is, in turn, based on real needs of the patients. A commenter stated that the technical analyses used to conclude that case-mix increases are generally ''not real'' have been based on the non-case-mix variables and that those non-case-mix variables were found to have a lower explanatory value. The commenter expressed concerns with CMS' exclusion of the therapy variables in the model to assess real case-mix, stating that those have the highest explanatory power. The commenter asked that CMS address this question in the final rule to better inform their understanding of its conclusions as to how ''real'' versus ''nominal'' determinations are made.

Response: The models to assess real and nominal case-mix growth were intended to analyze changes in case-mix over time and do not distinguish whether these changes are due to increases in therapy use or other factors. We do not believe that it would be appropriate to include utilization-related variables, such as the number of therapy visits, as predictors in the model, as such variables are provider-determined. In addition, the goal of these analyses was to examine changes in measures of patient acuity that are not affected by any changes in provider coding practices. For example, the models do incorporate information about change in the types of patients more likely to use therapy, such as post-acute joint replacement patients. We encourage commenters to review the Analysis of 2000–2009 Home Health Case-Mix Change Report, available on the HHA center page at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html,* in order to better understand the models used to assess real and nominal case-mix growth.

Comment: A number of commenters encouraged CMS to seek payment system reforms that are value-based rather than implementing payment reductions.

Response: The Home Health Value-Based Purchasing (HHVBP) model will be implemented January 1, 2016, as described in section IV of this final rule. However, the reductions to account for nominal case-mix growth are necessary to prevent overpayments due to coding practices that led to increases in payment that are not related to real increases in patient acuity.

Comment: Commenters referenced section 1895(b)(3)(B)(iv) of the Act, stating that there has not been an increase in aggregate payments that would justify the proposed reductions, and that CMS should withdraw its proposal. Commenters stated that there was a decrease in spending from 2010 through 2013 and questioned how nominal case-mix growth could have increased during the time period. Another commenter stated that Medicare data for 2012 to 2014 appear to indicate that the per episode payment during this period actually fell below the level that would have occurred as a result of any up-coding even though CMS' estimates case mix up-coding occurred. Commenters stated that no payment reductions should be implemented unless CMS could demonstrate that Medicare spending on home health services exceeded the Congressional Budget Office's (CBO) forecasted spending.

Response: We have no statutory authority to consider the relationship of CBO projections to home health outlays when setting the HH PPS payment rates. The Secretary's authority to respond to nominal coding change is set out at section 1895(b)(3)(B)(iv) of the Act. In addition, the reference to ''a change in aggregate payments'' in that provision does not mean that overall expenditures under the HH PPS need to increase in order to implement reductions for nominal case-mix growth. We would also like to note that a decrease in expenditures does not mean that there has been no case-mix growth. The case-mix growth during this time period may have offset the decrease in expenditures that might have otherwise occurred.

Comment: Commenters stated that the recent recalibrations have eliminated the nominal case-mix growth observed from 2012 through 2014. Furthermore, commenters stated that the removal of certain ICD–9–CM codes included in the HH PPS Grouper for CY 2014 addressed, in part, nominal case-mix growth from 2012 through 2014. Commenters stated that CMS should fully evaluate the impact of the recalibration on case-mix growth and publicly disclose the information.

Response: While the recent recalibrations (starting in CY 2015) may help to reduce future nominal case-mix growth, the proposed reductions are addressing the nominal case-mix growth from 2012 through 2014, prior to recent efforts to annually recalibrate the HH PPS case-mix weights. The reductions to account for nominal case-mix growth ensure that payments are not inflated by case-mix changes unrelated to patient severity that occurred from 2012 through 2014. This remains important even in years when we are annually recalibrating the case-mix weights. When CMS recalibrates the case-mix weights, a budget neutrality factor is applied to the national, standardized 60-day episode payment rate to ensure that

the recalibration of the case-mix weights result in the same aggregate expenditures as the aggregate expenditures using the current payment weights. For the recalibration of the weights in this rule, the budget neutrality factor is applied to the CY 2016 national, standardized 60-day episode payment rate to ensure that the recalibration of the case-mix weights results in the same aggregate expenditures using the current CY 2015 payment weights (simulating payments using CY 2014 utilization data, the most current and complete data available at this time). If there is nominal case-mix growth in the data used to recalibrate the case-mix weights, the nominal case-mix growth is built into the national, standardized 60-day episode rate through the budget neutrality factor. Thus nominal case-mix in a given year could result in increases to the national, standardized 60-day payment rate that would otherwise not have occurred, and future adjustments may be needed to better align payment with patient severity.

In measuring case-mix growth, we are factoring in the removal of the ICD–9–CM codes from the CY 2014 HH PPS Grouper into our assessment of case-mix growth from 2013 to 2014. We used the 2013 grouper and 2013 case-mix weights to calculate the average case-mix index for 2013. Then we used the 2014 grouper, which excluded ICD–9–CM codes found to be rarely used and/or not associated with resource use increases, and 2014 case-mix weights, to calculate the average case-mix index for 2014. Comparing the 2013 average case-mix index to the 2014 average case-mix index (multiplied by 1.3464 in order to make the comparison), we obtained an estimate of case-mix growth which factors in the removal of the ICD–9 codes. We estimated 1.37 percent growth in total case-mix even after taking out the ICD–9–CM codes in 2014. We will continue to monitor case-mix growth and may examine the effects of the annual recalibrations on future case-mix growth.

Comment: Some commenters questioned why the 2012 recalibration did not have a budget neutrality adjustment.

Response: The 2012 recalibration was implemented in a budget neutral manner. While a budget neutrality factor was not applied to the national, standardized 60-day episode payment rate, we did apply a budget neutrality factor to the weights to ensure that the recalibration was implemented in a budget neutral manner (76 FR 68555).

Comment: A few commenters stated that CMS did not take into consideration any probable coding effect in the transition from ICD–9–CM to ICD–10–CM. The commenters stated that it is highly likely that a decrease in productivity will occur due to the implementation of ICD–10–CM. Commenters also stated that it is also highly likely that ICD–10–CM will result in coding inaccuracies, which in turn, will lower average case mix. The commenters encouraged CMS to reconsider this large negative adjustment and at least postpone it until additional information and study results are available. A commenter stated that, in addition to ICD–10–CM implementation, HHAs are simultaneously facing increased costs due to the implementation of the new Department of Labor (DOL) rule on minimum wage and overtime for companionship providers.

Response: We note that providers have been aware of the transition from ICD–9–CM to ICD–10–CM for some time. The original implementation date for ICD–10–CM was October 1, 2013 (74 FR 3328). Therefore, the increase in costs due to the ICD–10–CM transition should be reflected in the latest cost report data we examined for the rebasing monitoring analyses in the proposed rule (that is, CY 2013 cost report data). In that analysis we found that an even greater reduction to HHA payments would need to occur to better align payments with costs than is currently allowed under section 1895(b)(3)(A)(iii) of the Act (80 FR 39845). We will continue to analyze HHA Medicare cost report data and monitor case-mix growth in future rulemaking and may consider revising payments accordingly.

Comment: Many commenters stated that their individual home health agencies have consistently had case-mix that was below the national average and; therefore, would be disproportionally impacted. Commenters suggested that CMS develop program integrity measures to address provider-specific up-coding rather than implementing the across-the-board reductions. A commenter suggested the program integrity efforts could be performed through the Recovery Audit Contractors (RACs). Another commenter suggested that CMS re-introduce the Medicare review procedures of the past in both the clinical and financial operations of home health with monetary penalties and/or recoupments based on those reviews. A third commenter stated that CMS should continue utilizing the existing fraud and abuse prevention processes to identify and target specific agencies that have excessive profit margins rather than impose the across the board reductions for all agencies and that CMS should use its enforcement authority to conduct targeted claims reviews and deny payment for claims where the case mix weight is not supported by the plan of care rather than cut the national standardized episode rate for all agencies.

One commenter stated that the Medicare Administrative Contractors (MACs) are tasked with finding instances of inappropriate coding and that the industry should not be penalized for inappropriate coding that the MACs were unable to find. The commenter also stated that the proposed reductions are a ''double whammy'' because the claims that were identified as erroneously billed have already been adjusted and any identified overpayments have been recovered and that CMS is attempting to recover even more than what was in error through the proposed reductions. In addition, the commenter questioned why there have not been more denials if there has been widespread up-coding, as suggested by CMS' analysis.

Response: For a variety of reasons, as we have noted in previous regulations, we have not proposed targeted reductions for nominal case-mix change. The foremost reason is that we believe changes and improvements in coding have been widespread, so that such targeting would likely not separate agencies clearly into high and low coding-change groups. When performing an independent review of our case-mix measurement methodology, Dr. David Grabowski, Ph.D., a professor of health care policy at Harvard Medical School, and his team agreed with our reasons for not proposing targeted reductions, stating their concerns about the small sample size of many agencies and their findings of significant nominal case-mix across different classes of agencies (please see the ''Home Health Study Report—Independent Review of the Models to Assess Nominal Case-Mix Growth'', dated June 21, 2011, located at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html*).

While certain commenters seem to assume that CMS can precisely identify those agencies practicing abusive coding, we do not agree that agency-specific case-mix levels can precisely distinguish the agencies that engage in abusive coding from all others. System wide, case-mix levels have risen over time throughout the country, while patient characteristics data indicate little real change in patient severity over time. That is, the main problem is not the level of case-mix billed by any

specific HHA over a period of time, but the amount of change in the billed case-mix weights not attributable to underlying changes in actual patient severity. We note that we have taken various measures to reduce payment vulnerabilities and the federal government has launched actions to directly identify fraudulent and abusive activities. Commenters should be aware of tip lines available that can help support investigative efforts of the federal government. The Office of the Inspector General, Department of Health and Human Services Web site at: *http://oig.hhs.gov/fraud/report-fraud/index.asp,* provides information about how to report fraud. Another Web site, *http://www.stopmedicarefraud.gov/index.html,* is oriented to Medicare patients and their families and provides information about recognizing fraud.

In terms of recoupments that correspond to claims denied after they were reviewed, such would typically be reflected in the claims data we used in our case-mix analysis. In the case where a paid-claim dispute is still active, because the volume is so low, this data would likely have little to no effect on our determination of nominal case-mix growth. In addition, while we appreciate the commenters' suggestion, targeted claim review on a scale that would be required to counteract the broad-based uptrend in case-mix weights would be resource-intensive and not feasible.

Comment: Some commenters stated that the additional payment reductions for nominal case-mix growth are based on a subset of the same factors used to determine the rebasing adjustment, such as the ''intensity of services'' factor. The commenters stated that the use of an earlier legislative authority to justify an additional type of reduction above the legislative cap on rebasing adjustments is contrary to congressional intent. The commenters urged CMS to adhere to the limits on home health rate rebasing established by Congress and recommended that CMS evaluate the impact of the rebasing adjustments and consult with Congress before considering additional reductions. Other commenters stated that CMS should provide a comprehensive explanation as to why it has not determined that the 2014 rate rebasing effectively eliminated the impact of any alleged nominal case mix weight change that may have occurred in 2013 and 2014. Commenters recommended that CMS should hold off on imposing the adjustments until the completion of the rebasing in 2017. Alternatively, the commenters recommended phasing-in the proposed reductions over more years. A commenter stated that this approach would be more consistent with approaches used by the agency to implement similar rate reductions in the IPPS and would soften the impact for those agencies whose case-mix growth was due to changes in patient acuity. Another commenter stated that CMS should do further analysis including validation that no element of the proposed coding cut would duplicate reductions already accounted for in the rebasing adjustments. Another commenter requested that CMS provide a discussion of the interaction of the rebasing adjustments and the recalibration of case weights on the purported nominal case mix growth, stating that they believed that the rebasing and recalibration of case weights addressed any nominal case mix growth at that time.

Response: The rebasing adjustments proposed and finalized for CY 2014 through CY 2017 were based on 2011 cost report data and 2012 claims data. We compared payment and costs using 2011 cost data and 2012 claims data and therefore, we did not account for any nominal case-mix growth from 2012 to 2014 in the methodology. Specifically, using the 2011 cost data, we estimated a 2013 60-day episode cost by increasing the 2011 60-day episode cost by the change in the visit data between 2011 and 2012 and the full 2012 and 2013 market baskets. We calculated payments by taking the 2012 national, standardized 60-day payment amount and updating it by the average case-mix weight for 2012 as well as updating the estimate based on the payment policies implemented in CY 2013 to estimate average payments in 2013. In the rebasing methodology, we did not factor in future projections of nominal case-mix growth from 2012 to 2014 in our analysis. As stated previously, the nominal case-mix reductions would allow us to account for nominal case-mix growth from 2012 through 2014 and mitigate structural overpayments.

While resetting the weights to 1.0000 and doing annual recalibrations may potentially reduce future nominal case-mix growth, it does not offset the nominal case-mix growth previously unaccounted for, particularly for those last few years before annual recalibrations began. We note that there is a two year lag between the data used to recalibrate the case-mix weights and the year that the weights will be implemented and we use the same claims data when comparing payments and developing the budget neutrality factor. If that utilization in the claims data is too high, it is built into the payments for both the future year's case mix weights and the previous year's case mix weights on which the recalibration is based, and so that increased utilization ends up being carried forward. In other words, the recalibration is adjusting for the next year's case mix change as compared to the previous one, but, barring additional action, will not (even in future years) adjust for unaccounted nominal case mix growth already built in to the system.

With regard to the commenters' concerns about congressional intent, we do not believe that application of the case-mix adjustment is contrary to congressional intent. We have received input from stakeholders and appreciate their comments but believe our final policy is within the authority under the statute and is consistent with congressional intent. Moreover, this policy reflects our goal to better align Medicare reimbursement with real changes in patient severity. With regard to the comment about phasing-in the reductions over more years, we note that in response to comments, we are phasing-in the case-mix reductions over 3 years (CY 2016, CY 2017, and CY 2018) rather than the 2 years (CY 2016 and CY 2017) described in the proposed rule. Specifically, we will be finalizing a 0.97 percent reduction each year in CY 2016, CY 2017, and CY 2018 to account for nominal case-mix growth from CY 2012 through CY 2014 ($1 - 1/(1.0179 \times 1.0115)^{1/3} = 0.0097$). Iteratively implementing the case-mix reduction over three years gives home health agencies more time to adjust to the intended reduction of 2.88 percent than would be the case were we to account for the nominal case-mix growth in two years.

Comment: Commenters stated that the proposed case-mix reductions would disproportionately affect hospital-based agencies and that hospital-based HHA's Medicare margins have been negative for the past few years. A commenter stated that hospital-based HHAs treat more severe patients than freestanding HHAs. Another commenter recommended that CMS consider the differences in case-mix across the types of HHAs and regions.

Response: Hospital-based HHAs comprise less than 10 percent of all home health agencies in our impact analysis (see section VII of this final rule). As stated in their March 2011 Report to Congress, MedPAC focuses on freestanding agencies because they are the majority of providers and because their costs do not reflect the sort of allocation of overhead costs seen in facility-based providers' Medicare cost reports, such as hospital-based HHA's

Medicare cost reports. MedPAC explains that in the case of hospitals, which often provide services that are paid for by multiple Medicare payment systems, measures of payments and costs for an individual sector could become distorted because of the allocation of overhead costs or complementarities of services. In addition, MedPAC has reported negative Medicare margins for hospital-based HHAs since at least 2005,[5] even though freestanding HHA Medicare margins have been around or over 15 percent. We question how hospital-based HHAs can still be operating after several years with negative Medicare margins and whether those HHAs have incentives to report negative Medicare margins (such as cost shifting/allocation by hospitals amongst their various units).

In their March 2009 Report to the Congress, MedPAC stated that hospital-based providers have a lower case-mix index, which suggests that they serve less costly patients.[6] Similarly, we also examined the average case-mix index for freestanding versus facility-based HHAs in CY 2014 and found that hospital-based HHAs had an average case-mix index that was approximately 6 percent lower than freestanding HHAs. However, the report on the independent review of the model used to assess real case-mix growth, performed by Dr. David Grabowski from Harvard University, stated ''. . . when we re-ran the Abt model by ownership type (non-profit, government, for-profit), agency type (facility-based, freestanding), region of the country (north, south, Midwest, west), agency size (large vs. small; based on number of initial episodes) and agency focus (post-acute versus community-dwelling), the results suggest that—although there is some variation—a consistent percentage of the growth in case-mix is nominal growth. As such, these results do not provide much support for adjusting payments by classes of agencies.'' The ''Home Health Study Report—Independent Review of the Models to Assess Nominal Case-Mix Growth'', dated June 21, 2011, is located on our homepage at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html.*

Comment: Commenters expressed concerns with the impact of the proposed reductions on HHA margins and the financial viability of HHAs. Commenters stated that CMS estimated that 43 percent of all HHAs would face negative margins by 2017 with the impact of rebasing and the annual productivity adjustment and provided other information on margins. Commenters stated that a recent analysis by NAHC indicates that the percentage of impacted HHAs is now forecasted at 53.71 percent by 2017 and that, with the addition of the case mix weight adjustment proposed by CMS, some states will be impacted to a much higher degree. Some other commenters stated that analysis conducted by Avalere Health determined that 45.3 percent of all HHAs nationwide will operate at a loss by the end of 2017. A commenter stated the MedPAC Medicare Margin estimate is not intended to serve as a measure of home health agencies' profit/loss, but is often interpreted as such, and an HHA's overall margin (rather than just the Medicare margin) is a standard measure of a home health company's bottom line/profit (or loss, as applicable). A few commenters stated that policymakers may want to consider providers' overall margins, as well as the MedPAC Medicare margin, when contemplating changes to home health reimbursement. A commenter stated that CMS should accurately account for the current costs of providing HH services to Medicare beneficiaries and to offer HH agencies a fair opportunity to generate a margin needed to make the ongoing investments that are necessary to maintain and improve patient care.

Response: In the CY 2014 final rule, we estimated that approximately 40 percent of providers would have negative margins in CY 2017 and that of the 40 percent of providers predicted to have negative margins, 83 percent of these providers already reported negative margins in 2011. In their March 2015 Report to the Congress, MedPAC estimates that the Medicare margins for freestanding agencies averaged 12.7 percent in 2013 and averaged 17 percent between 2001 and 2013. The Commission estimates that the Medicare margin for 2015 will be 10.3 percent. In addition, as mandated in section 3131(a) of the Affordable Care Act, MedPAC conducted a study on the rebasing implementation, which included an impact analysis on access to care, and submitted a Report to Congress on their findings. MedPAC's Report to Congress noted that the rebasing adjustments are partially offset by the payment update each year and across all four years of the phase-in of the rebasing adjustments the cumulative net reduction would equal about 2 percent. MedPAC concluded that, as a result of the payment update offsets to the rebasing adjustments, HHA margins are likely to remain high under the current rebasing policy and quality of care and beneficiary access to care are unlikely to be negatively affected.

Furthermore, in their 2013 Report to Congress, MedPAC stated ''low cost growth or no cost growth has been typical for home health care, and in some years we have observed a decline in cost per episode. The ability of HHAs to keep costs low has contributed to the high margins under the Medicare PPS.'' Our analysis of 2012 and 2013 cost report data supports MedPAC's statement about low or no cost growth and suggests that the cost of 60 day home health episodes has decreased since 2011. In the CY 2014 final rule, we estimated the cost of a 60-day episode in 2011 to be $2,453.71 using CY 2011 Medicare claims data and 2011 Medicare cost report data (78 FR 72277). In the CY 2015 proposed rule, we estimated the cost of a 60-day episode in 2012 to be $2,413.82 using CY 2012 Medicare claims data and FY 2012 Medicare cost report data (79 FR 38371). In the CY 2016 proposed rule, we estimated the cost of a 60-day episode in 2013 to be $2,402.11 using CY 2013 Medicare claims data and FY 2013 Medicare cost report data (80 FR 39846).

In addition, we note that in their 2013 Report to Congress, MedPAC stated that during the interim payment system (1997–2000), when payments dropped by about 50 percent in two years, many agencies exited the program. However, new agencies entered the program (about 200 new agencies a year) and existing agencies expanded their service areas to enter markets left by exiting agencies. This is due in part to the low capital requirements for home health care services that allow the industry to react rapidly when the supply of agencies changes or contracts. Reviews of access found that access to care remained adequate during this period despite a substantial decline in the number of agencies (Liu *et al.* 2003). In summary, MedPAC's past reviews of access to home health care found that access generally remained adequate during periods of substantial decline in the number of agencies. MedPAC stated that this is due in part to the low capital requirements for home health care services that allow the industry to react rapidly when the supply of agencies changes or contracts. As described in section III.A.3 of the CY 2016 proposed rule, the number of HHAs billing Medicare for home health services in CY 2013 was 11,889, or over 80 percent higher than the 6,511 HHAs billing Medicare for home health services in 2001. Even if some HHAs were to exit

[5] Medicare Payment Advisory Commission (MedPAC), *Report to the Congress: Medicare Payment Policy.* March 2007, P. 194.

[6] Medicare Payment Advisory Commission (MedPAC), *Report to the Congress: Medicare Payment Policy.* March 2009, P. 196.

the program due to possible reimbursement concerns, we would expect the home health market to remain robust (80 FR 39846).

With regard to the comments about the overall margin, we note that as stated in the CY 2014 final rule, Medicare has never set payments so as to cross-subsidize other payers. Indeed, section 1861(v)(1)(A) of the Act states ''under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs.'' As MedPAC stated in its March 2011 Report to Congress, cross-subsidization is not advisable for two significant reasons: ''Raising Medicare rates to supplement low Medicaid payments would result in poorly targeted subsidies. Facilities with high shares of Medicare payments—presumably the facilities that need revenues the least—would receive the most in subsidies from the higher Medicare payments, while facilities with low Medicare shares—presumably the facilities with the greatest need—would receive the smallest subsidies. Finally, increased Medicare payment rates could encourage states to further reduce their Medicaid payments and, in turn, create pressure to raise Medicare rates'' (78 FR 72284).

Comment: A commenter stated that the proposed payment rate reductions will create job losses, particularly for people in education and quality positions. Commenters expressed concerns that the proposed rate reductions may create instability within the industry and impact access to care, particularly in underserved communities or for patients with higher cost or more complex care needs. Commenters also stated that the proposed rate reductions will have a significant impact on those home health agencies that serve as the safety-net providers for their communities and another commenter stated that the proposed cuts will threaten access to care in rural areas stating that patients in rural areas tend to be sicker, older, poorer, and require more complex care than their urban counterparts. A commenter urge CMS to eliminate the proposed case mix cut pending a detailed analysis utilizing current data and incorporating an assessment of the impact of such an additional cut on Medicare beneficiaries as well as the rural, small, and other HHAs who serve them.

Response: We do not expect the payment reductions for nominal case-mix growth to have a significant impact, particularly given MedPAC's projected margins for 2015; however, we will continue to monitor for unintended consequences. As noted above, we are phasing-in the reductions over three years, rather than two years as described in the proposed rule. Iteratively implementing the case-mix reduction over three years gives home health agencies more time to adjust to the intended reduction of 2.88 percent than would be the case were we to account for the nominal case-mix growth in two years.

In addition, as described in the CY 2016 proposed rule, CMS has awarded a follow-on contract to Abt Associates to further explore margin differences across patient characteristics and possible payment methodology changes suggested by the results of the home health study. We presented several model options under development in the CY 2016 proposed rule and may consider implementing payment reform to address the margin differences across patient characteristics in future rulemaking (80 FR 39865). With regard to the comment about patients in rural areas, we note that episodes provided in rural areas will continue to receive a three percent add-on payment in CY 2016.

Comment: A commenter stated that the proposed reductions will limit services to the homebound population and will lead to increased re-hospitalization and costs. Another commenter stated that the proposed reductions would threaten the efficiency of the health care system and will likely increase the likelihood of unnecessary institutional care episodes and that this improper utilization may lead to higher costs. The commenter urged CMS to consider the role and value of home health care in the overall health care system as it makes changes to the home health prospective payment system. The commenter asked CMS to consider the most vulnerable populations and the demographics of home health users when implementing payment adjustments. The commenter urged CMS to consider the potential impact of payment adjustments on a generally, older, sicker, poorer, and more vulnerable population, and mitigate these risks where possible. Commenters also expressed concerns that the proposed cuts may impact quality of care.

Response: We note that we believe the commenter is referring to both the rebasing reductions as well as the proposed reductions to account for nominal case-mix growth. As described in the CY 2016 proposed rule, section 3131(a) of the Affordable Care Act required the Medicare Payment Advisory Commission (MedPAC) to assess, by January 1, 2015, the impact of the mandated rebasing adjustments on quality of and beneficiary access to home health care. As part of this assessment, the statute required MedPAC to consider the impact on care delivered by rural, urban, nonprofit, and for-profit home health agencies. MedPAC's Report to Congress noted that the rebasing adjustments are partially offset by the payment update each year and across all four years of the phase-in of the rebasing adjustments the cumulative net reduction would equal about 2 percent. MedPAC concluded that, as a result of the payment update offsets to the rebasing adjustments, HHA margins are likely to remain high under the current rebasing policy and quality of care and beneficiary access to care are unlikely to be negatively affected [7] (80 FR 39846). In addition, the overall impact of this rule as discussed in section VII of this final rule is smaller than the overall impact of previous rules in which reductions for nominal case-mix growth have been implemented. For instance, we estimated that the overall impact of the CY 2011 HH PPS final rule would be -4.89 percent and the overall impact of the CY 2012 HH PPS final rule would be -2.31 percent.

Commenters did not provide specific information about why they believe payment reductions would reduce the quality of care. MedPAC estimates that the Medicare margin for 2015 will be 10.3 percent, which should support current levels of quality. We also believe that policymaking in the quality improvement area should help to ensure quality advances. The HHVBP described in this final rule will be implemented on January 1, 2016, further enhancing quality-related incentives. While we do not anticipate significant negative impacts of this rule, we will continue to closely monitor the effects of the payments adjustments on HHAs, as well as on beneficiaries' access and quality of care.

Comment: Commenters stated that the proposed reductions will limit home health providers' ability to continue participating in broader payment and

[7] Medicare Payment Advisory Commission (MedPAC), ''Report to the Congress: Impact of Home Health Payment Rebasing on Beneficiary Access to and Quality of Care''. December 2014. Washington, DC. Accessed on 5/05/15 at: *http://www.medpac.gov/documents/reports/december-2014-report-to-the-congress-impact-of-home-health-payment-rebasing-on-beneficiary-access-to-and-quality-of-care.pdf?sfvrsn=0.*

delivery system reform efforts and in the HHVBP program. Commenters stated that the proposal fails to account for significant new cost burdens placed on agencies since 2010 and fails to take into account the current and future healthcare environment, such as the reform initiatives underway. Another commenter stated that the payment cuts should be delayed until their impact on HHAs can be more fully understood in light of the dynamics that the Bundled Payment for Care Improvement Initiative (BPCI), the proposed Comprehensive Care for Joint Replacement (CCJR) model, Accountable Care Organizations (ACOs) and various other healthcare delivery and payment reform initiatives are creating for the home health sector, including shifting more medically complex functional impaired patients into HHAs.

Response: While there may be increased costs associated with implementing the broader payment and delivery system reform initiatives, we expect that providers will be rewarded for efficient care or higher quality of care and will receive a return on their investment for investing in the payment reform efforts. The initiatives cited by the commenters offer financial rewards for high quality of care and/or efficient care.

Comment: A commenter stated that the proposed reductions will threaten the ability of home health agencies to reduce re-hospitalization rates and requested that CMS re-consider the reductions, given the current reductions due to sequestration and rebasing. Another commenter stated that they disagree with the rationale used to justify the proposed case-mix reductions. The commenter stated that the logic is ill-conceived and implies that Medicare home health services have increased due to overutilization. Another commenter stated that the proposed reductions assume that providers ''gamed the system.'' A commenter stated that the proposed reductions are based on the fact that CMS believes that the industry has profit margins that are too high and has inflated the case-mix of the patients served.

Response: The goal of the reductions for nominal case-mix growth is to better align payment with real changes in patient severity. The reductions would adjust the national, standardized 60-day episode payment rate to account for nominal case-mix growth between CY 2012 and CY 2014 and mitigate overpayments. As we have stated in previous regulations, we believe nominal coding change results mostly from changed coding practices, including improved understanding of the ICD–9 coding system, more comprehensive coding, changes in the interpretation of various items on the OASIS and in formal OASIS definitions, and other evolving measurement issues. Our view of the causes of nominal coding change does not emphasize the idea that HHAs or clinicians in general ''gamed the system'' or over-provided services or the idea that HHAs have high profit margins. However, since our goal is to pay only for increased costs associated with real changes in patient severity, and because nominal coding change does not demonstrate that underlying changes in patient severity occurred, we believe it is necessary to exclude nominal case-mix effects that are unrelated to changes in patient severity. We note that we will continue to monitor for any unintended consequences of the payment reductions.

Comment: One commenter stated that the starting point in the real and nominal case-mix growth analysis should have been 2002 or 2003, not 2000. Another commenter stated that the original baseline of a case-mix weight of 1.000 in 2000 was incorrect and that the analysis is flawed because the foundation or baseline is incorrect. Commenters cited multiple examples to support their statements that 2000 should not have been used as a baseline. For instance, they stated that in the first couple of years of the HH PPS, many industry participants were struggling with the transition to the new payment system and the submission of OASIS data. They also stated that the OASIS document has changed over time and that staff in 2000 had inadequate training on the OASIS. A commenter stated that the OASIS does not adequately capture the level of illness of the population being served.

Response: We followed the Administrative Procedure Act (APA) in implementing the HH PPS under the mandate in the Balanced Budget Act of 1997. Under the APA, we solicited public comments in 1999 on the then proposed system. OASIS itself was developed with industry participation for the purpose of measuring home health outcomes (see GAO–01–205, January 2001, Appendix II). A version of OASIS was used in the original case-mix research that led to the design of the HH PPS case-mix system. The research results indicated that adequate case-mix adjustment of payments could be achieved using OASIS variables. We have noted in previous regulations that the average case-mix weight nationally, as estimated from OASIS assessments in the 12 months leading up to October 1, 2000, was about 13 percent higher than the average in the sample of agencies whose data were used for the case-mix research. We used the estimate from the 12 months leading up to October 1, 2000 as our baseline for measuring case-mix change because it represented a very large, broad-based set of episodes. It did not reflect the earliest days of OASIS use. Given that coding practices continually evolved subsequent to the last 12 months ending October 1, 2000, and that agencies were not subject to the HH PPS incentives during the 12 months ending October 1, 2000, the selected baseline period is the most appropriate one to use to begin measuring coding change that occurred in relation to the introduction of the HH PPS. Any other period subsequent to our baseline builds in impacts on coding of the HH PPS and is questionable to use from the point of view of responsible fiscal stewardship.

We note that comments referencing coding improvements, such as increasing accuracy, do not recognize that such improvements are an inappropriate basis for increased payment. We believe that measurable changes in patient severity and patient need are appropriate bases for changes in payment. Our analysis found only small changes in patient severity and need.

With regard to the comments about the baseline, we note that in our May 2007 proposed rule and our August 2007 final rule, we described the IPS samples and PPS samples that were used to calculate case-mix change. We remind the commenters that 313,447 observations is an extremely large sample by statistical standards, and that agencies began collecting OASIS data in 1999, following issuance of a series of regulations beginning on January 25, 1999 (64 FR 3764). Most of the data we used for the baseline period come from the first 3 quarters of the year 2000—months after collection was mandated to begin in August 1999. By 2000 the vast majority of agencies were complying with the reporting requirements. Indirect evidence that the data from the early years of the HH PPS were sufficiently reliable comes from model validation analysis we conducted during that period. Validation of the 80-group model on a large 19-month claims sample ending June 2002 (N = 469,010 claims linked to OASIS) showed that the goodness-of-fit of the model was comparable to the fit statistic from the original Abt Associates case-mix sample (0.33 vs. 0.34), notwithstanding that average total resources per episode declined by 20 percent. That analysis

also showed that all but three variables in the scoring system remained statistically significant.

Comment: A commenter questioned CMS' ability to be able to statistically infer the difference between increases in real changes in case-mix vs. nominal case-mix growth to the degree that the estimate was used in developing the proposed reductions, *i.e.,* a hundredth of a percentage point. Some commenters stated that the home health payment system itself is flawed and cited the Report to Congress on the home health study on access to care for vulnerable populations. The commenter implied that since the payment system is flawed, the analysis to assess real and nominal case-mix is also flawed. Commenters stated that the proposed rule relies heavily on a case-mix methodology that CMS itself found requires ''additional analysis'' and ''potential modifications''. A commenter stated that the proposed case-mix creep adjustments should be suspended pending the development of a new case-mix model.

Response: As described in the CY 2012 final rule and discussed above, we procured an independent review of our methodology by a team at Harvard University led by Dr. David Grabowski (''Home Health Study Report—Independent Review of the Models to Assess Nominal Case-Mix Growth'', dated June 21, 2011). When reviewing the model, the Harvard team found that overall, our models were robust. As stated previously, we would like to account for nominal case-mix growth from 2012 through 2014 and mitigate overpayments. We note that, as described in the CY 2016 proposed rule, we have several model options under development and may implement payment reform in the future. However, while we are currently in the process of developing payment reform options to the case-mix methodology, we think it is appropriate to account for the nominal case-mix growth from 2012 to 2014.

Final Decision: After considering the comments received in response to the CY 2016 HH PPS proposed rule (80 FR 39840) and for the reasons discussed above, we are finalizing a 0.97 percent reduction to the national, standardized 60-day episode payment rate each year in CY 2016, CY 2017, and CY 2018 to account for nominal case-mix growth from 2012 to 2014.

3. Clarification Regarding the Use of the ''Initial Encounter'' Seventh Character, Applicable to Certain ICD–10–CM Code Categories, under the HH PPS

The ICD–10–CM coding guidelines regarding the seventh character assignment for diagnosis codes under Chapter 19, Injury, poisoning, and certain other consequences of external causes (S00–T88), were revised in the Draft 2015 ICD–10–CM, The Completed Official Draft Code Set. Based upon the 2015 revised coding guidance above, certain initial encounters are appropriate when the patient is receiving active treatment during a home health episode.

Comment: A commenter requested clarification on the use of the seventh character for ''initial encounters'' in the home health setting. The commenter agrees that it seems reasonable that traumatic injury codes with the initial encounter extension may not be appropriate. However, the commenter contends that certain initial encounter extensions may be appropriate if the patient is still receiving active treatment. The commenter provided an example of active treatment whereby the patient is receiving active treatment with the continuation of antibiotics for treatment of a postoperative infection. Based upon this example of active treatment, the commenter recommends that CMS revise the home health grouper to allow the reporting of the initial encounter seventh character for the ICD–10–CM codes for those conditions that could reasonably continue to receive active treatment in the home health setting. A couple of other commenters noted similar concerns regarding initial encounters.

Response: While this comment is outside the scope of this rule, we recognize that in the CY 2014 HH PPS final rule (78 FR 72271), we discussed the decision to eliminate codes with initial encounter extensions, listed in the GEMs translation for ICD–10–CM codes, that began with S and T that are used for reporting traumatic injuries (*e.g.,* fractures and burns) as part of our ICD–10 grouper conversion effort. Codes beginning with S and T have a seventh character that indicates whether the treatment is for an initial encounter, subsequent encounter or a sequela (a residual effect (condition produced) after the acute phase of an illness or injury has terminated).

The decision to eliminate the seventh character initial encounter for the S and T ICD–10–CM codes from the HH PPS ICD–10–CM translation list was based, not only on the most current coding conventions and guidelines that were available at that time, but also in collaboration with the cooperating parties of the ICD–10 Coding Committee (the American Health Information Management Association, the American Hospital Association, the Centers for Disease Control and Prevention's National Center for Health Statistics, and CMS) who confirmed that initial encounter extensions were not appropriate for care in the home health setting. Code extensions D, E, F, G, H, J, K, M, N, P, Q and R indicate the patient is being treated for a subsequent encounter (care for the injury during the healing or recovery phase) and were included in the translation list in place of the initial encounter extensions. CMS provided the draft translation list to the public on the CMS Web site at *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html?redirect=/center/hha.asp.* We did not receive any comments on the ICD–10–CM draft translation list and the elimination of initial encounter seventh character extension.

Since the publication of the CY 2014 HH PPS final rule, the ICD–10–CM coding guidelines regarding the use of the seventh character assignment for diagnosis codes under Chapter 19, Injury, poisoning, and certain other consequences of external causes (S00–T88), were revised in the Draft 2015 ICD–10–CM, The Completed Official Draft Code Set. Specifically, in March of 2015, the coding guidelines were revised to clarify that the designation of an initial encounter is based on whether a patient is receiving active treatment for the condition for which the code describes. Initial encounters are not based on chronology of care or whether the patient is seeing the same or a new provider for the same condition. Examples of active treatment are: Surgical treatment, emergency department encounter, and evaluation and continuing treatment by the same or a different physician. Based on these revisions, it is possible for a home health agency to use a diagnosis code with a seventh character ''A'' (an initial encounter) for certain conditions. A clinical example of this could include a patient who was in the acute care hospital for IV antibiotics for a post-surgical wound infection and who is discharged to home health on IV antibiotics for ongoing treatment of the surgical wound infection. This would be considered active treatment as the surgical wound infection requires continued IV antibiotics.

The coding guidelines state to assign the seventh character ''D'', indicating a subsequent encounter, for encounters after the patient has received active treatment of the condition and is receiving routine care for the condition during the healing or recovery phase. Examples of subsequent care include: cast change or removal, an x-ray to check healing status of fracture, removal of external or internal fixation device,

medication adjustment, other aftercare and follow up visits following treatment of the injury or condition. Therefore, it is also possible for home health encounters to be designated as subsequent encounters based on services that are provided during healing and recovery, after treatment of the condition described by the code is completed. A clinical example of this could include a patient who was in the acute care hospital for a traumatic hip fracture that was surgically repaired and the patient is discharged to home health for rehabilitation services. This would be considered a subsequent encounter as the hip fracture has been repaired and the patient is now in the healing and recovery phase.

We recognize that this revision may have caused some confusion among home health providers and that there may be subtle clinical differences between what is considered active treatment of a condition versus routine care during the healing and recovery phase of a condition in the home health setting. The assignment of the seventh character should be based on clinical information from the physician and depends on whether the individual is receiving active treatment for the condition in which the code describes, or if the individual is receiving ongoing care for that condition during the healing and recovery stage. In determining which diagnosis codes would be appropriate for an HHA to indicate that the care is for an initial encounter, CMS developed and shared a draft list of codes with the cooperating parties. Agreement was reached between CMS and the cooperating parties and a revised translation list effective January 1, 2016 will be posted on the CMS Web site. Also effective, January 1, 2016, the Home Health Prospective Payment System Grouper logic will be revised to award points for certain initial encounter codes based upon the revised ICD–10–CM coding guidelines for M0090 dates on or after October 1, 2015.

C. CY 2016 Home Health Rate Update

1. CY 2016 Home Health Market Basket Update

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2015 be increased by a factor equal to the applicable HH market basket update for those HHAs that submit quality data as required by the Secretary. The HH market basket was rebased and revised in CY 2013. A detailed description of how we derive the HHA market basket is available in the CY 2013 HH PPS final rule (77 FR 67080- 67090). The HH market basket percentage increase for CY 2016 is based on IHS Global Insight Inc.'s (IGI) third quarter forecast with historical data through the second quarter of 2015. The HH market basket percentage increase for CY 2016 is 2.3 percent.

Section 3401(e) of the Affordable Care Act, adding new section 1895(b)(3)(B)(vi) to the Act, requires that the market basket percentage under the HHA prospective payment system as described in section 1895(b)(3)(B) of the Act be annually adjusted by changes in economy-wide productivity for CY 2015 and each subsequent calendar year. The statute defines the productivity adjustment, described in section 1886(b)(3)(B)(xi)(II) of the Act, to be equal to the 10-year moving average of change in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, calendar year, cost reporting period, or other annual period) (the ''MFP adjustment''). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

Multifactor productivity is derived by subtracting the contribution of labor and capital input growth from output growth. The projections of the components of MFP are currently produced by IGI, a nationally recognized economic forecasting firm with which CMS contracts to forecast the components of the market basket and MFP. As described in the CY 2015 HH PPS proposed rule (79 FR 38384 through 38386), in order to generate a forecast of MFP, IGI replicated the MFP measure calculated by the BLS using a series of proxy variables derived from IGI's U.S. macroeconomic models. In the CY 2015 HH PPS proposed rule, we identified each of the major MFP component series employed by the BLS to measure MFP as well as provided the corresponding concepts determined to be the best available proxies for the BLS series.

Beginning with the CY 2016 rulemaking cycle, the MFP adjustment is calculated using a revised series developed by IGI to proxy the aggregate capital inputs. Specifically, IGI has replaced the Real Effective Capital Stock used for Full Employment GDP with a forecast of BLS aggregate capital inputs recently developed by IGI using a regression model. This series provides a better fit to the BLS capital inputs as measured by the differences between the actual BLS capital input growth rates and the estimated model growth rates over the historical time period. Therefore, we are using IGI's most recent forecast of the BLS capital inputs series in the MFP calculations beginning with the CY 2016 rulemaking cycle. A complete description of the MFP projection methodology is available on our Web site at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html.* In the future, when IGI makes changes to the MFP methodology, we will announce them on our Web site rather than in the annual rulemaking.

Using IGI's third quarter 2015 forecast, the MFP adjustment for CY 2016 (the 10-year moving average of MFP for the period ending CY 2016) is 0.4 percent. The CY 2016 HH market basket percentage of 2.3 percent will be reduced by the MFP adjustment of 0.4 percent. The resulting HH payment update percentage is equal to 1.9 percent, or 2.3 percent less 0.4 percentage point.

Section 1895(b)(3)(B) of the Act requires that the HH update be decreased by 2 percentage points for those HHAs that do not submit quality data as required by the Secretary. For HHAs that do not submit the required quality data for CY 2016, the HH payment update will be -0.1 percent (1.9 percent minus 2 percentage points).

2. CY 2016 Home Health Wage Index

a. Background

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of HH services. Since the inception of the HH PPS, we have used inpatient hospital wage data in developing a wage index to be applied to HH payments.

We will apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence).

We will continue to use the same methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there are no inpatient hospitals, and thus, no hospital wage data on which to base the calculation of the CY 2015 HH PPS wage index. For rural areas that do

not have inpatient hospitals, we will use the average wage index from all contiguous CBSAs as a reasonable proxy. For FY 2016, there are no rural geographic areas without hospitals for which we would apply this policy. For rural Puerto Rico, we will not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas). Instead, we will use the most recent wage index previously available for that area. For urban areas without inpatient hospitals, we use the average wage index of all urban areas within the state as a reasonable proxy for the wage index for that CBSA. For CY 2016, the only urban area without inpatient hospital wage data is Hinesville, GA (CBSA 25980).

b. Update

On February 28, 2013, OMB issued Bulletin No. 13–01, announcing revisions to the delineations of MSAs, Micropolitan Statistical Areas, and CBSAs, and guidance on uses of the delineation of these areas. This bulletin is available online at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.* This bulletin states that it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.''

In the CY 2015 HH PPS final rule (79 FR 66085 through 66087), we finalized changes to the HH PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, including a 1-year transition with a blended wage index for CY 2015. Because the 1-year transition period expires at the end of CY 2015, the final HH PPS wage index for CY 2016 will be fully based on the revised OMB delineations adopted in CY 2015. The final CY 2016 wage index is available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html*

3. CY 2016 Annual Payment Update

a. Background

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS is a national, standardized 60-day episode payment rate. As set forth in 42 CFR 484.220, we adjust the national, standardized 60-day episode payment rate by a case-mix relative weight and a wage index value based on the site of service for the beneficiary.

To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, we apply the appropriate wage index value to the labor portion of the HH PPS rates. The labor-related share of the case-mix adjusted 60-day episode rate is 78.535 percent and the non-labor-related share is 21.465 percent as set out in the CY 2013 HH PPS final rule (77 FR 67068). The CY 2016 HH PPS rates will use the same case-mix methodology as set forth in the CY 2008 HH PPS final rule with comment period (72 FR 49762) and will be adjusted as described in section III.C. of this rule. The following are the steps we take to compute the case-mix and wage-adjusted 60-day episode rate:

1. Multiply the national 60-day episode rate by the patient's applicable case-mix weight.
2. Divide the case-mix adjusted amount into a labor (78.535 percent) and a non-labor portion (21.465 percent).
3. Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.
4. Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 60-day episode rate, subject to any additional applicable adjustments.

In accordance with section 1895(b)(3)(B) of the Act, this document constitutes the annual update of the HH PPS rates. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with § 484.225(i), for a HHA that does not submit HH quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable HH market basket index amount minus two percentage points. Any reduction of the percentage change will apply only to the calendar year involved and would not be considered in computing the prospective payment amount for a subsequent calendar year.

Medicare pays the national, standardized 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low-utilization payment adjustment (LUPA) is provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment (PEP) adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

b. CY 2016 National, Standardized 60-Day Episode Payment Rate

Section 1895(3)(A)(i) of the Act required that the 60-day episode base rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case mix and area wage adjustments among different home health agencies in a budget neutral manner. To determine the CY 2016 national, standardized 60-day episode payment rate, we will apply a wage index standardization factor, a case-mix budget neutrality factor described in section III.B.1, a nominal case-mix growth adjustment described in section III.B.2, the rebasing adjustment described in section II.C, and the HH payment update as discussed in section III.C.1 of this final rule.

To calculate the wage index standardization factor, henceforth referred to as the wage index budget neutrality factor, we simulated total payments for non-LUPA episodes using the 2016 wage index and compared it to our simulation of total payments for non-LUPA episodes using the 2015 wage index. By dividing the total payments for non-LUPA episodes using the 2016 wage index by the total payments for non-LUPA episodes using the 2015 wage index, we obtain a wage index budget neutrality factor of 1.0011. We will apply the wage index budget neutrality factor of 1.0011 to the CY

2016 national, standardized 60-day episode rate.

As discussed in section III.B.1 of this final rule, to ensure the changes to the case-mix weights are implemented in a budget neutral manner, we will apply a case-mix weight budget neutrality factor to the CY 2016 national, standardized 60-day episode payment rate. The case-mix weight budget neutrality factor is calculated as the ratio of total payments when CY 2016 case-mix weights are applied to CY 2014 utilization (claims) data to total payments when CY 2015 case-mix weights are applied to CY 2014 utilization data. The case-mix budget neutrality factor for CY 2016 will be 1.0187 as described in section III.B.1 of this final rule.

Next, as discussed in section III.B.2 of this final rule, we will apply a reduction of 0.97 percent to the national, standardized 60-day episode payment rate in CY 2016 to account for nominal case-mix growth between CY 2012 and CY 2014. Then, we will apply the -$80.95 rebasing adjustment finalized in the CY 2014 HH PPS final rule (78 FR 72256) and discussed in section II.C. Lastly, we will update the payment rates by the CY 2016 HH payment update of 1.9 percent (MFP-adjusted home health market basket update) as described in section III.C.1 of this final rule. The CY 2016 national, standardized 60-day episode payment rate is calculated in Table 7.

TABLE 7—CY 2016 NATIONAL, STANDARDIZED 60-DAY EPISODE PAYMENT AMOUNT

CY 2015 National, standardized 60-day episode payment	Wage index budget neutrality factor	Case-mix weights budget neutrality factor	Nominal case-mix growth adjustment (1 − .0097)	CY 2016 Rebasing adjustment	CY 2016 HH payment update percentage	CY 2016 National, standardized 60-day episode payment
$2,961.38	× 1.0011	× 1.0187	× 0.9903	− $80.95	× 1.019	$2,965.12

The CY 2016 national, standardized 60-day episode payment rate for an HHA that does not submit the required quality data is updated by the CY 2016 HH payment update (1.9 percent) minus 2 percentage points and is shown in Table 8.

TABLE 8—FOR HHAS THAT DO NOT SUBMIT THE QUALITY DATA—CY 2016 NATIONAL, STANDARDIZED 60-DAY EPISODE PAYMENT AMOUNT

CY 2015 National, standardized 60-day episode payment	Wage index budget neutrality factor	Case-mix weights budget neutrality factor	Nominal case-mix growth adjustment (1 − .0097)	CY 2016 Rebasing adjustment	CY 2016 HH payment update percentage minus 2 percentage points	CY 2016 National, standardized 60-day episode payment
$2,961.38	×1.0011	×1.0187	×0.9903	− $80.95	×0.999	$2,906.92

c. CY 2016 National Per-Visit Rates

The national per-visit rates are used to pay LUPAs (episodes with four or fewer visits) and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or HH discipline. The six HH disciplines are as follows:

- Home health aide (HH aide);
- Medical Social Services (MSS);
- Occupational therapy (OT);
- Physical therapy (PT);
- Skilled nursing (SN); and
- Speech-language pathology (SLP).

To calculate the CY 2016 national per-visit rates, we start with the CY 2015 national per-visit rates. We then apply a wage index budget neutrality factor to ensure budget neutrality for LUPA per-visit payments and increase each of the six per-visit rates by the maximum rebasing adjustments described in section II.C. of this rule. We calculate the wage index budget neutrality factor by simulating total payments for LUPA episodes using the 2016 wage index and comparing it to simulated total payments for LUPA episodes using the 2015 wage index. By dividing the total payments for LUPA episodes using the 2016 wage index by the total payments for LUPA episodes using the 2015 wage index, we obtain a wage index budget neutrality factor of 1.0010. We will apply the wage index budget neutrality factor of 1.0010 to the CY 2016 national per-visit rates.

The LUPA per-visit rates are not calculated using case-mix weights. Therefore, there is no case-mix weight budget neutrality factor needed to ensure budget neutrality for LUPA payments. Then, we apply the rebasing adjustments finalized in the CY 2014 HH PPS final rule (78 FR 72280) to the per-visit rates for each discipline. Finally, the per-visit rates are updated by the CY 2016 HH payment update of 1.9 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payments for LUPAs are separate from the LUPA add-on payment amount, which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2016 national per-visit rates are shown in Tables 9 and 10.

TABLE 9—CY 2016 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

HH discipline type	CY 2015 Per-visit payment	Wage index budget neutrality factor	CY 2016 Rebasing adjustment	CY 2016 HH payment update percentage	CY 2016 Per-visit payment
Home health aide	$57.89	× 1.0010	+$1.79	× 1.019	$60.87
Medical Social Services	204.91	× 1.0010	+ $6.34	× 1.019	215.47
Occupational Therapy	140.70	× 1.0010	+ $4.35	× 1.019	147.95
Physical Therapy	139.75	× 1.0010	+ $4.32	× 1.019	146.95
Skilled Nursing	127.83	× 1.0010	+ $3.96	× 1.019	134.42
Speech-Language Pathology	151.88	× 1.0010	+ 4.70	× 1.019	159.71

The CY 2016 per-visit payment rates for HHAs that do not submit the required quality data are updated by the CY 2016 HH payment update of 1.9 percent minus 2 percentage points (which is equal to −0.1 percent) and is shown in Table 10.

TABLE 10—CY 2016 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

HH discipline type	CY 2015 Per-visit rates	Wage index budget neutrality factor	CY 2016 Rebasing adjustment	CY 2016 HH payment update percentage minus 2 percentage points	CY 2016 Per-visit rates
Home Health Aide	$57.89	× 1.0010	+ $1.79	× 0.999	$59.68
Medical Social Services	204.91	× 1.0010	+ $6.34	× 0.999	211.24
Occupational Therapy	140.70	× 1.0010	+ $4.35	× 0.999	145.05
Physical Therapy	139.75	× 1.0010	+ $4.32	× 0.999	144.07
Skilled Nursing	127.83	× 1.0010	+ $3.96	× 0.999	131.79
Speech-Language Pathology	151.88	× 1.0010	+ 4.70	× 0.999	156.58

d. Low-Utilization Payment Adjustment (LUPA) Add-On Factors

LUPA episodes that occur as the only episode or as an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences. In the CY 2014 HH PPS final rule, we changed the methodology for calculating the LUPA add-on amount by finalizing the use of three LUPA add-on factors: 1.8451 for SN; 1.6700 for PT; and 1.6266 for SLP (78 FR 72306). We multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by the appropriate factor to determine the LUPA add-on payment amount. For example, for LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes, if the first skilled visit is SN, the payment for that visit would be $248.02 (1.8451 multiplied by $134.42), subject to area wage adjustment.

e. CY 2016 Non-routine Medical Supply (NRS) Payment Rates

Payments for NRS are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. To determine the CY 2016 NRS conversion factor, we start with the 2015 NRS conversion factor ($53.23) and apply the −2.82 percent rebasing adjustment described in section II.C. of this rule (1 − 0.0282 = 0.9718). We then update the conversion factor by the CY 2016 HH payment update of 1.9 percent. We do not apply a standardization factor as the NRS payment amount calculated from the conversion factor is not wage or case-mix adjusted when the final claim payment amount is computed. The NRS conversion factor for CY 2016 is shown in Table 11.

TABLE 11—CY 2016 NRS CONVERSION FACTOR FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

CY 2015 NRS conversion factor	CY 2016 Rebasing adjustment	CY 2016 HH payment update percentage	CY 2016 NRS conversion factor
$53.23	× 0.9718	× 1.019	$52.71

Using the CY 2016 NRS conversion factor, the payment amounts for the six severity levels are shown in Table 12.

TABLE 12—CY 2016 NRS PAYMENT AMOUNTS FOR HHAS THAT DO SUBMIT THE REQUIRED QUALITY DATA

Severity level	Points (scoring)	Relative weight	CY 2016 NRS payment amounts
1	0	0.2698	$14.22
2	1 to 14	0.9742	51.35
3	15 to 27	2.6712	140.80
4	28 to 48	3.9686	209.18
5	49 to 98	6.1198	322.57
6	99+	10.5254	554.79

For HHAs that do not submit the required quality data, we again begin with the CY 2015 NRS conversion factor ($53.23) and apply the −2.82 percent rebasing adjustment as discussed in section II.C of this final rule (1 − 0.0282 = 0.9718). We then update the NRS conversion factor by the CY 2016 HH payment update of 1.9 percent minus 2 percentage points. The CY 2016 NRS conversion factor for HHAs that do not submit quality data is shown in Table 13.

TABLE 13—CY 2016 NRS CONVERSION FACTOR FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

CY 2015 NRS conversion factor	CY 2016 rebasing adjustment	CY 2016 HH payment update percentage minus 2 percentage points	CY 2016 NRS conversion factor
$53.23	× 0.9718	× 0.999	$51.68

The payment amounts for the various severity levels based on the updated conversion factor for HHAs that do not submit quality data are calculated in Table 14.

TABLE 14—CY 2016 NRS PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

Severity level	Points (scoring)	Relative weight	CY 2016 NRS payment amounts
1	0	0.2698	$13.94
2	1 to 14	0.9742	50.35
3	15 to 27	2.6712	138.05
4	28 to 48	3.9686	205.10
5	49 to 98	6.1198	316.27
6	99+	10.5254	543.95

f. Rural Add-On

Section 421(a) of the MMA requires, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes or visits ending on or after April 1, 2010, and before January 1, 2018, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 3 percent. Section 421 of the MMA waives budget neutrality related to this provision, as the statute specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to HH services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

For CY 2016, home health payment rates for services provided to beneficiaries in areas that are defined as rural under the OMB delineations will be increased by 3 percent as mandated by section 421(a) of the MMA. The 3 percent rural add-on is applied to the national, standardized 60-day episode payment rate, national per visit rates, and NRS conversion factor when HH services are provided in rural (non-CBSA) areas. Refer to Tables 15 through 18 for these payment rates.

TABLE 15—CY 2016 PAYMENT AMOUNTS FOR 60-DAY EPISODES FOR SERVICES PROVIDED IN A RURAL AREA

For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
CY 2016 national, standardized 60-day episode payment rate	Multiply by the 3 percent rural add-on	CY 2016 rural national, standardized 60-day episode payment rate	CY 2016 national, standardized 60-day episode payment rate	Multiply by the 3 percent rural add-on	CY 2016 rural national, standardized 60-day episode payment rate
$2,965.12	× 1.03	$3,054.07	$2,906.92	× 1.03	$2,994.13

TABLE 16—CY 2016 PER-VISIT AMOUNTS FOR SERVICES PROVIDED IN A RURAL AREA

HH Discipline type	For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
	CY 2016 per-visit rate	Multiply by the 3 percent rural add-on	CY 2016 rural per-visit rates	CY 2016 per-visit rate	Multiply by the 3 percent rural add-on	CY 2016 rural per-visit rates
HH Aide	$60.87	× 1.03	$62.70	$59.68	× 1.03	$61.47
MSS	215.47	× 1.03	221.93	211.24	× 1.03	217.58
OT	147.95	× 1.03	152.39	145.05	× 1.03	149.40
PT	146.95	× 1.03	151.36	144.07	× 1.03	148.39
SN	134.42	× 1.03	138.45	131.79	× 1.03	135.74
SLP	159.71	× 1.03	164.50	156.58	× 1.03	161.28

TABLE 17—CY 2016 NRS CONVERSION FACTOR FOR SERVICES PROVIDED IN RURAL AREAS

For HHAs that DO submit quality data			For HHAs that DO NOT submit quality data		
CY 2016 conversion factor	Multiply by the 3 percent rural add-on	CY 2016 rural NRS conversion factor	CY 2016 conversion factor	Multiply by the 3 percent rural add-on	CY 2016 rural NRS conversion factor
$52.71	× 1.03	$54.29	$51.68	× 1.03	$53.23

TABLE 18—CY 2016 NRS PAYMENT AMOUNTS FOR SERVICES PROVIDED IN RURAL AREAS

Severity level	Points (scoring)	For HHAs that DO submit quality data (CY 2016 NRS conversion factor = $54.29		For HHAs that DO NOT submit quality data (CY 2016 NRS conversion factor = $53.23)	
		Relative weight	CY 2016 NRS payment amounts for rural areas	Relative weight	CY 2016 NRS payment amounts for rural areas
1	0	0.2698	$14.65	0.2698	$14.36
2	1 to 14	0.9742	52.89	0.9742	51.86
3	15 to 27	2.6712	145.02	2.6712	142.19
4	28 to 48	3.9686	215.46	3.9686	211.25
5	49 to 98	6.1198	332.24	6.1198	325.76
6	99+	10.5254	571.42	10.5254	560.27

The following is a summary of comments we received regarding the CY 2016 home health rate update.

Comment: A commenter objected to the proposed 0.6 percent productivity adjustment.

Response: The productivity adjustment was mandated by Section 3401(e) of the Affordable Care Act by adding section 1895(b)(3)(B)(vi) to the Act and requiring that the market basket percentage under the HH PPS be annually adjusted by changes in economy-wide productivity in CY 2015 (and in subsequent calendar years). Since publication of the proposed rule, our forecast for the productivity adjustment has been revised to 0.4 percent based on an updated forecast with historical data through 2014.

Comment: A commenter stated that because CAHs are located in rural areas, the absence of CAH wage data further compromises the accuracy of the hospital wage index to determine labor costs of HHAs providing services in rural areas. In addition, pending development of an industry specific wage index, CMS should add a population density adjustment to the labor portion of the payment to account for increased costs of providing services in less densely populated areas.

Response: Although the pre-floor, pre-reclassified hospital wage index does not include data from CAHs, we believe it reflects the relative level of wages and wage-related costs applicable to providing home health services. As we stated in the IPPS Final Rule published on August 1, 2003 (68 FR 45397), ''CAHs represent a substantial number of hospitals with significantly different labor costs in many labor market areas where they exist.'' We further noted that, ''. . . in 89 percent of all labor market areas with hospitals that

converted to CAH status sometime after FY 2000, the average hourly wage for CAHs is lower than the average hourly wage for other short-term hospitals in the area. In 79 percent of the labor market areas with CAHs, the average hourly wage for CAHs is lower than the average hourly wage for other short-term hospitals by 5 percent or greater. These results suggest that the wage data for CAHs, in general, are significantly different from other short-term hospitals.

At this time, we do not have evidence that a population density adjustment is appropriate. While rural HHAs cite the added cost of long distance travel to provide care for their patients, urban HHAs cite added costs associated with needed security measures and traffic congestion.

Comment: A commenter urges CMS to review the wage index calculation for rural Massachusetts and to include Nantucket Cottage Hospital's data in the calculation. The commenter states that Nantucket Cottage Hospital had given up its critical access hospital (CAH) designation in 2014 yet CMS has apparently not used wage data from Nantucket Cottage Hospital in calculating the 2016 wage index for rural Massachusetts. The commenter urges CMS to include wage data from CAHs in calculating the wage index for HHAs and other non-hospital provider types. The commenter believes that including wage data from CAHS would make the wage index more reflective of actual local wage practices.

Response: Data from Nantucket Cottage Hospital is included in the calculation of the 2016 wage index for rural Massachusetts. In fact, data from this hospital has been included in the calculation of the HH wage index for rural Massachusetts since CY 2012. It has been our longstanding practice to not include data from CAHs in the calculation of the HH wage index. We only include hospital data from acute IPPS hospitals in the calculation of the HH wage index.

Comment: A commenter questions the validity of the wage index assigned to CBSA 22520, Florence-Muscle Shoals, AL. The commenter requests that the underlying data to determine this index be investigated to determine its validity. In addition, the commenter states that the wage index as assigned places this urban area below the rural wage index for the state, which cannot be correct.

Response: The HH wage index values in urban areas are not necessarily higher than the HH wage index values in rural areas. The wage index values are based on data submitted on the inpatient hospital cost reports. We utilize efficient means to ensure and review the accuracy of the hospital cost report data and resulting wage index. The home health wage index is derived from the pre-floor, pre-reclassified wage index which is calculated based on cost report data from hospitals paid under the IPPS. All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S–3 is not completed. In addition, our intermediaries perform desk reviews on all hospitals' Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. We believe that our review processes result in an accurate reflection of the applicable wages for the areas given. The processes and procedures describing how the inpatient hospital wage index is developed are discussed in the Inpatient Prospective Payment System (IPPS) rule each year, with the most recent discussion provided in the FY 2016 IPPS final rule (80 FR 49488 through 49508). Any provider type may submit comments on the hospital wage index during the annual IPPS rulemaking cycle.

Comment: Several commenters took issue with the fact that the HH wage index is based on pre-floor, pre-reclassified hospital wage data, but hospitals in the same geographic locations have the ability to apply for re-classification to another CBSA and may be eligible for the rural floor wage index. The commenters state that this inequity has created a competitive advantage for hospitals in recruiting and retaining scarce labor. Several commenters believe that the statute does give CMS authority to address and correct some of these inequities. One commenter believes that a correction to the manner in which the wage index is calculated is needed in order to recruit and retain staff necessary to provide home health care. The commenter continues to state that otherwise it may be difficult for HHAs to meet the increased demand for services, which may jeopardize the success of CMS' VBP initiatives. Another commenter recommends that CMS reform the HH wage index by instituting a proxy that allows HHAs to receive the same reclassification as hospitals if they provide series in the same service area.

Response: We continue to believe that the regulations and statutes that govern the HH PPS do not provide a mechanism for allowing HHAs to seek geographic reclassification or to utilize the rural floor provisions that exist for IPPS hospitals. Section 4410(a) of the BBA provides that the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that state. This is the rural floor provision and it is specific to hospitals. The re-classification provision found in section 1886(d)(10) of the Act. Section 1886(d)(10)(C)(i) of the Act states, ''The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification . . .'' This provision is only applicable to hospitals as defined in section 1886(d) of the Act.

In addition, we do not believe that using hospital reclassification data would be appropriate as these data are specific to the requesting hospitals and it may or may not apply to a given HHA in a given instance. With regard to implementing a rural floor, we do not believe it would be prudent at this time to adopt such a policy. MedPAC has recommended eliminating the rural floor policy from the calculation of the IPPS wage index (*see* Chapter 3 of MedPAC's March 2013 Report to Congress on Medicare Payment Policy, available at *http://medpac.gov/documents/reports/mar13_entirereport.pdf,* which notes on page 65 that in 2007, MedPAC had ''. . . recommended eliminating these special wage index adjustments and adopting a new wage index system to avoid geographic inequities that can occur due to current wage index policies.''

We continue to believe that using the pre-floor, pre-reclassified hospital wage index as the wage adjustment to the labor portion of the HH PPS rates is appropriate and reasonable.

Comment: A commenter requests that CMS explore wholesale revision and reform of the HH wage index. The commenter believes that existing law permits CMS flexibility in establishing area wage adjustment factors. Another commenter notes that CMS indicated that the entire wage index system was under review, and that a move to a Commuting-Based Wage Index (CBWI) was being considered. The commenter urges CMS to expedite that review and implement a system that not only recognizes variations between localities, but also treats all provider types within a local market equitably. Until such a system is in place, the commenter urges CMS to adjust the 2016 HHA wage index to reflect a policy to limit the wage index disparity between provider types within a given CBSA to no more than 10 percent.

Response: CMS' ''Report to Congress: Plan to Reform the Medicare Wage Index'' was submitted by the Secretary on April 11, 2012 and is available on

our Wage Index Reform Web page at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html.* This report states that other steps are necessary before we would be able to adopt a CBWI. In the meantime, we do not believe that limiting wage index differences between provider types within a given CBSA would be feasible. Regardless of whether or not it would be appropriate to do so, it would not be feasible to limit the differences in wage index values among provider types within a given CBSA to no more than 10 percent, due to timing issues. Some provider types are reimbursed on a calendar year basis and some are reimbursed on a fiscal year basis.

Comment: A commenter opposes CMS' use of the hospital wage index to establish the HH wage index. The commenter states that differences in the occupational personnel pool and costs between hospitals and HHAs make the use of the hospital wage index inappropriate in the HH setting. The commenter further states that hospitals benefit from institutional efficiencies that and rural hospitals have a reclassification mechanism to avoid exposure to the drastic rural index rate in most states. The commenter believes that Congress has granted CMS discretion in establishing the HH wage index and that CMS should establish a HH specific wage index. Another commenter believes that basing the wage index on hospital data is not reliable for home health. The commenter continues to state that home health workers pay is typically much more than that of a hospital employee due to the demanding nature of the job. The commenter suggests that CMS complete a detailed study of this issue.

Response: Our previous attempts at either proposing or developing a home health specific wage index were not well received by the home health industry. In a **Federal Register** Notice (53 FR 38476) published on September 30, 1988, the Health Care Financing Administration (HCFA), as we were then known, implemented an HHA-specific wage index based on data received from HHAs. Subsequently, HCFA and the Congress received numerous complaints from providers concerning the burden that the reporting requirements posed and the accuracy of the data. As a result, the Congress retroactively repealed its mandate in the Medicare Catastrophic Coverage Act of 1988 for use of an HHA wage index and referenced use of the hospital wage index (*see* section 1895(b)(4)(C) of the Act). This caused great confusion among both providers and fiscal intermediaries.

Developing a wage index that utilizes data specific to HHAs would require us to engage resources in an audit process. In order to establish a home health specific wage index, we would need to collect data that is specific to home health services. Because of the volatility of the home health wage data and the significant amount of resources that would be required to improve the quality of those data, we do not expect to propose a home health specific wage index until we can demonstrate that a home health specific wage index would be more reflective of the wages and salaries paid in a specific area, be based upon stable data sources, significantly improve our ability to determine payment for HHAs, and that we can justify the resources required to collect the data, as well as the increased burden on providers. We believe that in the absence of home health specific wage data, using the pre-floor, pre-reclassified hospital wage data is appropriate and reasonable for the HH PPS.

Comment: A commenter states that the wage index needs to reflect the growing difficulties of providing care in rural areas. The commenter states that paying lower wages for rural health care professionals that put as much time, skill and intensity into their work as their urban counterparts, exacerbates the workforces shortages. The commenter continues to state that further reducing the wage index for rural providers will make recruiting and retaining medical professionals more difficult for rural America. The commenter states that using the wage index for the local area ignores important market forces and that many health professionals are recruited from a distance, making the local wage insufficient financial incentive for practicing in rural America. Another commenter states that rural HHAs often function as the primary caregivers for elderly homebound patients, who have high resource needs, which also increases the cost of rural home health services.

Response: The HH wage index values in rural areas are not necessarily lower than the HH wage index values in urban areas. The HH wage index reflects the wages that inpatient hospitals pay in their local geographic areas. In addition, HHAs receive rural add-on payments for services provided to beneficiaries in rural areas. Section 421(a) of the MMA, as amended by section 210 of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10), provides for a payment increase of 3 percent for HH services provided in rural areas for episodes or visits ending on or after April 1, 2010, and before January 1, 2018.

Final Decision: After considering the comments received in response to the CY 2016 HH PPS proposed rule (80 FR 39840) and for the reasons discussed above, we are finalizing our proposal to use the pre-floor, pre-reclassified hospital inpatient wage index as the wage adjustment to the labor portion of the HH PPS rates. For CY 2016, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2011 and before October 1, 2012 (FY 2012 cost report data).

D. Payments for High-Cost Outliers Under the HH PPS

1. Background

In the July 10, 2015 Medicare and Medicaid Programs; CY 2016 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements; Proposed Rules (80 FR 39863 through 39864), we described the background and current method for determining outlier payments under the HH PPS. In that rule, we did not propose any changes to the current home health outlier payment policy for CY 2016.

For this final rule, simulating payments using CY 2014 claims data (as of June 30, 2015) and the CY 2016 payment rates, without the rebasing and nominal case-mix growth adjustments as described in section III.C.3 of this rule, we estimate that outlier payments in CY 2016 would comprise 2.13 percent of total payments. Based on simulations using CY 2014 claims data and the CY 2016 payments rates, including the rebasing and nominal case-mix growth adjustments as described in section III.C.3 of this rule, we estimate that outlier payments would comprise approximately 2.30 percent of total HH PPS payments, a percent change of almost 8 percent. This increase is attributable to the increase in the national per-visit amounts through the rebasing adjustments and the decrease in the national, standardized 60-day episode payment amount as a result of the rebasing and nominal case-mix growth adjustments. Given the same rebasing adjustments and case-mix growth reduction would also occur for 2017, and hence a similar anticipated increase in the outlier payments, we estimate that for CY 2017 outlier payments as a percent of total HH PPS payments would be approximately 2.5 percent.

We did not propose a change to the FDL ratio or loss-sharing ratio for CY

2016 as we believe that maintaining an FDL of 0.45 and a loss-sharing ratio of 0.80 are appropriate given the percentage of outlier payments is estimated to increase as a result of the increase in the national per-visit amounts through the rebasing adjustments and the decrease in the national, standardized 60-day episode payment amount as a result of the rebasing adjustment and nominal case-mix growth reduction. We will continue to monitor the percent of total HH PPS payments paid as outlier payments to determine if future adjustments to either the FDL ratio or loss-sharing ratio are warranted.

The following is a summary of comments we received regarding payments for high-cost outliers.

Comment: One commenter expressed support of the continuation of the high cost outlier parameters as currently structured.

Response: We appreciate the commenter's support of the current HH PPS outlier policy. We strive to maintain an approach that accounts for episodes that incur unusually high costs due to patient care needs.

Comment: Several commenters recommended changes to the existing outlier policy, including the elimination of the outlier payment policy altogether as well as modifications to the FDL Ratio and/or Loss-Sharing Ratio in order to generate outlier payment levels approximating 2.5 percent.

Response: We believe that section 1895(b)(5)(A) of the Act affords the Secretary the discretion as to whether or not to have an outlier policy under the HH PPS. We plan to continue investigating whether or not an outlier policy remains appropriate as well as ways to maintain an outlier policy for episodes that incur unusually high costs due to patient care needs without qualifying episodes of care that do not meet said criteria or are potentially fraudulent. We recently awarded a contract to Abt Associates to address any findings from the home health study required by section 3131(d) of the Affordable Care Act, monitor the potential impact of the rebasing adjustments and other recent payment changes, and develop payment options to ensure ongoing access to care for vulnerable populations. The work under this contract may include potential revisions to the outlier payment methodology to better reflect costs of treating Medicare beneficiaries with high levels of severity of illness.

Comment: One commenter suggested that CMS's outlier policy and ten percent threshold cap are not appropriate fraud-fighting initiatives and suggested other mechanisms for oversight and monitoring, including a provider-specific floor (minimum) on the number or percent of episodes that result in LUPAs.

Response: As we have noted in the past (74 FR 58085), we are committed to addressing potentially fraudulent activities, especially those in areas where we see suspicious outlier payments. As we noted above, we plan to examine potential revisions to the outlier payment methodology through ongoing studies and analysis of home health claims and other utilization data. Monitoring of potentially fraudulent activity will be captured in this analysis, and we will make policy and other adjustments as necessary in light of the new data and outcomes as appropriate.

Final Decision: We are finalizing no change to the FDL ratio or loss sharing ratio for CY 2016. However, we will continue to monitor outlier payments and continue to explore ways to maintain an outlier policy for episodes that incur unusually high costs due to patient care needs without qualifying episodes of care that do not meet that criteria.

E. Report to the Congress on the Home Health Study Required by Section 3131(d) of the Affordable Care Act and an Update on Subsequent Research and Analysis

In the CY 2016 HH PPS proposed rule (80 FR 39840), we included an informational summary of the Report to Congress on the home health study required by section 3131(d) of the Affordable Care Act and we provided an update on subsequent research and analysis completed to date. We will continue to provide the home health industry with periodic updates on the progress of our subsequent research, aimed at addressing the findings from the section 3131(d) of the Affordable Care Act home health study, in future rulemaking and/or announcements on the HHA Center Web page at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html*.

F. Technical Regulations Text Changes

We proposed to make several technical corrections in part 484 to better align the payment requirements with recent statutory and regulatory changes for home health services. We proposed to make changes to § 484.205(e) to state that estimated total outlier payments for a given calendar year are limited to no more than 2.5 percent of total outlays under the HHA PPS, as required by section 1895(b)(5)(A) of the Act as amended by section 3131(b)(2)(B) of the Affordable Care Act, rather than 5 percent of total outlays. Similarly, we also proposed to specify in § 484.240(e) that the fixed dollar loss and the loss sharing amounts are chosen so that the estimated total outlier payment is no more than 2.5 percent of total payments under the HH PPS. We also proposed to describe in § 484.240(f) that the estimated total amount of outlier payments to an HHA in a given year may not exceed 10 percent of the estimated total payments to the specific agency under the HH PPS in a given year. This update aligns the regulations text at § 484.240(f) with the statutory requirement. Finally, we proposed a minor editorial change in § 484.240(b) to specify that the outlier threshold for each case-mix group is the episode payment amount for that group, *or* the PEP adjustment amount for the episode, plus a fixed dollar loss amount that is the same for all case-mix groups.

In addition to the proposed changes to the regulations text pertaining to outlier payments under the HH PPS, we also proposed to amend § 409.43(e)(iii) and to add language to § 484.205(d) to clarify the frequency of review of the plan of care and the provision of Partial Episode Payments (PEP) under the HH PPS as a result of a regulations text change in § 424.22(b) that was finalized in the CY 2015 HH PPS final rule (79 FR 66032). Specifically, we proposed to change the definition of an intervening event to include transfers and instances where a patient is discharged and return to home health during a 60-day episode, rather than a discharge and return to the same HHA during a 60-day episode. In § 484.220, we proposed to update the regulations text to reflect the downward adjustments to the 60-day episode payment rate due to changes in the coding or classification of different units of service that do not reflect real changes in case-mix (nominal case-mix growth) applied to calendar years 2012 and 2013, which were finalized in the CY 2012 HH PPS final rule (76 FR 68532) as well as updating the CY 2011 adjustment to 3.79 percent as finalized in the CY 2011 HH PPS final rule (75 FR 70461). In § 484.225 we proposed to eliminate references to outdated market basket index factors by removing paragraphs (b), (c), (d), (e), (f), and (g). In § 484.230 we proposed to delete the last sentence as a result of a change from a separate LUPA add-on amount to a LUPA add-on factor finalized in the CY 2014 HH PPS final rule (78 FR 72256). Finally, we proposed deleting and reserving § 484.245 as we believe that this language is no longer applicable under the HH PPS, as it was meant to

facilitate the transition to the original PPS established in CY 2000.

Lastly, we proposed to make one technical correction in § 424.22 to re-designate paragraph (a)(1)(v)(B)(*1*) as (a)(2).

We invited comments on these technical corrections and associated changes in the regulations in parts 409, 424, and 484. However, we did not receive any comments regarding the technical regulations text changes.

Final Decision: We are finalizing the technical regulations text changes at § 409, § 424, and § 484 as proposed.

IV. Provisions of the Home Health Value-Based Purchasing (HHVBP) Model and Response to Comments

A. Background

In the CY 2015 Home Health Prospective Payment System (HH PPS) final rule titled ''Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies (79 FR 66032–66118), we indicated that we were considering the development of a home health value-based purchasing (HHVBP) model. We sought comments on a future HHVBP model, including elements of the model; size of the payment incentives and percentage of payments that would need to be placed at risk in order to spur home health agencies (HHAs) to make the necessary investments to improve the quality of care for Medicare beneficiaries; the timing of the payment adjustments; and, how performance payments should be distributed. We also sought comments on the best approach for selecting states for participation in this model. We noted that if the decision was made to move forward with the implementation of a HHVBP model in CY 2016, we would solicit additional comments on a more detailed model proposal to be included in future rulemaking.

In the CY 2015 HH PPS final rule,[8] we indicated that we received a number of comments related to the magnitude of the percentage payment adjustments; evaluation criteria; payment features; a beneficiary risk adjustment strategy; state selection methodology; and the approach to selecting Medicare-certified HHAs. A number of commenters supported the development of a value-based purchasing model in the home health industry in whole or in part with consideration of the design parameters provided. No commenters provided strong counterpoints or alternative design options which dissuaded CMS from moving forward with general design and framework of the HHVBP model as discussed in the CY 2015 HH PPS proposed rule. All comments were considered in our decision to develop an HHVBP model for implementation beginning January 1, 2016. Therefore, in the CY 2016 HH PPS proposed rule, we proposed to implement a HHVBP model, which included a randomized state selection methodology; a reporting framework; a payment adjustment methodology; a payment adjustment schedule by performance year and payment adjustment percentage; a quality measures selection methodology, classifications and weighting, measures for performance year one, including the reporting of New Measures, and a framework for proposing to adopt measures for subsequent performance years; a performance scoring methodology, which includes performance based on achievement and improvement; a review and recalculation period; and an evaluation framework. As we discuss in more detail below, we are finalizing our proposal to implement the HHVBP Model beginning January 1, 2016. We respond to comments received on the proposed components of the model, and discuss our final policies with respect to each of these components, in the relevant sections below.

The basis for developing the proposed value-based purchasing (VBP) model, as described in the proposed regulations at § 484.300 *et seq.,* stems from several important areas of consideration. First, we expect that tying quality to payment through a system of value-based purchasing will improve the beneficiaries' experience and outcomes. In turn, we expect payment adjustments that both reward improved quality and penalize poor performance will incentivize quality improvement and encourage efficiency, leading to a more sustainable payment system.

Second, section 3006(b) of the Affordable Care Act directed the Secretary of the Department of Health and Human Services (the Secretary) to develop a plan to implement a VBP program for payments under the Medicare Program for HHAs and the Secretary issued an associated Report to Congress in March of 2012 (2012 Report).[9] The 2012 Report included a roadmap for implementation of an HHVBP model and outlined the need to develop an HHVBP program that aligns with other Medicare programs and coordinates incentives to improve quality. The 2012 Report also indicated that a HHVBP program should build on and refine existing quality measurement tools and processes. In addition, the 2012 Report indicated that one of the ways that such a program could link payment to quality would be to tie payments to overall quality performance.

Third, section 402(a)(1)(A) of the Social Security Amendments of 1967 (as amended) (42 U.S.C. 1395b–1(a)(1)(A)), provided authority for us to conduct the Home Health Pay-for-Performance (HHPFP) Demonstration that ran from 2008 to 2010. The results of that demonstration found modest quality improvement in certain measures after comparing the quality of care furnished by demonstration participants to the quality of care furnished by the control group. One important lesson learned from the HHPFP Demonstration was the need to link the HHA's quality improvement efforts and the incentives. HHAs in three of the four regions generated enough savings to have incentive payments in the first year of the demonstration, but the size of payments were unknown until after the conclusion of the demonstration. Also, the time lag between quality performance and payment incentives was too long to provide a sufficient motivation for HHAs to take necessary steps to improve quality. The results of the demonstration, published in a comprehensive evaluation report[10] suggest that future models could benefit from ensuring that incentives are reliable enough, of sufficient magnitude, and paid in a timely fashion to encourage HHAs to be fully engaged in the quality of care initiative.

Furthermore, the President's FY 2015 and 2016 Budgets proposed that VBP should be extended to additional providers including skilled nursing facilities, home health agencies, ambulatory surgical centers, and hospital outpatient departments. The FY 2015 Budget called for at least 2-percent of payments to be tied to quality and efficiency of care on a budget neutral

[8] *Medicare and Medicaid Programs; CY 2015 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Survey and Enforcement Requirements for Home Health Agencies,* 79 FR 66105–66106 (November 6, 2014).

[9] CMS, ''Report to Congress: Plan to Implement a Medicare Home Health Agency Value-Based Purchasing Program'' (March 15, 2012) available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/downloads/stage-2-NPRM.PDF.*

[10] ''CMS Report on Home Health Agency Value-Based Purchasing Program'' (February of 2012) available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/HHP4P_Demo_Eval_Final_Vol1.pdf.*

basis. The FY 2016 Budget outlines a program which would tie at least 2-percent of Medicare payments to the quality and efficiency of care in the first 2 years of implementation beginning in 2017, and at least 5-percent beginning in 2019 without any impact to the budget. We proposed and are finalizing an HHVBP model that follows a graduated payment adjustment strategy within certain selected states beginning January 1, 2016.

The Secretary has also set two overall delivery system reform goals for CMS. First, we seek to tie 30-percent of traditional, or fee-for-service, Medicare payments to quality or value-based payments through alternative payment models by the end of 2016, and to tie 50-percent of payments to these models by the end of 2018. Second, we seek to tie 85-percent of all traditional Medicare payments to quality or value by 2016 and 90-percent by 2018.[11] To support these efforts the Health Care Payment Learning and Action Network was recently launched to help advance the work being done across sectors to increase the adoption of value-based payments and alternative payment models. We believe that testing the HHVBP Model would support these goals.

Finally, we have already successfully implemented the Hospital Value-Based Purchasing (HVBP) program, under which value-based incentive payments are made in a fiscal year to hospitals that meet performance standards established for a performance period with respect to measures for that fiscal year. The percentage of a participating hospital's base-operating DRG payment amount for FY 2016 discharges that is at risk, based on the hospital's performance under the program for that fiscal year, is 1.75 percent. That percentage will increase to 2.0 by FY 2017. We proposed and are finalizing in this rule an HHVBP Model that builds on the lessons learned and guidance from the HVBP program and other applicable demonstrations as discussed above, as well as from the evaluation report discussed earlier.

As we stated in the CY 2016 HH PPS proposed rule, the HHVBP Model presents an opportunity to improve the quality of care furnished to Medicare beneficiaries and study what incentives are sufficiently significant to encourage HHAs to provide high quality care. The HHVBP Model will offer both a greater potential reward for high performing HHAs as well as a greater potential downside risk for low performing HHAs. We proposed, and are finalizing in this rule, that the model will begin on January 1, 2016, and include an array of measures that would capture the multiple dimensions of care that HHAs furnish.

The HHVBP Model, as finalized, will be tested by CMS's Center for Medicare and Medicaid Innovation (CMMI) under section 1115A of the Act. Under section 1115A(d)(1) of the Act, the Secretary may waive such requirements of Titles XI and XVIII and of sections 1902(a)(1), 1902(a)(13), and 1903(m)(2)(A)(iii) as may be necessary solely for purposes of carrying out section 1115A with respect to testing models described in section 1115A(b). The Secretary is not issuing any waivers of the fraud and abuse provisions in sections 1128A, 1128B, and 1877 of the SSA or any other Medicare or Medicaid fraud and abuse laws for this model. Thus, notwithstanding any other provisions of this rule, all providers participating in the HHVBP Model must comply with all applicable fraud and abuse laws and regulations. Therefore, to clarify the scope of the Secretary's authority we have finalized § 484.300 confirming authority to establish Part F under sections 1102, 1115A, and 1871 of the Act (42 U.S.C. 1315a), which authorizes the Secretary to issue regulations to operate the Medicare program and test innovative payment and service delivery models to improve coordination, quality, and efficiency of health care services furnished under Title XVIII.

As we proposed, we are using section 1115A(d)(1) waiver authority to apply a reduction or increase of up to 8-percent to current Medicare payments to competing HHAs delivering care to beneficiaries in selected states, depending on the HHA's performance on specified quality measures relative to its peers. Specifically, the HHVBP Model will utilize the waiver authority to adjust Medicare payment rates under section 1895(b) of the Act.[12] In accordance with the authority granted to the Secretary in section 1115A(d)(1) of the Act, we are waiving section 1895(b)(4) of the Act only to the extent necessary to adjust payment amounts to reflect the value-based payment adjustments under this model for Medicare-certified HHAs in specified states selected in accordance with CMS's selection methodology. We are not implementing this model under the authority granted by the Affordable Care Act under section 3131 (''Payment Adjustments for Home Health Care'').

We are finalizing in this rule, as we proposed, that the defined population includes all Medicare beneficiaries provided care by any Medicare-certified HHA delivering care within the selected states. Medicare-certified HHAs that are delivering care within selected states are considered 'Competing Home Health Agencies' within the scope of this HHVBP Model. If care is delivered outside of selected states, or within a non-selected state that does not have a reciprocal agreement with a selected state, payments for those beneficiaries are not considered within the scope of the model because we are basing participation in the model on state-specific CMS Certification Numbers (CCNs). Payment adjustments for each year of the model will be calculated based on a comparison of how well each competing HHA performed during the performance period for that year (proposed, and finalized below, to be one year in length, starting in CY 2016) with its performance on the same measures in 2015 (proposed, and finalized below, to be the baseline data year).

As we proposed, and are finalizing in this rule, the first performance year will be CY 2016, the second will be CY 2017, the third will be CY 2018, the fourth will be 2019, and the fifth will be CY 2020. Greater details on performance periods are outlined in Section D—Performance Assessment and Payment Periods. This model will test whether being subject to significant payment adjustments to the Medicare payment amounts that would otherwise be made to competing Medicare-certified HHAs would result in statistically-significant improvements in the quality of care being delivered to this specific population of Medicare beneficiaries.

We proposed, and are finalizing in this rule, to identify Medicare-certified HHAs to compete in this model using state borders as boundaries. We do so under the authority granted in section 1115A(a)(5) of the Act to elect to limit testing of a model to certain geographic areas. This decision is influenced by the 2012 Report to Congress mandated under section 3006(b) of the Affordable Care Act. This Report stated that HHAs which participated in previous value-based purchasing demonstrations ''uniformly believed that all Medicare-certified HHAs should be required to participate in future VBP programs so all agencies experience the potential burdens and benefits of the program'' and some HHAs expressed concern that absent mandatory participation, ''low-performing agencies in areas with

[11] Content of this announcement can be found at *http://www.hhs.gov/news/press/2015pres/01/20150126a.html.*

[12] 42 U.S.C. 1395fff.

limited competition may not choose to pursue quality improvement.'' [13]

Section 1115A(b)(2)(A) of the Act requires that the Secretary select models to be tested where the Secretary determines that there is evidence that the model addresses a defined population for which there are deficits in care leading to poor clinical outcomes or potentially avoidable expenditures. The HHVBP Model was developed to improve care for Medicare patients receiving care from HHAs based on evidence in the March 2014 MedPAC Report to Congress citing quality and cost concerns in the home health sector. According to MedPAC, ''about 29-percent of post-hospital home health stays result in readmission, and there is tremendous variation in performance among providers within and across geographic regions.'' [14] The same report cited limited improvement in quality based on existing measures, and noted that the data on quality ''are collected only for beneficiaries who do not have their home health care stays terminated by a hospitalization,'' skewing the results in favor of a healthier segment of the Medicare population.[15] This model will test the use of adjustments to Medicare HH PPS rates by tying payment to quality performance with the goal of achieving the highest possible quality and efficiency.

B. Overview

We proposed to include in § 484.305 definitions for ''applicable percent'', ''applicable measure'', ''benchmark'', ''home health prospective payment system'', ''larger-volume cohort'', ''linear exchange function'', ''Medicare-certified home health agency'', ''New Measures'', ''payment adjustment'', ''performance period'', ''smaller-volume cohort'', ''selected states'', ''starter set'', ''Total Performance Score'', and ''value-based purchasing'' as they pertain to this subpart. Where we received comments on the proposed definitions or the substantive provisions of the model connected to the proposed definitions, we respond to comments in the relevant sections below. We are finalizing all the definitions as proposed in § 484.305 except for two: We are revising ''applicable percent'' so the final definition reflects the revised percentages as 3-percent for CY 2018, 5-percent for CY 2019, 6-percent for 2020; 7-percent for CY 2021 and 8-percent for CY 2022, as discussed in section G and we are revising ''Medicare-certified home health agency'' as ''Competing home health agency'' for clarity, since all HHAs with CCNs are, by definition, Medicare-certified, and only those HHAs in selected states are competing in the model. As we proposed and are finalizing in this rule, the HHVBP Model will encompass 5 performance years and be implemented beginning January 1, 2016 and conclude on December 31, 2022.

Payment and service delivery models are developed by CMMI in accordance with the requirements of section 1115A of the Act. During the development of new models, CMMI builds on the ideas received from internal and external stakeholders and consults with clinical and analytical experts.

We are finalizing our proposal to implement a HHVBP Model that has an overall purpose of improving the quality and efficient delivery of home health care services to the Medicare population. The specific goals of the model are to:

1. Incentivize HHAs to provide better quality care with greater efficiency;
2. Study new potential quality and efficiency measures for appropriateness in the home health setting; and,
3. Enhance current public reporting processes.

We proposed that the HHVBP Model would adjust Medicare HHA payments over the course of the model by up to 8-percent depending on the applicable performance year and the degree of quality performance demonstrated by each competing HHA. As discussed in greater detail in section G, we are finalizing this proposal with modification. Under our final policy, the model will reduce the HH PPS final claim payment amount to an HHA for each episode in a calendar year by an amount up to the applicable percentage revised and defined in § 484.305. The timeline of payment adjustments as they apply to each performance year is described in greater detail in the section D2 entitled ''Payment Adjustment Timeline.''

As we proposed, and are finalizing in this rule, the model will apply to all Medicare-certified HHAs in each of the selected states, which means that all HHAs in the selected states will be required to compete. We codify this policy at 42 CFR 484.310. Furthermore, a competing HHA will only be measured on performance for care delivered to Medicare beneficiaries within selected states (with rare exceptions given for care delivered when a reciprocal agreement exists between states). The distribution of payment adjustments will be based on quality performance, as measured by both achievement and improvement, across a set of quality measures rigorously constructed to minimize burden as much as possible and improve care. Competing HHAs that demonstrate they can deliver higher quality of care in comparison to their peers (as defined by the volume of services delivered within the selected state), or their own past performance, could have their payment for each episode of care adjusted higher than the amount that otherwise would be paid under section 1895 of the Act. Competing HHAs that do not perform as well as other competing HHAs of the same size in the same state might have their payments reduced and those competing HHAs that perform similarly to others of similar size in the same state might have no payment adjustment made. This operational concept is similar in practice to what is used in the HVBP program.

We expect that the risk of having payments adjusted in this manner will provide an incentive among all competing HHAs delivering care within the boundaries of selected states to provide significantly better quality through improved planning, coordination, and management of care. The degree of the payment adjustment will be dependent on the level of quality achieved or improved from the baseline year, with the highest upward performance adjustments going to competing HHAs with the highest overall level of performance based on either achievement or improvement in quality. The size of a competing HHA's payment adjustment for each year under the model will be dependent upon that HHA's performance with respect to that calendar year relative to other competing HHAs of similar size in the same state and relative to its own performance during the baseline year.

We proposed that states would be selected randomly from nine regional groupings for model participation. As discussed further in section IV.C. of this rule, we are finalizing this proposal. A competing HHA is only measured on performance for care delivered to Medicare beneficiaries within boundaries of selected states and only payments for HHA services provided to Medicare beneficiaries within boundaries of selected states will be subject to adjustment under this model unless a reciprocal agreement is in place. Requiring all Medicare-certified HHAs within the boundaries of selected

[13] See the *Recommendations* section of the U.S. Department of Health and Human Services. Report to Congress: Plan to Implement a Medicare Home Health Agency Value-Based Purchasing Program.'' (March 2012) p. 28.

[14] See full citation at note 11. MedPAC Report to Congress (March 2014) p. 215.

[15] MedPAC Report to Congress (March 2014) p. 226.

states to compete in the model ensures that: (1) There is no self-selection bias, (2) competing HHAs are representative of HHAs nationally, and (3) there is sufficient participation to generate meaningful results. We believe it is necessary to require all HHAs delivering care within boundaries of selected states to be included in the model because, in our experience, Medicare-providers are generally reluctant to participate voluntarily in models in which their Medicare payments could be subject to possible reduction. This reluctance to participate in voluntary models has been shown to cause self-selection bias in statistical assessments and thus, may present challenges to our ability to evaluate the model. In addition, state boundaries represent a natural demarcation in how quality is currently being assessed through Outcome Assessment Information Set (OASIS) measures on Home Health Compare (HHC). Secondly, it is our intent to generate an appropriate selection of competitor types in this model as a means of yielding the most optimal level of generalizability and representativeness of HHAs in the nation. Finally, having an appropriate number of competitors within the model should generate an appropriate statistical power to detect key effects we are testing in this model.

C. Selection Methodology

1. Identifying a Geographic Demarcation Area

We proposed to adopt a methodology that uses state borders as boundaries for demarcating which Medicare-certified HHAs will be required to compete in the model and proposed to select nine states from nine geographically-defined groupings of five or six states. Groupings were also defined so that the successful implementation of the model would produce robust and generalizable results, as discussed later in this section. We are finalizing this approach here.

We took into account five key factors when deciding to propose selection at the state-level for this model. First, if we required some, but not all, Medicare-certified HHAs that deliver care within the boundaries of a selected state to participate in the model, we believe the HHA market for the state could be disrupted because HHAs in the model would be competing against HHAs that are not included in the model (herein referenced 'non-competing HHAs'). Second, we wanted to ensure that the distribution of payment adjustments based on performance under the model could be extrapolated to the entire country. Statistically, the larger the sample to which payment adjustments are applied, the smaller the variance of the sampling distribution and the greater the likelihood that the distribution accurately predicts what would transpire if the methodology were applied to the full population of HHAs. Third, we considered the need to align with other HHA quality program initiatives including HHC. The HHC Web site presently provides the public and HHAs a state- and national-level comparison of quality. We expect that aligning performance with the HHVBP benchmark and the achievement score will support how measures are currently being reported on HHC. Fourth, there is a need to align with CMS regulations which require that each HHA have a unique CMS Certification Number (CCN) for each state in which the HHA provides service. Fifth, we wanted to ensure sufficient sample size and the ability to meet the rigorous evaluation requirements for CMMI models. These five factors are important for the successful implementation and evaluation of this model.

We expect that when there is a risk for a downward payment adjustment based on quality performance measures, the use of a self-contained, mandatory cohort of HHA participants will create a stronger incentive to deliver greater quality among competing HHAs. Specifically, it is possible the market would become distorted if non-model HHAs are delivering care within the same market as competing HHAs because competition, on the whole, becomes unfair when payment is predicated on quality for one group and volume for the other group. In addition, we expect that evaluation efforts might be negatively impacted because some HHAs would be competing on quality and others on volume, within the same market.

We proposed the use of state boundaries after careful consideration of several alternative selection approaches, including randomly selecting HHAs from all HHAs across the country, and requiring participation from smaller geographic regions including the county; the Combined Statistical Area (CSA); the Core-Based Statistical Area (CBSA); Metropolitan Statistical Area (MSA) rural provider level; and the Hospital Referral Region (HRR) level.

A methodology using a national sample of HHAs that are randomly selected from all HHAs across the country could be designed to include enough HHAs to ensure robust payment adjustment distribution and a sufficient sample size for the evaluation; however, this approach may present significant limitations when compared with the state boundaries selection methodology we proposed in this model. Of primary concern with randomly selecting at the provider-level across the nation is the issue with market distortions created by having competing HHAs operating in the same market as non-model HHAs.

Using smaller geographic areas than states, such as counties, CSAs, CBSAs, rural, and HRRs, could also present challenges for this model. These smaller geographic areas were considered as alternate selection options; however, their use could result in too small of a sample size of potential competing HHAs. As a result, we expect the distribution of payment adjustments could become highly divergent among fewer HHA competitors. In addition, the ability to evaluate the model could become more complex and may be less generalizable to the full population of Medicare-certified HHAs and the beneficiaries they serve across the nation. Further, the use of smaller geographic areas than states could increase the proportion of Medicare-certified HHAs that could fall into groupings with too few agencies to generate a stable distribution of payment adjustments. Thus, if we were to define geographic areas based on CSAs, CBSAs, counties, or HRRs, we would need to develop an approach for consolidating smaller regions into larger regions.

Home health care is a unique type of health care service when compared to other Medicare provider types. In general, the HHA's care delivery setting is in the beneficiaries' homes as opposed to other provider types that traditionally deliver care at a brick and mortar institution within beneficiaries' respective communities. As a result, the HHVBP Model needs to be designed to account for the unique way that HHA care is provided in order for results to be generalizable to the population. HHAs are limited to providing care to beneficiaries in the state that they have a CCN however; HHAs are not restricted from providing service in a county, CSA, CBSA or HRR that they are not located in (as long as the other county/CBSA/HRR is in the same state in which the HHA is certified). As a result, using smaller geographic areas (than state boundaries) could result in similar market distortion and evaluation confounders as selecting providers from a randomized national sampling. The reason is that HHAs in adjacent counties/CSAs/CBSAs/HRRs may not be in the model but, would be directly competing for services in the same markets or geographic regions. Competing HHAs delivering care in the

same market area as non-competing HHAs could generate a spillover effect where non-model HHAs would be vying for the same beneficiaries as competing HHAs. This spillover effect presents several issues for evaluation as the dependent variable (quality) becomes confounded by external influences created by these non-competing HHAs. These unintentional external influences on competing HHAs may be made apparent if non-competing HHAs become incentivized to generate greater volume at the expense of quality delivered to the beneficiaries they serve and at the expense of competing HHAs that are paid on quality instead of volume. Further, the ability to extrapolate these results to the full population of HHAs and the beneficiaries they serve becomes confounded by an artifact of the model and inferences would be limited from an inability to duplicate these results. While these concerns would decrease in some order of magnitude as larger regions are considered, the only way to eliminate these concerns entirely is to define inclusion among Medicare-certified HHAs at the state level.

In addition, home health quality data currently displayed on HHC allows users to compare HHA services furnished within a single state. Selecting HHAs using other geographic regions that are smaller and/or cross state lines could require the model to deviate from the established process for reporting quality. For these reasons, we stated in the proposed rule that we believe a selection methodology based on the use of Medicare-certified HHAs delivering care within state boundaries is the most appropriate for the successful implementation and evaluation of this model. In the proposed rule, we requested comments on this proposed state selection methodology as well as potential alternatives. We summarize and respond to comments received at the end of this section (section IV.C.). As we discuss below, we are finalizing the state selection model as proposed.

2. Overview of the Randomized Selection Methodology for States

We proposed the state selections listed in proposed § 484.310 based on the described proposed randomized selection methodology. We proposed to group states by each state's geographic proximity to one another accounting for key evaluation characteristics (that is, proportionality of service utilization, proportionality of organizations with similar tax-exempt status and HHA size, and proportionality of beneficiaries that are dually-eligible for Medicare and Medicaid).

Based on an analysis of OASIS quality data and Medicare claims data, we stated in the proposed rule that we believe the use of nine geographic groupings would account for the diversity of beneficiary demographics, rural and urban status, cost and quality variations, among other criteria. To provide for comparable and equitable selection probabilities, these separate geographic groupings each include a comparable number of states. Under our proposed methodology, groupings were based on states' geographic proximity to one another, having a comparable number of states if randomized for an equal opportunity of selection, and similarities in key characteristics that will be considered in the evaluation study because the attributes represent different types of HHAs, regulatory oversight, and types of beneficiaries served. This is necessary for the evaluation study to remain objective and unbiased and so that the results of this study best represent the entire population of Medicare-certified HHAs across the nation.

Several of the key characteristics we used for grouping state boundaries into clusters for selection into the model are also used in the impact analysis of our annual HHA payment updates, a fact that reinforces their relevance for evaluation. The additional proposed standards for grouping (level of utilization and socioeconomic status of patients) are also important to consider when evaluating the program, because of their current policy relevance. Large variations in the level of utilization of the home health benefit has received attention from policymakers concerned with achieving high-value health care and curbing fraud and abuse.[16] Policymakers' concerns about the role of beneficiary-level characteristics as determinants of resource use and health care quality were highlighted in the Affordable Care Act, which mandated a study [17] of access to home health care for vulnerable populations [18] and, more recently, the Improving Medicare Post-acute Care Transformation (IMPACT) Act of 2014 required the Secretary to study the relationship between individuals' socioeconomic status and resource use or quality.[19] The parameters used to define each geographic grouping are further described in the next three sections.

a. Geographic Proximity

We explained in the proposed rule that under this methodology, in order to ensure that the Medicare-certified HHAs that would be required to participate in the model are not all in one region of the country, the states in each grouping are adjacent to each other whenever possible while creating logical groupings of states based on common characteristics as described above. Specifically, analysis based on quality data and claims data found that HHAs in these neighboring states tend to hold certain characteristics in common. These include having similar patterns of utilization, proportionality of non-profit agencies, and types of beneficiaries served (for example, severity and number, type of co-morbidities, and socio-economic status). Therefore, the proposed groupings of states were delineated according to states' geographic proximity to one another and common characteristics as a means of permitting greater comparability. In addition, each of the groupings retains similar types of characteristics when compared to any other type of grouping of states.

b. Comparable Number of States in Each Grouping

Under the proposed randomized selection methodology, each geographic region, or grouping, has a similar number of states. As a result, all states had a 16.7-percent to 20-percent chance of being selected under our proposed methodology, and Medicare-certified HHAs had a similar likelihood of being required to compete in the model by using this sampling design. We asserted in the proposed rule that this sampling design would ensure that no single entity is singled out for selection, since all states and Medicare-certified HHAs would have approximately the same chance of being selected. In addition, this sampling approach would mitigate the opportunity for HHAs to self-select into the model and thereby bias any results of the test.

[16] See MedPAC Report to Congress: Medicare Payment Policy (March 2014, Chapter 9) available at *http://medpac.gov/documents/reports/mar14_entirereport.pdf*. See also the Institute of Medicine Interim Report of the Committee on Geographic Variation in Health Care Spending and Promotion of High-Value Health Care: Preliminary Committee Observations (March 2013) available at *http://iom.edu/Reports/2013/Geographic-Variation-in-Health-Care-Spending-and-Promotion-of-High-Care-Value-Interim-Report.aspx*.

[17] This study can be accessed at *http://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.html*.

[18] Section 3131(d) of the Affordable Care Act.

[19] Improving Medicare Post-acute Care Transformation (IMPACT) Act of 2014 (Public Law 113–185).

c. Characteristics of State Groupings

Without sacrificing an equal opportunity for selection, we explained in the proposed rule that the proposed state groupings are intended to ensure that important characteristics of Medicare-certified HHAs that deliver care within state boundaries can be used to evaluate the primary intervention with greater generalizability and representativeness of the entire population of Medicare-certified HHAs in the nation. Data analysis of these characteristics employed the full data set of Medicare claims and OASIS quality data. Although some characteristics, such as beneficiary age and case-mix, yielded some variations from one state to another, other important characteristics do vary substantially and could influence how HHAs respond to the incentives of the model. Specifically, home health services utilization rates, tax-exemption status of the provider, the socioeconomic status of beneficiaries (as measured by the proportion of dually-eligible beneficiaries), and agency size (as measured by average number of episodes of care per HHA), are important characteristics that could influence outcomes of the model. Subsequently, we intend to study the impacts of these characteristics for purposes of designing future value-based purchasing models and programs. These characteristics and expected variations must be considered in the evaluation study to enable us to avoid erroneous inferences about how different types of HHAs will respond to HHVBP incentives.

Under our proposed state selection methodology, state groupings reflect regional variations that enhance the generalizability of the model. In line with this methodology, each grouping includes states that are similar in at least one important aforementioned characteristic while being geographically located in close proximity to one another. Using the criteria described above, the following geographic groupings were identified using Medicare claims-based data from calendar years 2013–2014. Each of the 50 states was assigned to one of the following geographic groups:

- Group #1: (VT, MA, ME, CT, RI, NH)

States in this group tend to have larger HHAs and have average utilization relative to other states.

- Group #2: (DE, NJ, MD, PA, NY)

States in this group tend to have larger HHAs, have lower utilization, and provide care to an average number of dually-eligible beneficiaries relative to other states.

- Group #3: (AL, GA, SC, NC, VA)

States in this group tend to have larger HHAs, have average utilization rates, and provide care to a high proportion of minorities relative to other states.

- Group #4: (TX, FL, OK, LA, MS)

States in this group have HHAs that tend to be for-profit, have very high utilization rates, and have a higher proportion of dually-eligible beneficiaries relative to other states.

- Group #5: (WA, OR, AK, HI, WY, ID)

States in this group tend to have smaller HHAs, have average utilization rates, and are more rural relative to other states.

- Group #6: (NM, CA, NV, UT, CO, AZ)

States in this group tend to have smaller HHAs, have average utilization rates, and provide care to a high proportion of minorities relative to other states.

- Group #7: (ND, SD, MT, WI, MN, IA)

States in this group tend to have smaller HHAs, have very low utilization rates, and are more rural relative to other states.

- Group #8: (OH, WV, IN, MO, NE., KS)

States in this group tend to have HHAs that are of average size, have average utilization rates, and provide care to a higher proportion of dually-eligible beneficiaries relative to other states.

- Group #9: (IL, KY, AR, MI, TN)

States in this group tend to have HHAs with higher utilization rates relative to other states.

d. Randomized Selection of States

We stated in the proposed rule that upon the careful consideration of the alternative selection methodologies discussed in that rule, including selecting states on a non-random basis, we proposed to use a selection methodology based on a randomized sampling of states within each of the nine regional groupings described above. We examined data on the evaluation elements listed in this section of the proposed rule and this final rule to determine if specific states could be identified in order to fulfill the needs of the evaluation. After careful review, we determined that each evaluation element could be measured by more than one state. As a result, we determined that it was necessary to apply a fair method of selection where each state would have a comparable opportunity of being selected and which would fulfill the need for a robust evaluation. The proposed nine groupings of states, as described in this section of the proposed rule and this final rule, permit the model to capture the essential elements of the evaluation including demographic, geographic, and market factors.

We explained in the proposed rule that the randomized sampling of states is without bias to any characteristics of any single state within any specific regional grouping, where no states are excluded, and no state appears more than once across any of the groupings. The randomized selection of states was completed using a scientifically-accepted computer algorithm designed for randomized sampling. The randomized selection of states was run on each of the previously described regional groupings using exactly the same process and, therefore, reflects a commonly accepted method of randomized sampling. This computer algorithm employs the aforementioned sampling parameters necessary to define randomized sampling and omits any human interaction once it runs.

Based on this sampling methodology, SAS Enterprise Guide (SAS EG) 5.1 software was used to run a computer algorithm designed to randomly select states from each grouping. SAS EG 5.1 and the computer algorithm were employed to conduct the randomized selection of states. SAS EG 5.1 represents an industry-standard for generating advanced analytics and provided a rigorous, standardized tool by which to satisfy the requirements of randomized selection. The key SAS commands employed include a ''PROC SURVEYSELECT'' statement coupled with the ''METHOD=SRS'' option used to specify simple random sampling as the sample selection method. A random number seed was generated by using the time of day from the computer's clock. The random number seed was used to produce random number generation. Note that no stratification was used within any of the nine geographically-diverse groupings to ensure there is an equal probability of selection within each grouping. For more information on this procedure and the underlying statistical methodology, please reference SAS support documentation at: *http://support.sas.com/documentation/cdl/en/statug/63033/HTML/default/viewer.htm#statug_surveyselect_sect003.htm/.*

Based on consideration of the comments received and for the reasons discussed, we believe this state selection methodology provides the strongest evidence of producing meaningful results representative of the

national population of competing Medicare-certified HHAs and, in turn, meets the evaluation requirements of section 1115A(b)(4) of the Act.

In § 484.310, we proposed to codify the names of the states selected utilizing this proposed methodology, where one state from each of the nine groupings was selected. For each of these groupings, we proposed to use state borders to demarcate which Medicare-certified HHAs would be required to compete in this model: Massachusetts was randomly selected from Group 1, Maryland was randomly selected from Group 2, North Carolina was randomly selected from Group 3, Florida was randomly selected from Group 4, Washington was randomly selected from Group 5, Arizona was randomly selected from Group 6, Iowa was randomly selected from Group 7, Nebraska was randomly selected from Group 8, and Tennessee was randomly selected from Group 9. Thus, we explained in the proposed rule that if our methodology is finalized as proposed, all Medicare-certified HHAs that provide services in Massachusetts, Maryland, North Carolina, Florida, Washington, Arizona, Iowa, Nebraska, and Tennessee will be required to compete in this model. We invited comments on this proposed randomized selection methodology.

We summarize and respond to these comments at the end of this section. As discussed we are finalizing the state selection methodology as proposed without modification, as well as finalizing the states that were selected utilizing this methodology as codified in § 484.310.

e. Use of CMS Certification Numbers (CCNs)

We proposed that Total Performance Scores (TPS) and payment adjustments would be calculated based on an HHA's CCN [20] and, therefore, based only on services provided in the selected states. The exception to this methodology is where an HHA provides service in a state that also has a reciprocal agreement with another state. Services being provided by the HHA to beneficiaries who reside in another state would be included in the TPS and subject to payment adjustments.[21] The reciprocal agreement between states allows for an HHA to provide services to a beneficiary across state lines using its original CCN number. Reciprocal agreements are rare and, as identified using the most recent Medicare claims data from 2014, there was found to be less than 0.1 percent of beneficiaries that provided services that were being served by CCNs with reciprocal agreements across state lines. Due to the very low number of beneficiaries served across state borders as a result of these agreements, we stated in the proposed rule that we expect there to be an inconsequential impact by including these beneficiaries in the model.

We received the following comments on the proposed selection methodology. As discussed, we are finalizing the selection methodology as proposed.

Comment: A few commenters expressed concern that participating HHAs will receive payment adjustment incentives based on quality of care, while non-participating HHAs in the same geographic area might be incentivized to generate greater volume at the expense of quality. Some commenters recommended expanding the model to allow more states to participate in each succeeding year of the model to prevent non-participating states from falling behind, and some commenters also recommended CMS shorten the duration of the model to three (3) years to expedite the implementation of VBP nationally.

Response: Competing HHAs within the selected states will not be compared with non-competing HHAs within the same geographic area. HHAs will not compete across state borders, other than those HHAs that may provide services in a state that has a reciprocal agreement with another state. Specifically, the model is designed to have HHAs compete only within their state and within their size cohort, as discussed further in section F. Competing HHAs will not compete for payment adjustment incentives outside of their state or size cohort. The decision to utilize states to select HHAs for inclusion in the model was based on a range of factors related to implementation and evaluation and weighed against other selection alternatives. Specifically, we considered how the competing HHA's CCN is operationalized at the state-level and how evaluation will determine whether the payment adjustment incentive has an effect on quality within each competing HHA's state and size-cohort. In response to comments suggesting that non-competing HHAs in non-selected states might 'fall behind,' we again reference the design of the payment methodology which precludes non-competitors from competing outside of selected states and size-cohorts. The purpose of this model is to test the effect of high incentives on quality. Performance measurement is based on a linear exchange function which only includes competing-HHAs. If the model yields early positive results within these states and competing cohorts, expansion may be considered if the requirements of the statute are met. Section 1115A(c) of the Act authorizes the Secretary to expand the scope and duration of a model being tested through rulemaking, including implementation on a nationwide basis. In addition, we do not expect that HHAs in non-selected states would fall significantly behind in improving quality because of their interest in attracting beneficiaries, and improving performance on quality metrics in other programs, such as the HHQRP. Further, we believe testing the model over 5 years will provide more data with which to evaluate the effects of high incentives with greater certainty.

Comment: Several commenters expressed concern regarding how HHAs are selected to participate in the HHVBP Model. Commenters expressed concerns centered on leaving behind innovative HHAs in non-participating states. Many commenters recommended including voluntary participation by interested innovative HHAs in non-participating states and carefully documenting characteristics of selected agencies. Commenters also stated that mandatory participation may potentially put agencies with fewer resources in selected states at risk for closure.

Response: We appreciate the comments and input on the state selection methodology. The selection methodology was based on lessons learned, industry stakeholder perspectives, and an analysis of Medicare data. For the reasons discussed above, we believe that application of this methodology will result in participation by HHAs that represent an accurate reflection of the entire population of Medicare-certified HHAs, both in terms of size and in terms of quality. In general, providers do not voluntarily participate in alternate payment models when payments are at risk of being lowered. This reluctance to participate in voluntary models has been shown to cause self-selection bias in statistical assessments and thus, we believe that

[20] HHAs are required to report OASIS data and any other quality measures by its own unique CMS Certification Number (CCN) as defined under *title 42, chapter IV, subchapter G,* part 484, § 484.20 Available at URL *http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title42/42cfr484_main_02.tpl.*

[21] See Chapter 2 of the State Operations Manual (SOM), Section 2184—Operation of HHAs Cross State Lines, stating ''When an HHA provides services across State lines, it must be certified by the State in which its CCN is based, and its personnel must be qualified in all States in which they provide services. The appropriate SA completes the certification activities. The involved States must have a written reciprocal agreement permitting the HHA to provide services in this manner.''

allowing voluntary participation by interested HHAs in non-participating states could present challenges to our ability to evaluate the model. In reference to concerns that some HHAs with fewer resources may be at greater risk for closure, CMS will continue to monitor for direct associations between HHAs that exhibit poor performance and the effect of the payment adjustment incentive.

Comment: Commenters questioned the fairness of being required to participate in both the proposed HHVBP Model and the proposed Comprehensive Care Joint Replacement Model (CJR).

Response: HHAs located in the MSAs included in the proposed CJR Model will not be excluded from the HHVBP Model. HHAs are not participants in the proposed CJR Model. As proposed, Hospitals are the participants. Home health payments for beneficiaries participating in the proposed CJR are not subject to alteration under that model. As proposed, only the hospital payments are at risk. HHAs will continue to be paid for the services they provide to and bill for Medicare beneficiaries that are participating in the proposed CJR.

Comment: Some commenters expressed concern that state selection will not sufficiently represent the Medicare population at large and impacts a disproportionate portion of the Medicare population. Another commenter recommended CMS consider a hardship exemption for HHAs with a high percentage of Medicaid services or that serve a high percentage of dual-eligible patients. Commenters also expressed concern on various topics around state selection, including lack of complex urban areas and corresponding utilization patterns; peer cohorts based simply on size and state; consideration of profit or non-profit status, hospital-based or free-standing HHAs, and rural and urban status, all related to either under-representation or potential bias in the selected competing HHAs, or over-representation of certain sub-populations of Medicare beneficiaries included in the model One commenter also recommended excluding states with populations under a certain threshold, such as 2.5 million, to ensure a large population and making the model more robust.

Response: We have taken into consideration the level of utilization and socioeconomic status of patients in grouping states for random selection, and will evaluate the model sensitive to these differences. The alternative methodologies proposed by stakeholders did not fulfill the requirements to be generalizable and representative of the entire population of Medicare-certified HHAs in the nation. Our mechanisms, including tracking quality improvement through performance measures and conducting comparative analysis based on variations on HHA size, geographic location, organizational structure, and other HHA demographic information will be utilized for evaluating the model. We have conducted extensive analysis on the population of HHAs included in the model and are confident we will be able to effectively extrapolate model results to the general population. In part, this analysis is referenced in Table 24 and finds an association between the higher proportion of dually-eligible beneficiaries serviced and better performance. The performance and subsequent payment distributions are consistent with respect to the four described categories (that is dually-eligible, level of acuity, percent rural, and organization type). In addition, CMS conducted a statistical analysis of the sample size of HHAs provided by the nine selected states and determined it was sufficient to effectively detect the model's impact.

Comment: One commenter stated that Maryland should not be included in the selected states for HHVBP because Maryland is already participating in the Maryland All Payer Model. Another commenter suggested that Florida not be included in both HHVBP and ACO bundling models because it is difficult for HHAs to track compliance with all relevant policy and regulatory requirements.

Response: We understand the variances in state demographics, state regulatory structures, and the interplay with other federal initiatives, and intend to evaluate how the HHVBP Model performs in the selected states, including interactions with existing policies, models and programs operating in the specific states selected. For example, the Maryland All-Payer Model does not directly intersect with HHVBP because it is a hospital-based model, so we do not believe this is a compelling reason to exclude this state. In addition, concerns that Florida Medicare-certified HHAs would also be included in ACO models is not a compelling reason to exclude this state because other states have HHAs participating within ACO models. We do, however, recognize the need to evaluate the impact of the model in the context of the various policies and programs operating in those states where participating HHAs serve patients. As discussed, after consideration of the public comments received, we are finalizing our proposal to include the nine selected states as stated in Section 2. In comparison to other alternatives for selection, we believe the proposed randomized state-selection method provides an equitable process of selection and a comparable number of HHAs to account for the power to detect statistical variations between the payment adjustment incentive as well as non-financial incentives and their effect on quality. The nine selected states finalized here will participate for the full duration of the model.

Comment: One commenter suggested that selected states be more homogenous in having no prior experience in VBP and to exclude any states that participated in 2008–2010 HH Pay for Performance demonstration.

Response: We understand concerns about previous program and model participation in that some competitors may be more prepared for VBP in comparison to others. While we are not convinced that we can attribute the level of preparedness for VBP to the HHA's experience with the HHP4P Demonstration or any other VBP initiative, we intentionally developed a methodology for randomized selection of states to prevent bias to any characteristics of any single state within any specific grouping. As a result of this randomness of selection, the design permits an equitable opportunity for selection and provides a greater capacity to generalize results to the entire population of Medicare-certified HHAs in the U.S.

Final Decision: For the reasons stated and in consideration of the comments received, we are finalizing the state selection methodology as proposed, including the nine states selected under this methodology as codified at § 484.310. All Medicare-certified HHAs that provide services in Massachusetts, Maryland, North Carolina, Florida, Washington, Arizona, Iowa, Nebraska, and Tennessee will be required to compete in the HHVBP Model.

D. Performance Assessment and Payment Periods

1. Performance Reports

We proposed to use quarterly performance reports, annual payment adjustment reports, and annual publicly-available performance reports as a means of developing greater transparency of Medicare data on quality and aligning the competitive forces within the market to deliver care based on value over volume, and are finalizing this reporting structure here. The publicly-reported reports will inform home health industry

stakeholders (consumers, physicians, hospitals) as well as all competing HHAs delivering care to Medicare beneficiaries within selected state boundaries on their level of quality relative to both their peers and their own past performance.

We proposed that competing HHAs would be scored for the quality of care delivered under the model based on their performance on measures compared to both the performance of their peers, defined by the same size cohort (either smaller- or larger-volume cohorts as defined in § 484.305), and their own past performance on the measures. We also proposed in § 484.305 to define larger-volume cohort to mean the group of competing HHAs within the boundaries of a selected state that are participating in Home Health Care Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) in accordance with § 484.250 and to define smaller-volume cohort to mean the group of HHAs within the boundaries of a selected state that are exempt from participation in HHCAHPS in accordance with § 484.250. We also proposed where there are too few HHAs in the smaller-volume cohort in each state to compete in a fair manner (that is, when there is only one or two HHAs competing within a small cohort in a given state), these HHAs would be included in the larger-volume cohort for purposes of calculating the total performance score and payment adjustment without being measured on HHCAHPS. We requested comments on this proposed methodology.

Comment: A few commenters mentioned the cohort methodology in their submissions. One commenter offered support to CMS's decision to measure each HHA against a comparable cohort by size of agency and agreed that large HHAs with multiple locations have a scale that smaller agencies do not, rendering outcomes difficult to measure by comparison. Conversely, other commenters did not support CMS's proposal to base performance payments on relative performance within HHA peer cohorts, with one commenter recommending payments should be based solely on comparisons to prior year performance and another suggesting using national data for all HHAs, taking into account socio-demographic factors.

Response: Analysis of existing HHA data (*see* 80 FR 39910, Table 26—HHA Cohort Payment Adjustment Distributions by State) indicates dividing HHAs into large and small cohorts results in a higher likelihood of fair and accurate performance comparisons and the subsequent payment adjustments. We intend to closely evaluate model outcomes across a range of demographic factors within the small and large cohorts, and may modify the model if warranted in subsequent years.

Final Decision: After considering the comments received, we are finalizing the large and small cohort structure as proposed.

We proposed that quality performance scores and relative peer rankings would be determined through the use of a baseline year (calendar year 2015) and subsequent performance periods for each competing HHA. Further, these reports will provide competing HHAs with an opportunity to track their quality performance relative to their peers and their own past performance. Using these reports provides a convenient and timely means for competing HHAs to assess and track their own respective performance as capacity is developed to improve or sustain quality over time.

Beginning with the data collected during the first quarter of CY 2016 (that is, data for the period January 1, 2016 to March 31, 2016), and for every quarter of the model thereafter, we proposed to provide each Medicare-certified HHA with a quarterly report that contains information on their performance during the quarter. We stated that we expect to make the first quarterly report available in July 2016, and make performance reports for subsequent quarters available in October, January and April. The final quarterly report would be made available in April 2021. We proposed that the quarterly reports would include a competing HHA's model-specific performance results with a comparison to other competing HHAs within its cohort (larger- or smaller-volume) within the state boundary. These model-specific performance results will complement all quality data sources already being provided through the QIES system and any other quality tracking system possibly being employed by HHAs. We note that all performance measures that competing HHAs will report through the QIES system are also already made available in the CASPER Reporting application. The primary difference between the two reports (CASPER reports and the model-specific performance report) is that the model-specific performance report we proposed consolidates the applicable performance measures used in the HHVBP Model and provides a peer-ranking to other competing HHAs within the same state and size-cohort. In addition, CASPER reports will provide quality data earlier than model-specific performance reports because CASPER reports are not limited by a quarterly run-out of data and a calculation of competing peer-rankings. For more information on the accessibility and functionality of the CASPER system, please reference the CASPER Provider Reporting Guide.[22]

We proposed that the model-specific quarterly performance report will be made available to each HHA through a dedicated CMMI model-specific platform for data dissemination and include each HHA's relative ranking amongst its peers along with measurement scores and overall performance rankings.

We also proposed that a separate payment adjustment report would be provided once a year to each of the competing HHAs. This annual report will focus primarily on the payment adjustment percentage and include an explanation of when the adjustment will be applied and how this adjustment was determined relative to performance scores. Each competing HHA will receive its own annual payment adjustment report viewable only to that HHA.

We also proposed a separate, annual, publicly available quality report that would provide home health industry stakeholders, including providers and suppliers that refer their patients to HHAs, with an opportunity to confirm that the beneficiaries they are referring for home health services are being provided the best possible quality of care available.

We invited comments on the proposed reporting framework.

Comment: Some commenters expressed support for the proposed HHVBP reporting framework of quarterly/annual reports and public reporting. Specifically, one commenter supported CMS in its efforts to provide agencies with performance reports and notices of payment change prior to the imposition of any payment penalty. One commenter suggested that CMS employ a continuous improvement cycle with industry stakeholders to maximize the value of the annual publicly available quality reports so that information does not mislead beneficiaries. Another commenter supported the proposed timeliness with which quarterly reports would be made available to HHAs after agency data submission, but expressed doubts about CMS's ability to comply with its own proposed timeline for

[22] The Casper Reporting Guide is available at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/downloads/HHQICASPER.pdf*).

releasing quarterly reports. Conversely, a few commenters suggested that challenges related to providing updated quarterly reports on performance should be considered more fully before implementation. Some commenters also suggested that CMS should include in future rulemaking how quarterly reconciliation will be implemented. Another commenter posited that current reporting timeframes, even if complied with, do not give small and rural HHAs enough lead time to improve quality.

Response: We thank the commenters for their overall support for the inclusion of performance reports for all competing HHAs and industry stakeholders. In reference to concerns with the timelines for delivery of reports, we intend to meet all performance report timeline expectations. However, in this final rule, we are revising the timelines for notification and preview of the annual payment adjustment to remove the references to specific days of the month set forth in the proposed rule. This will allow for greater flexibility for the industry and CMS to meet these expectations and to account for the possibility of a specific day falling on a weekend or holiday. Through technical assistance efforts, we will continuously work with all competing-HHAs and stakeholders in how these reports are interpreted and reconciled and how they may be used to support transformational efforts to deliver care within the HHVBP system of incentives.

Comment: Some comments offered their general support of the HHVBP public reporting of performance data because it will inform industry stakeholders of quality improvements, and noted several areas of value in performance data. Specifically, commenters suggested public reports would permit providers to steer patients to high-performing HHAs based on quality reports. Commenters offered that to the extent possible, accurate comparable data will provide HHAs the ability to improve care delivery and patient outcomes, while better predicting and managing quality performance and payment updates. These same commenters urged CMS to consider the HHA information technology infrastructure needed to support complex performance tracking connected with a VBP program. Overall, commenters generally encouraged the transparency of data pertaining to the HHVBP Model.

Response: As part of the HHVBP Model, we will provide technical assistance and other tools for HHAs in selected states to encourage best practices when making changes to improve quality. We anticipate that the HHVBP learning network will be an integral part of data monitoring and performance related discussion and feedback. As indicated in the proposed rule (see 80 FR 39873) we also intend to make public competing HHAs' Total Performance Scores with the intention of encouraging providers and other stakeholders to utilize quality ranking when selecting an HHA.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing the reporting framework for the HHVBP Model as proposed without modification.

2. Payment Adjustment Timeline

We proposed to codify in § 484.325 that competing HHAs will be subject to upward or downward payment adjustments based on the agency's Total Performance Score. We proposed that the model would consist of 5 performance years, where each performance year would link performance to the opportunity and risk for payment adjustment up to an applicable percent as defined in proposed § 484.305. The 1st performance year would transpire from January 1, 2016 through December 31, 2016, and subsequently, all other performance years would be assessed on an annual basis through 2020 unless modified through rulemaking. We proposed that the first payment adjustment would begin January 1, 2018 applied to that calendar year based on 2016 performance data. Subsequently, all other payment adjustments would be made on an annual basis through the conclusion of the model. We proposed that payment adjustments would be increased incrementally over the course of the model with a maximum payment adjustment of 5-percent (upward or downward) in 2018 and 2019, a maximum payment adjustment of 6-percent (upward or downward) in 2020, and a maximum payment adjustment of 8-percent (upward or downward) in 2021 and 2022. We proposed to implement this model over a total of seven (7) years beginning on January 1, 2016, and ending on December 31, 2022.

After consideration of comments received, we are modifying the final payment adjustment percentages as discussed in Section G and finalized in § 484.305.

We proposed that the baseline year would run from January 1, 2015 through December 31, 2015 and provide a basis from which each respective HHA's performance will be measured in each of the performance years. Data related to performance on quality measures will continue to be provided from the baseline year through the model's tenure using a dedicated HHVBP web-based platform specifically designed to disseminate data in this model (this ''portal'' will present and archive the previously described quarterly and annual quality reports). Further, HHAs will provide performance data on the three new quality measures discussed in section E5 through this platform as well. Any additional measures added through the model's tenure and proposed through future rulemaking, will use data from the previous calendar year as the baseline.

We proposed that new market entries (specifically, new competing HHAs delivering care in the boundaries of selected states) would also be measured from their first full calendar year of services in the state, which would be treated as baseline data for subsequent performance years under this model. The delivery of services would be measured by the number of episodes of care for Medicare beneficiaries and used to determine whether an HHA falls into the smaller- or larger-volume cohort. Furthermore, these new market entries would be competing under the HHVBP Model in the first full calendar year following the full calendar year baseline period.

We proposed that HHAs would be notified in advance of their first performance level and payment adjustment being finalized, based on the 2016 performance period (January 1, 2016 to December 31, 2016), with their first payment adjustment to be applied January 1, 2018 through December 31, 2018. We proposed that each competing HHA would be notified of this first pending payment adjustment on August 1, 2017 and a preview period would run for 10 days through August 11, 2017. This preview period would provide each competing HHA an opportunity to reconcile any performance assessment issues relating to the calculation of scores prior to the payment adjustment taking effect, in accordance with the process in Section H—Preview and Period to Request Recalculation. Once the preview period ends, any changes would be reconciled and a report finalized no later than November 1, 2017 (or 60 days prior to the payment adjustment taking affect). As discussed further in section H, we are finalizing this proposal with modification, to allow for a longer preview period of quarterly performance reports and annual payment adjustment reports for all competing HHAs. Specifically, we are extending the preview period such that each HHA will be notified of the first pending payment adjustment in

August 2017 and followed by a 30-day preview period.

We proposed that subsequent payment adjustments would be calculated based on the applicable full calendar year of performance data from the quarterly reports, with competing HHAs notified and payments adjusted, respectively, every year thereafter. As a sequential example, the second payment adjustment will occur January 1, 2019 based on a full 12 months of the CY 2017 performance period. Notification of the second adjustment will occur in August of 2018, followed by a 30-day preview period (under our modifications to the proposed notification and preview timeline, as discussed previously) and followed by reconciliation prior to November 1, 2018. Subsequent payment adjustments will continue to follow a similar timeline and process.

Beginning in CY 2019, we may consider revising this payment adjustment schedule and updating the payment adjustment more frequently than once each year if it is determined that a more timely application of the adjustment as it relates to performance improvement efforts that have transpired over the course of a calendar year would generate increased improvement in quality measures. Specifically, we would expect that having payment adjustments transpire closer together through more frequent performance periods would accelerate improvement in quality measures because HHAs would be able to justify earlier investments in quality efforts and be incentivized for improvements. In effect, this concept may be operationalized to create a smoothing effect where payment adjustments are based on overlapping 12-month performance periods that occur every 6 months rather than annually. As an example, the normal 12-month performance period occurring from January 1, 2020 to December 31, 2020 might have an overlapping 12-month performance period occurring from July 1, 2020 to June 30, 2021. Following the regularly scheduled January 1, 2022 payment adjustments, the next adjustments could be applied to payments beginning on July 1, 2022 through December 31, 2022. Depending on if and when more frequent payment adjustments would be applied, performance would be calculated based on the applicable 12-months of performance data, HHAs notified, and payments adjusted, respectively, every six months thereafter, until the conclusion of the model. As a result, separate performance periods would have a 6-month overlap through the conclusion of the model. HHAs would be notified through rulemaking and be given the opportunity to comment on any proposed changes to the frequency of payment adjustments.

We received the following comments on this proposed payment adjustment schedule.

Comment: Many commenters recommended a delay in the payment adjustment schedule. One commenter recommended that CMS collect and report quality data for 2016 as an educational exercise only, and use 2017 data as the basis to adjust payment rates beginning in October 2018. This same commenter also recommended CMS delay the first year of rate adjustments by nine months to October 1, 2018. Another commenter supported the importance of HHAs in the VBP program not experiencing payment adjustments until two years after the performance year in an effort to minimize the programmatic impact and allow agencies the ability to plan ahead. Several commenters suggested a one year delay in implementing the model, citing the timeline as too aggressive. A few commenters posited that it is difficult for HHAs in the HHVBP Model to begin preparing for the model now without a final rule to guide them, and noted concern that the final rule will publish so close to the beginning of the model. Some commenters specifically supported payment adjustment on an annual basis, positing adjustments made more frequently than once each year may jeopardize the financial viability of smaller volume providers, causing further disruption, as multiple adjustments throughout a fiscal year would be difficult to manage. Further, due to the delay in data collection and reporting used in these programs, significant change in performance in shorter increments would be unlikely, as quality improvement initiatives take time to fully implement and for results to be realized. Another commenter offered that any move to increase the payment adjustment to every 6 months would not offer HHAs sufficient time to improve clinician practice patterns and evaluate the effectiveness of the changes made.

Response: We are finalizing the proposed payment adjustment timeline for model implementation on an annual basis. Any changes to the frequency of payment adjustments under the model would be implemented through future rulemaking. In response to concerns with having the first performance year tied to an annual payment adjustment in 2018, we expect that competing HHAs will begin transforming delivery patterns as soon as this model is implemented. Delaying the payment adjustment, which is the primary intervention in this model, limits the ability to understand the intervention's associated effect on quality. We expect that model-specific technical assistance which will be made available to all competing-HHAs will provide the appropriate information and tools needed to transform how care is delivered within the HHVBP Model.

Comment: Several commenters expressed concern about the time lag between the performance year and the year in which payment adjustments would be applied and strongly recommended less time lapse between performance measurement and payment adjustment. One commenter recommended CMS revise the HHVBP Model so that rewards and penalties are imposed within 6 months of the end of the measurement period, rather than a full year later, and consider imposing the rewards and penalties for 6 months at a time, allowing the rates to return to normal for the first 6 months of the subsequent year. Another commenter offered that this expedited timeframe would allow agencies working towards improvement to have the resources available to do so more immediately.

Response: We agree that there may be merit in closing the gap between performance measurement and payment adjustments in order to more effectively connect improvements in quality care with financial incentives. We will closely evaluate the efficacy of the model, and may consider whether shorter performance assessment cycles (and by extension, shorter payment adjustment cycles) are warranted. Any such changes will be implemented through future rulemaking.

Final Decision: For the reasons discussed, we are finalizing the payment adjustment timeline as proposed with modification. Specifically, we are finalizing that payment adjustments will be increased incrementally over the course of the model with a maximum payment adjustment of 3-percent (upward or downward) in 2018, a maximum payment adjustment of 5-percent (upward or downward) in 2019, a maximum payment adjustment of 6-percent (upward or downward) in 2020, a maximum payment adjustment of 7-percent (upward or downward) in 2021, and a maximum payment adjustment of 8-percent (upward or downward) in 2022. We are also modifying the timeline for notification and preview of the pending payment adjustment to allow for greater flexibility and to account for the possibility of a specific day falling on a weekend or holiday,

and also to provide a longer preview period for HHAs. Specifically, we are extending the preview period such that each HHA will be notified of each pending payment adjustment in August of the year prior to the payment adjustment being applied and the preview period will run for 30 days of that year. We also removed specific days of the month previously referenced in the proposed rule to allow for greater flexibility.

E. Quality Measures

1. Objectives

We proposed that initially, the measures for the HHVBP Model would be predominantly drawn from the current OASIS,[23] which is familiar to the home health industry and readily available for utilization by the model. In addition, the HHVBP Model provides us with an opportunity to examine a broad array of quality measures that address critical gaps in care. A recent comprehensive review of the VBP experience over the past decade, sponsored by the Office of the Assistant Secretary for Planning and Evaluation (ASPE), identified several near- and long-term objectives for HHVBP measures.[24] The recommended objectives emphasize measuring patient outcomes and functional status; appropriateness of care; and incentives for providers to build infrastructure to facilitate measurement within the quality framework.[25] The following seven objectives derived from this study served as guiding principles for the selection of the proposed measures for the HHVBP Model:

1. Use a broad measure set that captures the complexity of the HHA service provided;
2. Incorporate the flexibility to include Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014 measures that are cross-cutting amongst post-acute care settings;
3. Develop second-generation measures of patient outcomes, health and functional status, shared decision making, and patient activation;
4. Include a balance of process, outcome, and patient experience measures;
5. Advance the ability to measure cost and value;
6. Add measures for appropriateness or overuse; and,
7. Promote infrastructure investments.

2. Methodology for Selection of Quality Measures

a. Direct Alignment With National Quality Strategy Priorities

A central driver of the proposed measure selection process was incorporating innovative thinking from the field while simultaneously drawing on the most current evidence-based literature and documented best practices. Broadly, we proposed measures that have a high impact on care delivery and support the combined priorities of HHS and CMS to improve health outcomes, quality, safety, efficiency, and experience of care for patients. To frame the selection process, we utilized the domains described in the CMS Quality Strategy that maps to the six National Quality Strategy (NQS) priority areas (*see* Figure 3 for CMS domains).[26]

[23] For detailed information on OASIS see the official CMS OASIS Web resource available at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/OASIS/index.html?redirect=/oasis.* See also industry resource available at *http://www.oasisanswers.com/index.htm,* specifically updated OASIS component information available at *www.oasisanswers.com/LiteratureRetrieve.aspx?ID=215074*).

[24] U.S. Department of Health and Human Services. Office of the Assistant Secretary for Planning and Evaluation (ASPE) (2014) *Measuring Success in Health Care Value-Based Purchasing Programs.* Cheryl L. Damberg *et al.* on behalf of RAND Health.

[25] *Id.*

[26] The CMS Quality Strategy is discussed in broad terms at URL *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/CMS-Quality-Strategy.html.* CMS Domains appear presentations by CMS and ONC (available at *http://www.cms.gov/eHealth/downloads/Webinar_eHealth_March25_eCQM101.pdf*) and a CMS discussion of the NQS Domains can be found at URL *http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/2014_ClinicalQualityMeasures.html.*

Figure 3: CMS Framework for Measurement Mapped to the Six National Quality Strategy Domains

b. Referenced Quality Measure Authorities

We proposed at § 484.315 that Medicare-certified HHAs will be evaluated using a starter set of quality measures (''starter set'' refers to the quality measures for the first year of this model) designed to encompass multiple NQS domains, and provide future flexibility to incorporate and study newly developed measures over time. New and evolving measures will be considered for inclusion in subsequent years of this model and proposed through future rulemaking.

To create the proposed starter set we began researching the current set of OASIS measures that are being used within the health home environment.[27] Following that, we searched for endorsed quality measures using the National Quality Forum (NQF) Quality Positioning System (QPS),[28] selecting measures that address all possible NQS domains. We further examined measures on the CMS-generated Measures Under Consideration (MUC) list,[29] and reviewed other relevant measures used within the health care industry, but not currently used in the home health setting, as well as measures required by the IMPACT Act of 2014. Finally, we searched the National Quality Measures Clearinghouse (NQMS) to identify evidence-based measures and measure sets.

c. Key Policy Considerations and Data Sources

So that measures for the HHVBP Model take a more holistic view of the patient beyond a particular disease state or care setting, we proposed, and are finalizing in this rule, measures, which include outcome measures as well as process measures, that have the potential to follow patients across multiple settings, reflect a multi-faceted approach, and foster the intersection of health care delivery and population health. A key consideration behind this approach is to use in performance year one (PY1) of the model proven measures that are readily available and meet a high impact need, and in subsequent model years augment this starter set with innovative measures that have the potential to be impactful and fill critical measure gap areas. All substantive changes or additions to the starter set or new measures would be proposed in future rulemaking. This approach to quality measure selection aims to balance the burden of collecting data with the inclusion of new and important measures. We carefully considered the potential burden on HHAs to report the measure data when developing the starter set, and prioritized measures that will draw both from claims data and data already collected in OASIS.

The majority of the measures proposed, as well as the majority of measures being finalized, in this model will use OASIS data currently being reported to CMS and linked to state-specific CCNs for selected states in order to promote consistency and to reduce the data collection burden for providers. Utilizing primarily OASIS data will allow the model to leverage reporting structures already in place to evaluate performance and identify weaknesses in care delivery. This model will also afford the opportunity to study measures developed in other care settings and new to the home health industry (hereinafter referred to as ''New Measures''). Many of the New Measures have been used in other health care settings and are readily applicable to the home health environment (for example, influenza vaccination coverage for health care personnel). The final New Measures for PY1 are described in detail below. We proposed, and are finalizing with modification, in PY1 to collect data on these New Measures which have already been tested for validity, reliability, usability/feasibility, and sensitivity in

[27] All data for the starter set measures, not including New Measures, is currently collected from HHAs under §§ 484.20 and 484.210.

[28] The NQF Quality Positioning System is available at *http://www.qualityforum.org/QPS*.

[29] To review the MUC List see *https://www.qualityforum.org/Setting_Priorities/Partnership/Measures_Under_Consideration_List_2014.aspx*.

other health care settings but have not yet been validated within the home health setting. As discussed in further detail under ''E5.New Measures,'' we are finalizing three of the four proposed New Measures for reporting under this model. HHVBP will study if their use in the home health setting meets validity, reliability, usability/feasibility, and sensitivity to statistical variations criteria. For PY1, we proposed that HHAs could earn points to be included in the Total Performance Score (TPS) simply for reporting data on New Measures (*see* Section—Performance Scoring Methodology). To the extent we determine that one or more of the New Measures is valid and reliable for the home health setting, we will consider in future rulemaking to score Medicare-certified HHAs on their actual performance on the measure.

3. Selected Measures

The initial set of measures proposed for PY1 of the model utilizes data collected via OASIS, Medicare claims, HHCAHPS survey data, and data reported directly from the HHAs to CMS. We proposed, in total, 10 process measures and 15 outcome measures (*see* Figure 4a of the proposed rule) plus four New Measures (*see* Figure 4b of the proposed rule). As discussed below, we are finalizing the proposed starter set of measures with modification; specifically, under our final policy, there are in total six process measures and 15 outcome measures (*see* Figure 4a of this final rule) and three New Measures (see Figure 4b of this final rule). Process measures evaluate the rate of HHA use of specific evidence-based processes of care based on the evidence available. Outcomes measures illustrate the end result of care delivered to HHA patients. When available, NQF endorsed measures will be used. This set of measures will be subject to change or retirement during subsequent model years and revised through the rulemaking process. For example, we may propose in future rulemaking to remove one or more of these measures if, based on the evidence; we conclude that it is no longer appropriate for the model due to its performance being topped-out. We will also consider proposing to update the measure set if new measures that address gaps within the NQS domains became available. We will also consider proposing adjustments to the measure set based on lessons learned during the course of the model. For instance, in light of the passage of the IMPACT Act of 2014, which mandates the collection and use of standardized post-acute care assessment data, we will consider proposing in future rulemaking to adopt measures that meet the requirements of the IMPACT Act as soon as they became available. Provisions of the IMPACT ACT applicable to HHAs will take effect beginning CY 2017. Currently, IMPACT measures for home health are in the development stage and not available for inclusion in the starter set of measures. We requested public comment on the methodology for constructing the proposed starter set of quality measures and on the proposed selected measures.

Comment: Many commenters expressed concern at the number of measures proposed for use in the model, with the primary concern related to the burden placed on HHAs to focus on so many different areas at once, as well as the effort required to track and report New Measures at the same time. Many commenters suggested decreasing the number of measures, particularly process measures, in the starter set and expressed the opinion less measures would allow for greater targeting of quality improvement.

Response: We have considered the commenters' suggestions and agree that more narrowly focusing the starter set of measures being tested in the HHVBP Model may increase the likelihood of HHA success in their quality improvement and transformation efforts. In addition, we were encouraged by commenters to re-evaluate the proposed starter set of measures and specifically include fewer process measures in the final starter set. After consideration of these comments we are reducing the number of measures in the final starter set. We proposed that the starter set would include 25 measures that are currently reported through existing systems (in addition to the proposed New Measures). Twenty of these proposed measures were process/outcomes measures collected on the OASIS or through claims data and five are HHCAHPs. We agree with commenters that placing an emphasis on outcome measures over process measures determines performance in a way most meaningful to patients. For each process measure in the proposed starter set we analyzed what specific metrics were being assessed in relation to the entire starter set and how close the measure was to being 'topped-out' based on the most recent available data. Based on these comments and for the reasons stated we are reducing the number of process measures by four resulting in a final starter set with six process measures, 10 outcome measures and five HHCAHPS. In addition, we have decreased the New Measures from four to three (as discussed later in this section). We are not including the following proposed measures in the final starter set: Timely Initiation of Care (NQF0526), Pressure Ulcer Prevention and Care (NQF0538), Multifactor Fall Risk Assessment Conducted for All Patients who can Ambulate (NQF0537), Depression assessment conducted (NQF0518), and Adverse Event for Improper Medication Administration and/or Side Effects (New Measures).

Comment: We received some public comments expressing concern that all measures in the starter set are not endorsed by NQF.

Response: We agree that wherever possible NQF-endorsed measures should be utilized. When creating the proposed starter set it was our policy to utilize an NQF-endorsed measure whenever one was available to address a known quality improvement issue in home health. For other measures included in the finalized starter set, we are utilizing long-standing OASIS data components to track quality. As an innovation model, it is our intention to closely monitor the quality measures and to address any needed adjustments through future rulemaking. In addition, the information we learn during this model may, where appropriate, be utilized to assist in effective measures gaining endorsement within the HH service line.

Comment: We received a number of public comments citing the settlement agreement in *Jimmo* v. *Sebelius* and expressing concern with the inclusion of five measures related to improvement and articulating the importance of including measures related to patient stabilization and maintenance.

Response: We appreciate the feedback on the measures methodology and acknowledge that skilled care may be necessary to improve a patient's current condition, to maintain the patient's current condition, or to prevent or slow further deterioration of the patient's condition, as was clarified through the *Jimmo* settlement. The *Jimmo* settlement agreement, however, pertains only to the clarification of CMS's manual guidance on coverage standards, not payment measures, and expressly does not pertain to or prevent the implementation of new regulations, including new regulations pertaining to the HHVBP Model. While we considered using some of the stabilization measures for this model, we found that in contrast to the average HHA improvement measure scores which ranged from 56- to 65-percent, the average HHA stabilization measure scores ranged from 94- to 96-percent. Using measures where the average rates are nearly 100-percent would not allow

for meaningful comparisons between competing-HHAs on the quality of care delivered. In addition, we performed analyses on whether the proportion of an individual HHA's episodes of care relating to ''low therapy'' episodes (episodes with 0–5 therapy visits) and the proportion of an individual HHA's total therapy visits relating to maintenance therapy would have an impact on the measures related to improvement used in the model. HHAs that have a higher proportion of patients that require maintenance therapy or patients that receive little to no therapy at all would not be expected to perform well on the measures related to improvement. Although the functional measures related to improvement are expected to be sensitive to the provision of therapy, our analysis did not determine that HHAs' performance on the measures related to improvement were negatively impacted by whether they had a higher proportion of maintenance therapy patients or a higher proportion of patients that had little to no therapy.

Based on these two analyses, CMS expects that, at this time, HHAs that provide care to more beneficiaries that are maintenance-oriented will not be at a disadvantage in the model. We also do not expect any access issues for beneficiaries that have more maintenance needs because HHAs would not know whether the beneficiary has restorative or maintenance needs until the HHA initiates the episode of care and conducts the necessary assessments. Once the initial OASIS assessment is complete, the beneficiary will be included in measure calculation.

We are finalizing the measures related to improvement as proposed in the proposed rule, however, we are sensitive to this issue and will closely monitor whether HHVBP Model-specific measures have the potential to impact beneficiaries that require skilled care to maintain the patient's current condition, or to prevent or slow further deterioration of the patient's condition. If necessary, we will use future rulemaking if we determine that this issue has a meaningful detrimental effect on payments of those HHAs that provide more maintenance care. In addition, we are currently working on the development of valid and reliable stabilization measures that may be incorporated into the HHVBP Model in the future. One stabilization measure is referenced in Table 20 'Future Setting-specific Measure Constructs under Consideration'. The HHVBP Model is designed such that any measures determined to be good indicators of quality will be considered for use in the HHVBP Model in future years and may be added through the rulemaking process.

Comment: Although CMS received general support for the use of OASIS data, some commenters expressed concern with OASIS issues related to data validation or with the use of certain OASIS data elements as the basis for measuring quality.

Response: We appreciate the comments on this issue and are committed to balancing concerns related to provider burden with concerns related to data validation and accurate reporting of information to CMS via OASIS. In designing the HHVBP Model, we intentionally crafted a starter set of measures to minimize burden. Specifically, the majority of measures rely on OASIS data already reported by HHAs. In response to a 2012 report issued by the Office of the Inspector General,[30] CMS affirmed a series of monitoring activities related to OASIS education, training and also updated the HHA surveyor worksheet related to HHA OASIS compliance. As part of the monitoring and evaluation of this model CMMI will utilize CMS best practices for determining the validity of OASIS data and detecting fraud related to data submission. Should validation concerns arise, CMMI may consider implementing data validation processes. The model will closely monitor reported measures for indications of fraud and CMS will propose any changes to the model as needed in future rulemaking.

Comment: A few commenters expressed specific concern that measures in the starter set will be duplicative of, or will not take into account the future measures implemented under the IMPACT Act, and suggested consciously aligning the HHVBP starter set with the IMPACT Act as it is implemented.

Response: We agree the HHVBP measure set should be in alignment with the IMPACT Act. As stated in the HHVBP proposed rule and finalized here, as soon as new IMPACT measures are finalized and approved, we will consider how best to incorporate and align IMPACT Act measures with the HHVBP measure in future rulemaking. As an example, once baseline data is available for NQF #0678 'pressure ulcers' which will be implemented in CY 2016, we will consider using this measure in future years through rulemaking.

Comment: One commenter recommended eliminating all vaccine-related measures, as vaccines are not the primary focus of home health care. The commenter stated that the use of vaccine-related measures creates misalignment between patient centered principles and HHA financial incentives.

Response: We have included two immunization measures in the starter set that are NQF-endorsed as preventive services measures and already collected by home health agencies. These measures are the pneumococcal vaccine and the influenza vaccines for HHA beneficiaries. The immunization measures that are New Measures, the shingles vaccine and influenza vaccines for HHA staff, under the final HHVBP Model serve important public health functions. The New Measure for influenza vaccination for HHA staff is a well-established scientific principle as being a sound mechanism for protecting vulnerable patient populations from avoidable disease transmission. In addition, this New Measure is utilized in every care setting except home health, and is intended to close the gap in protection. The Shingles vaccination is the other New Measure utilizing immunizations, and its efficacy in either preventing shingles entirely or reducing the pain symptoms associated with shingles is directly related to improvement of patient quality of life. The measurements related to vaccination are not connected to whether a patient does or does not receive the vaccinations. Patients are free to decline vaccinations and competing HHAs are not financially penalized for the patient's choice.

Final Decision: For the reasons discussed and in consideration of the comments received we are not finalizing the following proposed measures:

- Timely Initiation of Care (NQF0526)
- Pressure Ulcer Prevention and Care (NQF0538)
- Multifactor Fall Risk Assessment Conducted for All Patients Who Can Ambulate (NQF0537)
- Depression assessment conducted (NQF0518)
- Adverse Event for Improper Medication Administration and/or Side Effects (New Measure)

We are finalizing the remaining quality measures as proposed. The final starter set includes 6 process measures, 10 outcome measures and 5 HHCAHPS, and three New Measures.

The final PY1 measures are presented in the following figures.

[30] Cite for OIG report here.

FIGURE 4a: FINAL PY1 MEASURES [31]

NQS Domains	Measure title	Measure type	Identifier	Data source	Numerator	Denominator
Clinical Quality of Care.	Improvement in Ambulation-Locomotion.	Outcome	NQF0167	OASIS (M1860)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less impairment in ambulation/locomotion at discharge than at the start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.
Clinical Quality of Care.	Improvement in Bed Transferring.	Outcome	NQF0175	OASIS (M1850)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less impairment in bed transferring at discharge than at the start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.
Clinical Quality of Care.	Improvement in Bathing.	Outcome	NQF0174	OASIS (M1830)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less impairment in bathing at discharge than at the start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.
Clinical Quality of Care.	Improvement in Dyspnea.	Outcome	NA	OASIS (M1400)	Number of home health episodes of care where the discharge assessment indicates less dyspnea at discharge than at start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.
Communication & Care Coordination.	Discharged to Community.	Outcome	NA	OASIS (M2420)	Number of home health episodes where the assessment completed at the discharge indicates the patient remained in the community after discharge.	Number of home health episodes of care ending with discharge or transfer to inpatient facility during the reporting period, other than those covered by generic or measure-specific exclusions.
Communication & Care Coordination.	Care Management: Types and Sources of Assistance.	Process	NA	OASIS (M2102)	Multiple data elements	Multiple data elements.
Efficiency & Cost Reduction.	Acute Care Hospitalization: Unplanned Hospitalization during first 60 days of Home Health.	Outcome	NQF0171	CCW (Claims)	Number of home health stays for patients who have a Medicare claim for an admission to an acute care hospital in the 60 days following the start of the home health stay.	Number of home health stays that begin during the 12-month observation period. A home health stay is a sequence of home health payment episodes separated from other home health payment episodes by at least 60 days.
Efficiency & Cost Reduction.	Emergency Department Use without Hospitalization.	Outcome	NQF0173	CCW (Claims)	Number of home health stays for patients who have a Medicare claim for outpatient emergency department use and no claims for acute care hospitalization in the 60 days following the start of the home health stay.	Number of home health stays that begin during the 12-month observation period. A home health stay is a sequence of home health payment episodes separated from other home health payment episodes by at least 60 days.
Patient Safety	Improvement in Pain Interfering with Activity.	Outcome	NQF0177	OASIS (M1242)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less frequent pain at discharge than at the start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.
Patient Safety	Improvement in Management of Oral Medications.	Outcome	NQF0176	OASIS (M2020)	Number of home health episodes of care where the value recorded on the discharge assessment indicates less impairment in taking oral medications correctly at discharge than at start (or resumption) of care.	Number of home health episodes of care ending with a discharge during the reporting period, other than those covered by generic or measure-specific exclusions.

FIGURE 4a: FINAL PY1 MEASURES [31]—Continued

NQS Domains	Measure title	Measure type	Identifier	Data source	Numerator	Denominator
Patient Safety	Prior Functioning ADL/IADL.	Outcome	NQF0430	OASIS (M1900)	The number (or proportion) of a clinician's patients in a particular risk adjusted diagnostic category who meet a target threshold of improvement in Daily Activity (that is, ADL and IADL) functioning.	All patients in a risk adjusted diagnostic category with a Daily Activity goal for an episode of care. Cases to be included in the denominator could be identified based on ICD–9 codes or alternatively, based on CPT codes relevant to treatment goals focused on Daily Activity function.
Population/Community Health.	Influenza Vaccine Data Collection Period: Does this episode of care include any dates on or between October 1 and March 31?	Process	NA	OASIS (M1041)	NA	NA.
Population/Community Health.	Influenza Immunization Received for Current Flu Season.	Process	NQF0522	OASIS (M1046)	Number of home health episodes during which patients (a) Received vaccination from the HHA or (b) had received vaccination from HHA during earlier episode of care, or (c) was determined to have received vaccination from another provider.	Number of home health episodes of care ending with discharge, or transfer to inpatient facility during the reporting period, other than those covered by generic or measure-specific exclusions.
Population/Community Health.	Pneumococcal Polysaccharide Vaccine Ever Received.	Process	NQF0525	OASIS (M1051)	Number of home health episodes during which patients were determined to have ever received Pneumococcal Polysaccharide Vaccine (PPV).	Number of home health episodes of care ending with discharge or transfer to inpatient facility during the reporting period, other than those covered by generic or measure-specific exclusions.
Population/Community Health.	Reason Pneumococcal vaccine not received.	Process	NA	OASIS (M1056)	NA	NA.
Clinical Quality of Care.	Drug Education on All Medications Provided to Patient/Caregiver during all Episodes of Care.	Process	NA	OASIS (M2015)	Number of home health episodes of care during which patient/caregiver was instructed on how to monitor the effectiveness of drug therapy, how to recognize potential adverse effects, and how and when to report problems (since the previous OASIS assessment).	Number of home health episodes of care ending with a discharge or transfer to inpatient facility during the reporting period, other than those covered by generic or measure-specific exclusions.
Home Health CAHPS: Satisfaction Survey Measures						
Patient & Caregiver-Centered Experience.	Care of Patients	Outcome		CAHPS	NA	NA.
Patient & Caregiver-Centered Experience.	Communications between Providers and Patients.	Outcome		CAHPS	NA	NA.
Patient & Caregiver-Centered Experience.	Specific Care Issues	Outcome		CAHPS	NA	NA.
Patient & Caregiver-Centered Experience.	Overall rating of home health care and.	Outcome		CAHPS	NA	NA.
Patient & Caregiver-Centered Experience.	Willingness to recommend the agency.	Outcome		CAHPS	NA	NA.

[31] For more detailed information on the proposed measures utilizing OASIS refer to the *OASIS–C1/ICD–9, Changed Items & Data Collection Resources* dated September 3, 2014 available at *www.oasisanswers.com/LiteratureRetrieve.aspx?ID=215074.* For NQF endorsed measures see The NQF Quality Positioning System available at *http://www.qualityforum.org/QPS.* For non-NQF measures using OASIS see links for data tables related to OASIS measures at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.* For information on HHCAHPS measures see *https://homehealthcahps.org/SurveyandProtocols/SurveyMaterials.aspx.*

FIGURE 4b—FINAL PY1 NEW MEASURES

NQS domains	Measure title	Measure type	Identifier	Data source	Numerator	Denominator
Population/Community Health.	Influenza Vaccination Coverage for Home Health Care Personnel.	Process	NQF0431 (Used in other care settings, not Home Health).	Reported by HHAs through Web Portal.	Healthcare personnel in the denominator population who during the time from October 1 (or when the vaccine became available) through March 31 of the following year: (a) received an influenza vaccination administered at the healthcare facility, or reported in writing or provided documentation that influenza vaccination was received elsewhere: or (b) were determined to have a medical contraindication/condition of severe allergic reaction to eggs or to other components of the vaccine or history of Guillain-Barre Syndrome within 6 weeks after a previous influenza vaccination; or (c) declined influenza vaccination; or (d) persons with unknown vaccination status or who do not otherwise meet any of the definitions of the above-mentioned numerator categories.	Number of healthcare personnel who are working in the healthcare facility for at least 1 working day between October 1 and March 31. of the following year, regardless of clinical responsibility or patient contact.
Population/Community Health.	Herpes zoster (Shingles) vaccination: Has the patient ever received the shingles vaccination?	Process	NA	Reported by HHAs through Web Portal.	Total number of Medicare beneficiaries aged 60 years and over who report having ever received zoster vaccine (shingles vaccine).	Total number of Medicare beneficiaries aged 60 years and over receiving services from the HHA.
Communication & Care Coordination.	Advance Care Plan	Process	NQF0326	Reported by HHAs through Web Portal.	Patients who have an advance care plan or surrogate decision maker documented in the medical record or documentation in the medical record that an advanced care plan was discussed but the patient did not wish or was not able to name a surrogate decision maker or provide an advance care plan.	All patients aged 65 years and older.

4. Additional Information on HHCAHPS

Figure 5 provides details on the elements of the Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey (HHCAHPS) we proposed, and are finalizing, to include in the PY1 starter set. The HHVBP Model will not alter the HHCAHPS current scoring methodology or the participation requirements in any way. Details on participation requirements for HHCAHPS can be found at 42 CFR 484.250 [32] and details on HHCAHPS scoring methodology are available at; *https://homehealthcahps.org/SurveyandProtocols/SurveyMaterials.aspx*.[33]

FIGURE 5—HOME HEALTH CARE CONSUMER ASSESSMENT OF HEALTHCARE PROVIDERS AND SYSTEMS SURVEY (HHCAHPS) COMPOSITES

Care of Patients	Response Categories
Q9. In the last 2 months of care, how often did home health providers from this agency seem informed and up-to-date about all the care or treatment you got at home?	Never, Sometimes, Usually, Always.
Q16. In the last 2 months of care, how often did home health providers from this agency treat you as gently as possible?	Never, Sometimes, Usually, Always.
Q19. In the last 2 months of care, how often did home health providers from this agency treat you with courtesy and respect?	Never, Sometimes, Usually, Always.
Q24. In the last 2 months of care, did you have any problems with the care you got through this agency?	Yes, No.

[32] 76 FR 68606, Nov. 4, 2011, as amended at 77 FR 67164, Nov. 8, 2012; 79 FR 66118, Nov. 6, 2014.

[33] Detailed scoring information is contained in the Protocols and Guidelines manual posted on the HHCAHPS Web site and available at *https://homehealthcahps.org/Portals/0/PandGManual_NOAPPS.pdf*.

FIGURE 5—HOME HEALTH CARE CONSUMER ASSESSMENT OF HEALTHCARE PROVIDERS AND SYSTEMS SURVEY (HHCAHPS) COMPOSITES—Continued

Communications Between Providers & Patients	Response Categories
Q2. When you first started getting home health care from this agency, did someone from the agency tell you what care and services you would get?	Yes, No.
Q15. In the past 2 months of care, how often did home health providers from this agency keep you informed about when they would arrive at your home?	Never, Sometimes, Usually, Always.
Q17. In the past 2 months of care, how often did home health providers from this agency explain things in a way that was easy to understand?	Never, Sometimes, Usually, Always.
Q18. In the past 2 months of care, how often did home health providers from this agency listen carefully to you?	Never, Sometimes, Usually, Always.
Q22. In the past 2 months of care, when you contacted this agency's office did you get the help or advice you needed?	Yes, No.
Q23. When you contacted this agency's office, how long did it take for you to get the help or advice you needed?	Same day; 1 to 5 days; 6 to 14 days; More than 14 days.
Specific Care Issues	**Response Categories**
Q3. When you first started getting home health care from this agency, did someone from the agency talk with you about how to set up your home so you can move around safely?	Yes, No.
Q4. When you started getting home health care from this agency, did someone from the agency talk with you about all the prescription medicines you are taking?	Yes, No.
Q5. When you started getting home health care from this agency, did someone from the agency ask to see all the prescription medicines you were taking?	Yes, No.
Q10. In the past 2 months of care, did you and a home health provider from this agency talk about pain?	Yes, No.
Q12. In the past 2 months of care, did home health providers from this agency talk with you about the purpose for taking your new or changed prescription medicines?	Yes, No.
Q13. In the last 2 months of care, did home health providers from this agency talk with you about when to take these medicines?	Yes, No.
Q14. In the last 2 months of care, did home health providers from this agency talk with you about the important side effects of these medicines?	Yes, No.
Global type Measures	**Response Categories**
Q20. What number would you use to rate your care from this agency's home health providers?	Use a rating scale (0–10) (0 is worst, 10 is best).
Q25. Would you recommend this agency to your family or friends if they needed home health care?	Definitely no; Probably no; Probably yes; Definitely yes.

5. New Measures

As discussed in the proposed rule and the previous section of this final rule, the New Measures we proposed are not currently reported by Medicare-certified HHAs to CMS, but we believe fill gaps in the NQS Domains not completely covered by existing measures in the home health setting. We proposed that all competing HHAs in selected states, regardless of cohort size or number of episodes, will be required to submit data on the New Measures for all Medicare beneficiaries to whom they provide home health services within the state (unless an exception applies). We proposed at § 484.315(b) that competing HHAs would be required to report data on these New Measures. Competing HHAs will submit New Measure data through a dedicated HHVBP web-based platform. This web-based platform will function as a means to collect and distribute information from and to competing HHAs. Also, for those HHAs with a sufficient number of episodes of care to be subject to a payment adjustment, New Measures scores included in the final TPS for PY1 are only based on whether the HHA has submitted data to the HHVBP web-based platform or not. We proposed the following New Measures for competing HHAs:

- Advance Care Planning;
- Adverse Event for Improper Medication Administration and/or Side Effects;
- Influenza Vaccination Coverage for Home Health Care Personnel; and,
- Herpes Zoster (Shingles) Vaccination received by HHA patients.

For the reasons explained below and in consideration of the comments received, we are not including the proposed ''Adverse Event for Improper Medication Administration and/or Side Effects'' as one of the final New Measures. We are finalizing the other three proposed New Measures without modification.

a. Advance Care Planning

Advance Care Planning is an NQF-endorsed process measure in the NQS domain of Person- and Caregiver-centered experience and outcomes (*see* Figure 3). This measure is currently endorsed at the group practice/individual clinician level of analysis. We believe its adoption under the HHVBP Model represents an opportunity to study this measure in the home health setting. This is an especially pertinent measure for home health care to confirm that the wishes of the patient regarding their medical, emotional, or social needs are met across care settings. The Advance Care Planning measure will focus on Medicare beneficiaries, including dually-eligible beneficiaries.

We proposed that the measure would be numerically expressed by a ratio whose numerator and denominator are as follows:

Numerator: The measure would calculate the percentage of patients age 65 years and older served by the HHA that have an advance care plan or

surrogate decision maker [34] documented in the clinical record or documentation in the clinical record that an advance care plan was discussed, but the patient did not wish or was not able to name a surrogate decision maker or provide an advance care plan.

Denominator: All patients aged 65 years and older admitted to the HHA.

Advance care planning provides that the health care plan is consistent with the patient's wishes and preferences. Therefore, studying this measure within the HHA environment allows for further analysis of planning for the ''what ifs'' that may occur during the patient's lifetime. In addition, the use of this measure is expected to result in an increase in the number of patients with advance care plans. Increased advance care planning among the elderly is expected to result in enhanced patient autonomy and reduced hospitalizations and in-hospital deaths.[35]

We invited comments on this proposed measure.

Comment: Some commenters expressed support for the inclusion of the advance care directive quality measure in the HHVBP Model as an important step towards advancing the needs and wishes of Medicare beneficiaries and improving care near the end of life. One commenter suggested CMS should collect data separately for advance care plans and for surrogate decision makers, since they should not be considered to be alternatives to each other and suggested breaking this one measure into two new separate measures. Another commenter recommended that information collected for Advanced Care Planning be compliant with the standard at § 484.10(c)(ii), in which the HHA must inform and distribute written information to the patient, in advance, concerning its policies on advance directives, including a description of applicable state law.

Response: HHAs are already required to comply with Conditions of Participation as codified in § 484.10(c)(1)(ii) regarding patient rights and participation in this model in no way alters those regulatory obligations for participating HHAs. We will analyze the data collected for this New Measure and based on this analysis determine if we need to modify the measure in future rulemaking. We also note that standard practices for developing advance care plans integrate selection of surrogate decision making into the plan, so if and when a surrogate is needed they are readily made aware of the patient's wishes as articulated in the care plan.

Comment: One commenter did not support adoption of an Advance Care Planning measure and stated that an HHA should not be given an incentive to make the patient acquire an advanced directive. The commenter also asserted that Advance Care Planning is better suited for long-term care relationships and that advance directive compliance is already assessed at the HHA level. The commenter expressed concern that the Advance Care Planning measure shows a preference for living wills instead of working through a process to create an advance care plan.

Response: Advance Care Plans are fundamentally different than advanced directives (also referred to as living wills.) The basis for an Advance Care Plan is ongoing communication with health providers, family members, and potential surrogate decision makers; they are not focused exclusively on end of life or life threatening conditions. Advance Care Plans ensure patient centered care by providing an opportunity for health care providers and patients to identify how a patient would like to be cared for when a medical crisis makes it difficult or impossible to make their own healthcare decisions.

Comment: Commenters suggested that this metric, and the reporting on all New Measures be delayed until CY2017 and that it be included within OASIS for data collection due to the complexity of the question and its multiple parts.

Response: Based on the comments we received from HHAs to delay the reporting requirement for New Measures, including Advance Care Planning, we are modifying our proposal to require HHAs to submit the first round of data on this and the other New Measures no later than October 7, 2016 for the period July 2016 through September 2016. In response to the recommendation that we incorporate this measure into OASIS before including it in the Model, part of the purpose of testing this measure in the HH setting is to make informed decisions based on newly available data analysis prior to recommending that this measure be incorporated into measures that all HHAs are required to report.

Comment: Some commenters expressed concern that the Advance Care Planning Measure does not clearly state that the patient does not have to complete the advance care plan. In addition, some commenters wrote that the measure creates an incentive to pressure patients to do so. A few commenters requested CMS make regulations and policy guidance on the Advance Care Planning measure to more strongly clarify that the well-being and autonomy of the individual patient is the primary concern, not cost savings for the government.

Response: Beneficiaries are free to make their own decisions related to their participation in their care, and this measure ascertains that providers provide information and opportunity to the patient so they can engage in planning their own care. The intent of the measure is to provide education and guidance to the beneficiaries, not to pressure them regarding this measure. We will provide robust technical assistance for HHAs related to this new measure, including necessary tools and information for ensuring autonomous decision making on the part of the patient.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing this New Measure as proposed, with the modification that HHAs will be required to begin reporting data no later than October 7, 2016 for the period July 2016 through September 2016 and quarterly thereafter. As a result, the first quarterly performance report in July 2016 will not account for any of the New Measures.

b. Adverse Event for Improper Medication Administration and/or Side Effects

We proposed an Adverse Event for Improper Medication Administration and/or Side Effects measure that aligns with the NQS domain of Safety (specifically ''medication safety''—*see* Figure 3) with the goal of making care safer by reducing harm caused in the delivery of care. The National Quality Forum included ADEs as a Serious Reportable Event (SRE) in the category of Care Management, defining said event as a ''patient death or serious injury associated with a medication error (for example, errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration),'' noting that ''. . . the high rate of medication errors resulting in injury and death makes this event important to endorse again.'' [36] We refer

[34] A surrogate decision maker, also known as a health care proxy or agent, advocates for patients who are unable to make decisions or speak for themselves about personal health care such that someone else must provide direction in decision-making, as the surrogate decision-maker.

[35] Lauren Hersch Nicholas, Ph.D., MPP et al. Regional Variation in the Association Between Advance Directives and End-of-Life Medicare Expenditures. JAMA. 2011;306(13):1447–1453. doi:10.1001/jama.2011.1410.

[36] National Quality Forum, Serious Reportable Events in Healthcare-2011, at 9. (2011), *available at: http://www.qualityforum.org/Publications/2011/12/Serious_Reportable_Events_in_Healthcare_2011.aspx.*

readers to the CY 2016 HH PPS proposed rule for more detail on this proposed measure (80 FR 39883 through 39884).

We invited comments on the Adverse Drug Events measure.

Comment: Many commenters noted the duplication between this proposed New Measure and an existing OASIS adverse event outcome measure, ''Emergent Care for Improper Medication Administration, Medication Side Effects''. A commenter recommended substituting the proposed New Measure titled Adverse Event for Improper Medication Administration and/or Side Effects with the current measure called ''Potentially Avoidable Event Outcome titled Emergent Care for Improper Medication Administration, Medication Side Effects'' generated using OASIS data. In addition, commenters generally did not support inclusion of the ADE metric as part of HHVBP because: HHA staff are not typically trained to positively identify ADEs, which are often complex; ADEs often only become apparent after further care; the complexity of ADEs means they are often not identified on discharge paperwork, meaning that more effort would be required to identify ADEs and less vigilant HHAs would be rewarded for not inputting information; and drug education metrics are already part of home health compare and in OASIS data. One commenter expressed concern that ADE measure could create a disincentive for HHAs to accept patients with complex medication regimes.

Response: We agree with the comments suggesting Adverse Drug Event data would be duplicative and are not finalizing this measure for PY1 of the model. We will evaluate if there is a more narrowly tailored approach for measuring quality performance related to medication management. We will continue to analyze ways to address the issue of adverse drug events in the home health setting and seek input from stakeholders on including an alternative measure in future model years.

Final Decision: In consideration of comments received we are not finalizing this measure.

c. Influenza Vaccination Coverage for Home Health Care Personnel

Staff Immunizations (Influenza Vaccination Coverage among Health Care Personnel) (NQF #0431) is an NQF-endorsed measure that addresses the NQS domain of Population Health (*see* Figure 3). The measure is currently endorsed in Ambulatory Care; Ambulatory Surgery Center (ASC), Ambulatory Care; Clinician Office/Clinic, Dialysis Facility, Hospital/Acute Care Facility, Post-Acute/Long Term Care Facility; Inpatient Rehabilitation Facility, Post-Acute/Long Term Care Facility; Long Term Acute Care Hospital, and Post-Acute/Long Term Care Facility: Nursing Home/Skilled Nursing Facility. Home health care is among the only remaining settings for which the measure has not been endorsed. We stated in the proposed rule that we believe the HHVBP Model presents an opportunity to study this measure in the home health setting. This measure is currently reported in multiple CMS quality reporting programs, including Ambulatory Surgical Center Quality Reporting, Hospital Inpatient Quality Reporting, and Long-Term Care Hospital Quality Reporting; we believe its adoption under the HHVBP Model presents an opportunity for alignment in our quality reporting programs. The documentation of staff immunizations is also a standard required by many HHA accrediting organizations. We believe that this measure would be appropriate for HHVBP because it addresses total population health across settings of care by reducing the exposure of individuals to a potentially avoidable virus.

We proposed that the measure would be numerically expressed by a ratio whose numerator and denominator are as follows:

Numerator: The measure would calculate the percentage of home health care personnel who receive the influenza vaccine, and document those who do not receive the vaccine in the articulated categories below:

(1) Received an influenza vaccination administered at the health care agency, or reported in writing (paper or electronic) or provided documentation that influenza vaccination was received elsewhere; or

(2) Were determined to have a medical contraindication/condition of severe allergic reaction to eggs or to other component(s) of the vaccine, or history of Guillain-Barré Syndrome within 6 weeks after a previous influenza vaccination; or

(3) Declined influenza vaccination; or

(4) Persons with unknown vaccination status or who do not otherwise meet any of the definitions of the above-mentioned numerator categories.

We proposed that each of the above groups would be divided by the number of health care personnel who are working in the HHA for at least one working day between October 1 and March 31 of the following year, regardless of clinical responsibility or patient contact.

Denominator: This measure collects the number of home health care personnel who work in the HHA during the flu season: [37] Denominators are to be calculated separately for the following three (3) groups:

1. Employees: all persons who receive a direct paycheck from the reporting HHA (that is, on the agency's payroll);

2. Licensed independent practitioners: include physicians (MD, DO), advanced practice nurses, and physician assistants only who are affiliated with the reporting agency who do not receive a direct paycheck from the reporting HHA; and

3. Adult students/trainees and volunteers: include all adult students/trainees and volunteers who do not receive a direct paycheck from the reporting HHA.

We stated in the proposed rule that this measure for the HHVBP Model is expected to result in increased influenza vaccination among home health professionals. Reporting health care personnel influenza vaccination status would allow HHAs to better identify and target unvaccinated personnel. Increased influenza vaccination coverage among HHA personnel would be expected to result in reduced morbidity and mortality related to influenza virus infection among patients, especially elderly and vulnerable populations.[38]

We proposed, and are finalizing in this rule, that information on the above numerator and denominator will be reported by HHAs through the HHVBP Web-based platform, in addition to other information related to this measure as the Secretary deems appropriate.

We invited comments on the proposed Staff Influenza Vaccination measure.

Comment: A few commenters asserted that HHVBP is not the correct avenue for improving population health and that extending the measure to all allied staff is too broad of a reach for the program, especially considering that the HHA has no mandate that allows it to force allied staff to comply. Commenters recommended modifying proposed influenza measures to include in the numerator HHA staff who decline the vaccination yet wear protective masks

[37] Flu season is generally October 1 (or when the vaccine became available) through March 31 of the following year. See URL *http://www.cdc.gov/flu/about/season/flu-season.htm* for detailed information.

[38] Carman WF, Elder AG, Wallace LA, *et al.* Effects of influenza vaccination of health-care workers on mortality of elderly people in long-term care: a randomized controlled trial. Lancet 2000; 355:93–97.

or be limited to HHA staff who have contact with the patient. Commenters also noted that staff data is already collected through licensure and certification requirements, and recommended that CMS promote staff influenza immunization through the upcoming Conditions of Participation in Medicare and Medicaid for Home Health Agencies rule.

Response: Home health care is among the only remaining settings for which the measure has not been endorsed. Mandatory health worker vaccinations are widely endorsed by national professional associations [39] because public health data has conclusively demonstrated that immunizing health staff to prevent influenza improves population health.[40] We also note that state certification and documentation requirements for licensure are not consistent from state to state and the requirement for staff vaccination is not part of the CoPs.

Comment: Some commenters suggested CMS develop state-specific or regional time frames for when this measure applies, noting the proposed October-March timeframe may not be sufficiently protective for states in the Northeast.

Response: We are following flu season guidelines from the Centers for Disease Control (CDC), which indicates peak flu season is from October through March. We defer to CDC expertise and will not be amending the flu time frame for the purposes of the HHVBP model at this time.

Comment: One commenter did not support the inclusion of the metric for Influenza Vaccination Coverage for Home Health Care Personnel because, as proposed, the metric does not include consideration of the overall availability of the flu vaccine at the local/state level. The commenter asserted that regardless of known national declared shortages, regional availability limits should be reflected within the measure so as not to unduly penalize home health agencies.

Response: In PY1, HHAs will not be scored on immunization rates for health personnel and will receive credit for reporting data related to immunizing healthcare staff.

Comment: Some commenters expressed concern that the resources and time commitment required to be able to reliably report on this metric would create undue hardship for January 1, 2016 implementation and suggested delayed implementation.

Response: We acknowledge the concerns expressed related to the timeline for reporting data on New Measures and agree with commenters that additional time for HHAs to prepare for data reporting is merited. We are finalizing that competing HHAs will be required to report data on this measure, as well as the other New Measures, no later than October 7, 2016.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing this New Measure as proposed, with the modification that HHAs will be required to begin reporting data no later than October 7, 2016 for the period July 2016 through September 2016 and quarterly thereafter. As a result, the first quarterly performance report in July 2016 will not account for any of the New Measures.

c. Herpes Zoster Vaccine (Shingles Vaccine) for Patients

We proposed to adopt this measure for the HHVBP Model because it aligns with the NQS Quality Strategy Goal to Promote Effective Prevention & Treatment of Chronic Disease. Currently this measure is not endorsed by NQF or collected in OASIS. However, due to the severe physical consequences of symptoms associated with shingles,[41] we view its adoption under the HHVBP Model as an opportunity to perform further study on this measure. The results of this analysis could provide the necessary data to meet NQF endorsement criteria. We proposed that the measure would calculate the percentage of home health patients who receive the Shingles vaccine, and collect the number of patients who did not receive the vaccine.

Numerator: Equals the total number of Medicare beneficiaries aged 60 years and over who report having ever received herpes zoster vaccine (shingles vaccine) during the home health episode of care.

Denominator: Equals the total number of Medicare beneficiaries aged 60 years and over receiving services from the HHA.

The Food and Drug Administration (FDA) has approved the use of herpes zoster vaccine in adults age 50 and older. In addition, the Advisory Committee on Immunization Practices (ACIP) currently recommends that herpes zoster vaccine be routinely administered to adults, age 60 years and older.[42] In 2013, 24.2 percent of adults 60 years and older reported receiving herpes zoster vaccine to prevent shingles, an increase from the 20.1 percent in 2012,[43] yet below the targets recommended in the HHS Healthy People 2020 initiative.[44]

The incidence of herpes zoster outbreak increases as people age, with a significant increase after age 50. Older people are more likely to experience the severe nerve pain known as post-herpetic neuralgia (PHN),[45] the primary acute symptom of shingles infection, as well as non-pain complications, hospitalizations,[46] and interference with activities of daily living.[47] Studies have shown for adults aged 60 years or older the vaccine's efficacy rate for the prevention of herpes zoster is 51.3 percent and 66.5 percent for the prevention of PHN for up to 4.9 years after vaccination.[48] The Short-Term Persistence Sub study (STPS) followed patients 4 to 7 years after vaccination and found a vaccine efficacy of 39.6 percent for the prevention of herpes zoster and 60.1 percent for the prevention of PHN.[49] The majority of patients reporting PHN are over age 70; vaccination of this older population would prevent most cases, followed by vaccination at age 60 and then age 50.

We stated in the proposed rule that studying this measure in the home

[39] For a complete list of professional organizations that endorse mandatory flu vaccinations for health workers see URL *http://www.immunize.org/honor-roll/influenza-mandates.*

[40] Carman WF, Elder AG, Wallace LA, *et al.* Effects of influenza vaccination of health-care workers on mortality of elderly people in long-term care: a randomized controlled trial. Lancet 2000; 355:93–97.

[41] For detailed information on Shingles incidences and known complications associated with this condition see CDC information available at *http://www.cdc.gov/shingles/about/overview.html.*

[42] CDC. Morbidity and Mortality Weekly Report 2011; 60(44):1528.

[43] CDC. Morbidity and Mortality Weekly Report 2015; 64(04):95–102.

[44] Healthy People 2020: Objectives and targets for immunization and infectious diseases. Available at *https://www.healthypeople.gov/2020/topics-objectives/topic/immunization-and-infectious-diseases/objectives.*

[45] Yawn BP, Saddier P, Wollen PC, St Sauvier JL, Kurland MJ, Sy LS. A population-based study of the incidence and complication rate of herpes zoster before zoster vaccine introduction. Mayo Clinic Proc 2007; 82:1341–9.

[46] Lin F, Hadler JL. Epidemiology of primary varicella and herpes zoster hospitalizations: the pre-varicella vaccine era. J Infect Dis 2000; 181:1897–905.

[47] Schmader KE, Johnson GR, Saddier P, *et al.* Effect of a zoster vaccine on herpes zoster-related interference with functional status and health-related quality-of-life measures in older adults. J Am Geriatr Soc 2010; 58:1634–41.

[48] Schmader KE, Johnson GR, Saddier P, *et al.* Effect of a zoster vaccine on herpes zoster0-related interference with functional status and health-related quality-of-life measures in older adults. J Am Geriatr Soc 2010; 58:1634–41.

[49] Schmader, KE, Oxman, MN, Levin, MJ, Johnson,G, Zhang, JH, Betts, R, Morrison, VA, Gelb, L, Guatelli, JC, Harbecke, R, Pachucki, C, Keay, S, Menzies, B, Griffin, MR, Kauffman, C, Marques, A, Toney, J, Keller, PM, LI, X, Chan, LSF, Annumziato, P. Persistence of the Efficacy of Zoster Vaccine in the Shingles Prevention Study and the Short Term Persistence Substudy. Clinical Infectious Disease 2012; 55:1320–8

health setting presents an ideal opportunity to address a population at risk which will benefit greatly from this vaccination strategy. For example, receiving the vaccine will often reduce the course and severity of the disease and reduce the risk of post herpetic neuralgia.

We proposed, and are finalizing in this rule, that information on the above numerator and denominator will be reported by HHAs through the HHVBP web-based platform, in addition to other information related to this measure as the Secretary deems appropriate.

We invited public comment on the proposed Herpes Zosters Vaccine measure.

Comment: A number of commenters expressed concern that patients refuse Shingles vaccination since the vaccine is costly and is paid for only through Medicare Part D. A few commenters also expressed concerns that patients in home health may not have ready knowledge of their vaccination status, and tracking this information down could be burdensome for HHAs. Some commenters also raised the concern that a desire to comply with the measure presents the potential for unnecessary repeat vaccinations.

Response: We appreciate public comment on this issue. CMS recognizes there are payment and access issues related to the Shingles vaccination. As a New Measure, competing HHAs will have the opportunity to report on implementation challenges related to patients accessing the Shingles vaccination and we will be evaluating feedback from HHAs provided through data reporting on the measure. However, we believe inclusion of this New Measure is connected to quality care for patients because the Shingles vaccination has been demonstrated to either reduce the incidence of Shingles or significantly mitigate the pain and discomfort associated with Shingles. Including the measure in intended to increase patient awareness and access to the vaccine if they so choose.

Comment: One commenter recommended development of additional vaccine measures to align with ACIP policies.

Response: We thank the commenter and note that we intend to evaluate the measures in the HHVBP Model on an annual basis and implement any changes to the measure set in future rulemaking. In PY1 we have included the ACIP recommendation to utilize the Shingles vaccination, and we will refer to ACIP recommendations when analyzing additional measures in subsequent years of the model.

Comment: Commenters expressed concern about collecting Herpes Zoster vaccination data because they asserted that modifications to EMR will have to occur. Commenters also asserted that the resources and time commitment required to be able to reliably report on this metric would create undue hardship for January 1, 2016 implementation. Commenters recommended moving the timeline out 6–12 months for collecting this data.

Response: We appreciate commenters' concerns regarding the timeline for data collection and agree that in some instances additional preparation time may be needed by competing HHAs including allowing for those HHAs who may have to modify their clinical record system. We are finalizing that competing HHAs will be required to report data on this measure, as well as the other New Measures, no later than October 7, 2016 for the period July 2016 through September 2016.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing this New Measure as proposed, with the modification that HHAs will be required to begin reporting data no later than October 7, 2016 for the period July 2016 through September 2016 and quarterly thereafter. As a result, the first quarterly performance report in July 2016 will not account for any of the New Measures.

6. HHVBP Model's Four Classifications

As previously stated, the quality measures that we proposed to use in the performance years, as well as the quality measures that we are finalizing in this final rule, are aligned with the six NQS domains: Patient and Caregiver-Centered Experience and Outcomes; Clinical Quality of Care; Care Coordination; Population Health; Efficiency and Cost Reduction; and, Safety (*see* Figure 6).

We proposed to filter these NQS domains and the HHVBP quality measures into four classifications to align directly with the measure weighting utilized in calculating payment adjustments. The four HHVBP classifications we proposed are: Clinical Quality of Care, Outcome and Efficiency, Person- and Caregiver-Centered Experience, and New Measures reported by the HHAs.

We did not receive any public comments on our proposed measure classifications for the HHVBP Model and are finalizing these classifications with one modification. Specifically, we are revising Classification II from ''Outcome and Efficiency'' to ''Care Coordination and Efficiency.'' The definition of this classification is unchanged from the proposed rule. We are making this change to be more inclusive about this classification designation, which includes measures/NQS domains relating to care coordination.

These final four classifications capture the multi-dimensional nature of health care provided by the HHA. These classifications are further defined as:

- Classification I—Clinical Quality of Care: Measures the quality of health care services provided by eligible professionals and paraprofessionals within the home health environment.
- Classification II—Care Coordination and Efficiency: Outcomes measure the end result of care including coordination of care provided to the beneficiary. Efficiencies measure maximizing quality and minimizing use of resources.
- Classification III—Person- and Caregiver-Centered Experience: Measures the beneficiary and their caregivers' experience of care.
- Classification IV—New Measures: Measures not currently reported by Medicare-certified HHAs to CMS, but that may fill gaps in the NQS Domains not completely covered by existing measures in the home health setting.

Figure 6: Six NQS Measure Domains and Classifications

7. Weighting

We proposed that measures within each classification would be weighted the same for the purposes of payment adjustment. We are weighting at the individual measure level and not the classification level. Classifications are for organizational purposes only. We proposed this approach because we did not want any one measure within a classification to be more important than another measure. Under this approach, a measure's weight will remain the same even if some of the measures within a classification group have no available data. We stated in the proposed rule that weighting will be re-examined in subsequent years of the model and be subject to the rulemaking process. We invited comments on the proposed weighting methodology for the HHVBP Model.

Comment: We received a few comments on the weighting of measures in the starter set. Some commenters recommended that certain measures should be weighted more than others; with one comment specifying the re-hospitalization measure should have greater weight, and some other commenters suggesting that measures not based on self-reported data should have greater weight. One commenter expressed concern that by weighting measures equally, HHAs will have little opportunity to make significant improvements because each measure will only represent a small fraction of the agency's score; therefore, agencies would need to make large improvements in many measures to see a meaningful difference in their overall score. All comments related to weighting indicated a preference for moving away from each measure receiving equal weight.

Response: The quality measures that were selected for the HHVBP Model capture the multiple dimensions of care that HHA provide to their beneficiaries. We are finalizing this proposed policy because equally weighted measures will encourage HHAs to approach quality improvement initiatives more broadly in an effort to capture the multidimensional aspects of care that HHAs provide. In addition, weighting the measures equally addresses concerns where HHAs may be providing services to beneficiaries with different needs. If particular measures are weighted more than others, HHAs may only make the investment to improve their quality in those areas where measures have a higher weight, potentially allowing other aspects of care to be subject to potential neglect. We will monitor the impact of the equally weighting the individual measures and may consider changes to the weighting methodology after analysis and through rulemaking.

Final Decision: For the reasons discussed, we are finalizing the weighting methodology as proposed without modification.

F. Performance Scoring Methodology

1. Performance Calculation Parameters

The methodology we proposed, and are finalizing in this final rule for the reasons discussed herein, for assessing each HHA's total annual performance is based on a score calculated using the starter set of quality measures that apply to the HHA (based on a minimum number of cases, as discussed herein). The methodology will provide an assessment on a quarterly basis for each HHA and will result in an annual distribution of value-based payment adjustments among HHAs so that HHAs achieving the highest performance scores will receive the largest upward payment adjustment. The methodology includes three primary features:

- The HHA's Total Performance Score (TPS) will be determined using the higher of an HHA's achievement or improvement score for each measure;
- All measures within the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications will have equal weight and will account for 90-percent of the TPS (*see* Section 2 below) regardless of the number of measures in the three classifications.

Points for New Measures are awarded for submission of data on the New Measures via the HHVBP web-based platform, and withheld if data is not submitted. Data reporting for each New Measure will have equal weight and will account for 10-percent of the TPS for the first performance year; and,

- The HHA performance score would reflect all of the measures that apply to the HHA based on a minimum number of cases defined below.

For the reasons discussed in more detail later in this section, we are finalizing our proposed performance scoring methodology with one modification related to the rounding up or down of achievement and improvement scoring used in the calculation of the Total Performance Score.

2. Considerations for Calculating the Total Performance Score

We proposed, and are finalizing in this final rule, in § 484.320 to calculate the TPS by adding together points awarded to Medicare-certified HHAs on the starter set of measures, including the New Measures. As explained in the proposed rule, we considered several factors when developing the performance scoring methodology for the HHVBP Model. First, it is important that the performance scoring methodology be straightforward and transparent to HHAs, patients, and other stakeholders. HHAs must be able to clearly understand performance scoring methods and performance expectations to maximize quality improvement efforts. The public must understand performance score methods to utilize publicly-reported information when choosing HHAs.

Second, we believe the performance scoring methodology for the HHVBP Model should be aligned appropriately with the quality measurements adopted for other Medicare value-based purchasing programs including those introduced in the hospital and skilled nursing home settings. This alignment will facilitate the public's understanding of quality measurement information disseminated in these programs and foster more informed consumer decision-making about their health care choices.

Third, we believe that differences in performance scores must reflect true differences in quality performance. To make sure that this point is addressed in the performance scoring methodology for the HHVBP Model, we assessed quantitative characteristics of the measures, including the current state of measure development, number of measures, and the number and grouping of measure classifications.

Fourth, we believe that both quality achievement and improvement must be measured appropriately in the performance scoring methodology for the HHVBP Model. The methodology specifies that performance scores under the HHVBP Model are calculated utilizing the higher of achievement or improvement scores for each measure. The impact of performance scores utilizing achievement and improvement on HHAs' behavior and the resulting payment implications was also considered. Using the higher of achievement or improvement scores allows the model to recognize HHAs that have made great improvements, though their measured performance score may still be relatively lower in comparison to other HHAs.

Fifth, through careful measure selection we intend to eliminate, or at least control for, unintended consequences such as undermining better outcomes to patients or rewarding inappropriate care. As discussed above, when available, NQF endorsed measures will be used. In addition we are adopting measures that we believe are closely associated with better outcomes in the HHA setting in order to incentivize genuine improvements and sustain positive achievement while retaining the integrity of the model.

Sixth, we intend that the model will utilize the most currently available data to assess HHA performance. We recognize that these data would not be available instantaneously due to the time required to process quality measurement information accurately; however, we intend to make every effort to process data in the timeliest fashion. Using more current data will result in a more accurate performance score while recognizing that HHAs need time to report measure data.

3. Additional Considerations for the HHVBP Total Performance Scores

Many of the key elements of the HHVBP Model performance scoring methodology that we proposed, and are finalizing in this final rule for the reasons described herein, are aligned with the scoring methodology of the Hospital Value-Based Purchasing Program (HVBP) in order to leverage the rigorous analysis and review underpinning that Program's approach to value-based purchasing in the hospital sector. The HVBP Program includes as one of its core elements the scoring methodology included in the 2007 Report to Congress ''Plan to Implement a Medicare Hospital Value-Based Purchasing Program'' (hereinafter referred to as ''The 2007 HVBP Report'').[50] The 2007 HVBP Report describes a Performance Assessment Model with core elements that can easily be replicated for other value-based purchasing programs or models, including the HHVBP Model.

In the HVBP Program, the Performance Assessment Model aggregates points on the individual quality measures across different quality measurement domains to calculate a hospital's TPS. Similarly, the proposed HHVBP Model would aggregate points on individual measures across four measure classifications derived from the 6 CMS/NQS domains as described above (*see* Figure 3) to calculate the HHA's TPS. In addition, the proposed HHVBP payment methodology is also aligned with the HVBP Program with respect to evaluating an HHA's performance on each quality measure based on the higher of an achievement or improvement score in the performance period. The model is not only designed to provide incentives for HHAs to provide the highest level of quality, but also to provide incentives for HHAs to improve the care they provide to Medicare beneficiaries. By rewarding HHAs that provide high quality and/or high improvement, we believe the HHVBP Model will ensure that all HHAs will be incentivized to commit the resources necessary to make the organizational changes that will result in better quality.

We proposed, and are finalizing for the reasons described herein, that under the model, an HHA will be awarded points only for ''applicable measures.'' An ''applicable measure'' is one for which the HHA has provided 20 home health episodes of care per year. Points awarded for each applicable measure will be aggregated to generate a TPS. As described in the benchmark section below, HHAs will have the opportunity to receive 0 to 10 points for each measure in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications. Each measure will have equal weight regardless of the total number of measures in each of the first three classifications. In contrast, we proposed, and are finalizing in this rule, to score the New Measures in a different way. For each New Measure, HHAs will receive 10 points if they report the New Measure or 0 points if they do not report the measure during the performance

[50] The 2007 HVBP Report is available at the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/downloads/HospitalVBPPlanRTCFINALSUBMITTED2007.pdf.*

year. In total, the New Measures will account for 10-percent of the TPS regardless of the number of measures applied to an HHA in the other three classifications.

We proposed, and are finalizing in this rule, to calculate the TPS for the HHVBP methodology similarly to the TPS calculation that has been finalized under the HVBP program. The performance scoring methodology for the HHVBP Model will include determining performance standards (benchmarks and thresholds) using the 2015 baseline period performance year's quality measure data, scoring HHAs based on their achievement and/or improvement with respect to those performance standards, and weighting each of the classifications by the number of measures employed, as presented in further detail in Section G below.

4. Setting Performance Benchmarks and Thresholds

For scoring HHAs' performance on measures in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications, we proposed, and are finalizing in this rule, to adopt an approach using several key elements from the scoring methodology set forth in the 2007 HVBP Report and the successfully implemented HVBP Program [51] including allocating points based on achievement or improvement, and calculating those points based on industry benchmarks and thresholds.

In determining the achievement points for each measure, HHAs will receive points along an achievement range, which is a scale between the achievement threshold and a benchmark. We proposed, and are finalizing in this rule, that the achievement threshold will be calculated as the median of all HHAs' performance on the specified quality measure during the baseline period and to calculate the benchmark as the mean of the top decile of all HHAs' performance on the specified quality measure during the baseline period. Unlike the HVBP Program that uses a national sample, this model will calculate both the achievement threshold and the benchmark separately for each selected state and for HHA cohort size. Under this methodology, we will have benchmarks and achievement thresholds for both the larger-volume cohort and for the smaller-volume cohort of HHAs (defined in each state based on a baseline period that runs from January 1, 2015 through December 31, 2015). Another way HHVBP differs from the Hospital VBP is this model only uses 2015 as the baseline year for the measures included in the starter set. For the starter set used in the model, 2015 will consistently be used as the baseline period in order to evaluate the degree of change that may occur over the multiple years of the model. In determining improvement points for each measure, we proposed, and are finalizing in this rule, that HHAs will receive points along an improvement range, which is a scale indicating change between an HHA's performance during the performance period and the baseline period. In addition, as in the achievement calculation, the benchmark and threshold will be calculated separately for each state and for HHA cohort size so that HHAs will only be competing with those HHAs in their state and their size cohort.

5. Calculating Achievement and Improvement Points

a. Achievement Scoring

We proposed the achievement scoring under the HHVBP Model be based on the Performance Assessment Model set forth in the 2007 HVBP Report and as implemented under the HVBP Program. An HHA could earn 0–10 points for achievement for each measure in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications based on where its performance during the performance period falls relative to the achievement threshold and the benchmark, according to the following formula:

$$9 \times \left(\frac{\text{HHA Performance Score - Achievement Threshold}}{\text{Benchmark - Achievement Threshold}} \right) + 0.5$$

We proposed that all achievement points would be rounded up or down to the nearest point (for example, an achievement score of 4.55 would be rounded to 5). After considering the potential skewing of HHA ranking that would occur with rounding up to the nearest point, we are finalizing that all achievement points will be rounded up or down to the third decimal point (for example, an achievement score of 4.5555 would be rounded to 4.556). The will ensure greater precision in scoring and ranking HHAs within their cohorts.

HHAs could receive an achievement score as follows:

- An HHA with performance equal to or higher than the benchmark could receive the maximum of 10 points for achievement.
- An HHA with performance equal to or greater than the achievement threshold (but below the benchmark) could receive 1–9 points for achievement, by applying the formula above.
- An HHA with performance less than the achievement threshold could receive 0 points for achievement.

We invited comments on the proposed methodology for scoring HHAs on achievement.

Comment: Some commenters expressed concern that HHAs will not know what benchmark is needed to avoid penalty until the end of the 2015 performance year, and several commenters recommended that CMS establish benchmarks based on historical performance so it is clear to HHAs the level of achievement necessary to avoid penalties. Commenters voiced concern that agencies may not invest in quality improvement activities if the potential financial return is difficult to determine. Commenters also recommended that CMS set benchmarks at a level such that most providers have a reasonable expectation of achieving them. A few commenters suggested keeping 2015 as the base year, and suggested providing HHAs with mid-course snapshots of their performance against the benchmarks.

Response: The HHVBP Model is using the 2015 quality data as the baseline for the model because it is the most recent data available. As indicated in the payment methodology, the achievement threshold for each measure used in the

[51] For detailed information on HVBP scoring see *http://www.medicare.gov/hospitalcompare/data/hospital-vbp.html.*

model will be based on the median of Medicare-certified HHA performance on the specified quality measure during the baseline period (2015). The benchmark refers to the mean of the top decile of Medicare-certified HHA performance on the specified quality measure during the baseline period (2015). Benchmarks and achievement thresholds are calculated separately for the larger-volume and smaller-volume cohorts within each state. HHAs will receive points if they achieve performance equal to or above the achievement threshold (the median of 2015). We believe that awarding points to HHAs that provide better quality than the median is an achievable level and will incentivize HHAs to make the investments necessary to improve their quality. Benchmarks and achievement thresholds for each measure will be available on each respective HHA's quarterly report. The 2015 base year achievement threshold and the benchmarks for each cohort will be provided to the HHAs in April 2016. We believe that this will provide sufficient notice to HHAs of the level of performance necessary to receive points for each given measure. In addition, baseline values will be included in all quarterly reports for all measures.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing the proposed methodology for scoring HHAs on achievement under the HHVBP Model, with one modification. Specifically, as noted above, under our final policy all achievement points will be rounded up or down to the third decimal point (for example, an achievement score of 4.5555 would be rounded to 4.556).

b. Improvement Scoring

In keeping with the approach used by the HVBP Program, we proposed that an HHA could earn 0–10 points based on how much its performance during the performance period improved from its performance on each measure in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications during the baseline period. A unique improvement range for each measure will be established for each HHA that defines the difference between the HHA's baseline period score and the same state and size level benchmark for the measure used in the achievement scoring calculation described previously, according to the following formula:

$$10 \times \left(\frac{\text{HHA Performance Period Score} - \text{HHA Baseline Period Score}}{\text{Benchmark} - \text{HHA Baseline Period Score}} \right) - 0.5$$

We proposed that all improvement points will be rounded to the nearest point and are now finalizing that improvement points will be rounded up or down to the third decimal point (see example above). If an HHA's performance on the measure during the performance period was:

- Equal to or higher than the benchmark score, the HHA could receive an improvement score of 10 points;
- Greater than its baseline period score but below the benchmark (within the improvement range), the HHA could receive an improvement score of 0–10, based on the formula above; or
- Equal to or lower than its baseline period score on the measure, the HHA could receive 0 points for improvement.

We invited comments on the proposed methodology for scoring HHAs on improvement.

Comment: There were many comments directed at the proposed methodology for improvement scoring under the HHVBP Model. Some commenters opposed awarding credit for improvement, and noted their concern that by using the greater of either an HHA's achievement or improvement score, the methodology could reward a HHA with a low performance but high improvement score because that HHA could receive higher payments than a high performing agency. These commenters encouraged CMS to focus on rewarding the achievement of specified quality scores, and reduce its emphasis on improvement scores after the initial three years of the HHVBP Model, given that what matters most to beneficiaries is an agency's actual performance. Additionally, commenters recommended that HHA achievement scores be weighted more heavily than improvement scores, noting that some HHAs may have little or no room for improvement in their current quality performance scores. Some commenters suggested measuring performance primarily on the basis of achievement of specified quality scores, with a declining emphasis over time on improvement versus achievement.

Response: We appreciate the commenters raising these concerns. The model is designed to improve and to ensure the highest quality of care for all Medicare beneficiaries. If the model only focused on rewarding those HHAs that already provide the highest quality of care, only the beneficiaries that receive care from those HHAs would benefit from the model. Therefore, we believe that providing the opportunity to earn points for both achievement and improvement provides the greatest opportunity for the quality of care to rise for all beneficiaries who receive services from competing HHAs. We will, however, monitor and evaluate the impact of awarding an equal amount of points for both achievement and improvement and may consider changes to the weight of the improvement score relative to the achievement score in future years through rulemaking.

Final Decision: For the reasons discussed, we are finalizing the improvement scoring methodology as proposed.

Comment: Several commenters expressed concern that the proposed HHVBP structure requires that HHAs be penalized each year, regardless of their performance or improvement, noting that each year, some HHAs will end up in the bottom decile, even if the difference between the highest and lowest scoring is only a few points. These commenters were concerned that if the lowest scoring HHAs do not have the resources to rise from the bottom they are at risk for going out of business by the end of the model. If low scoring HHAs leave the market, then higher scoring HHAs will move into the bottom decile the next year of the model. These HHAs could experience a downward payment adjustment even though their performance, in actuality, is not significantly different than HHAs ranked higher. These commenters are concerned this limits value based performance improvement.

Response: We understand commenters concerns but the purpose of the model is to improve quality across the HH sector. As is the case currently, the market will not remain static, and HHAs of all calibers will leave and enter the market. In many instances, if a small number of low performing HHAs do drop out of the market, the next group

of low scoring HHAs will include HHAs whose performance equals or exceeds the average baseline performance, and will likely have received bonus payments in previous years. We have done financial modeling based on recent HHA performance (see chart I2 for further explanation) and results support our understanding of how scoring will work. In addition, we have analyzed available data and lessons learned from the Hospital VBP program and the previous home health demonstration to support our findings. As indicated in the proposed rule,[52] HHAs may end up in the bottom decile in relationship to other HHAs in their cohort in later years of the model even after they improve their quality if all the HHAs in the model improve at the same rate. However, in the HHVBP model their downward payment adjustment, if any, could be substantially reduced because all performance scoring is anchored to the 2015 benchmark.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing the proposed methodology for scoring HHAs under the HHVBP Model, with one modification to decimal scoring, where we are finalizing that all achievement and improvement points will be rounded up or down to the third decimal point (for example, an achievement score of 4.5555 would be rounded to 4.556).

[52] 80 FR 39910 (July 10, 2015). See Table 25.

c. Examples of Calculating Achievement and Improvement Scores

For illustrative purposes we present the following examples of how the performance scoring methodology will be applied in the context of the measures in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications. These HHA examples were selected from an empirical database created from 2013/2014 data from the Home Health Compare archived data, claims data and enrollment data to support the development of the HHVBP permutation of the Performance Assessment Model, and all performance scores are calculated for the pneumonia measure, with respect to the number of individuals assessed and administered the pneumococcal vaccine. We note that the figures and examples below are the same figures and examples set forth in the proposed rule, updated to reflect our final policy on rounding of these scores, as discussed previously.

Figure 7 shows the scoring for HHA 'A', as an example. The benchmark calculated for the pneumonia measure in this case was 0.875 (the mean value of the top decile in 2013), and the achievement threshold was 0.474 (the performance of the median or the 50th percentile among HHAs in 2013). HHA A's 2014 performance rate of 0.910 during the performance period for this measure exceeds the benchmark, so HHA A would earn 10 (the maximum) points for its achievement score. The HHA's performance rate on a measure is expressed as a decimal. In the illustration, HHA A's performance rate of 0.910 means that 91-percent of the applicable patients that were assessed were given the pneumococcal vaccine. In this case, HHA A has earned the maximum number of 10 possible achievement points for this measure and thus, its improvement score is irrelevant in the calculation.

Figure 7 also shows the scoring for HHA 'B'. As referenced below, HHA B's performance on this measure went from 0.212 (which was below the achievement threshold) in the baseline period to 0.703 (which is above the achievement threshold) in the performance period. Applying the achievement scale, HHA B would earn 5.640 points for achievement, calculated as follows: $[9 * ((0.703 - 0.474)/(0.875 - 0.474))] + 0.5 = 5.640$.

Checking HHA B's improvement score yields the following result: Based on HHA B's period-to-period improvement, from 0.212 in the baseline year to 0.703 in the performance year, HHA B would earn 6.906 points, calculated as follows: $[10 * ((0.703 - 0.212)/(0.875 - 0.212))] - 0.5 = 6.906$. Because the higher of the achievement and improvement scores is used, HHA B would receive 6.906 points for this measure.

Figure 7: Example of an HHA Earning Points by Achievement or Improvement Scoring

In Figure 8, HHA 'C' yielded a decline in performance on the pneumonia measure, falling from 0.571 to 0.462 (a decline of 0.11 points). HHA C's performance during the performance period is lower than the achievement threshold of 0.472 and, as a result, receives 0 points based on achievement. It also receives 0 points for improvement, because its performance during the performance period is lower than its performance during the baseline period.

Figure 8: Example of an HHA Not Earning Points by Achievement or Improvement Scoring

6. Scoring Methodology for New Measures

The HHVBP Model provides us with the opportunity to study new quality measures. We proposed that the New Measures for PY1 would be reported directly by the HHA and would account for 10-percent of the TPS regardless of the number of measures in the other three classifications (we refer the reader to 80 FR 39890 for further discussion of our proposed scoring methodology for New Measures). For the reasons set forth in the proposed rule and in response to comments below, we are finalizing our proposed scoring methodology for New Measures, revised only to reflect that the final starter set will include three, rather than four, New Measures, as discussed in section E5. Under our final methodology, the final three New Measures that we are adopting for PY1 will be reported directly by the HHA and will account for 10-percent of the TPS regardless of the number of measures in the other three classifications. HHAs that report on these measures will receive 10 points out of a maximum of 10 points for each of the 3 measures in the New Measure classification. Hence, a HHA that reports on all 3 measures will receive 30 points out of a maximum of 30. An HHA will receive 0 points for each measure that it fails to report on. If an HHA reports on all 3 measures, it will receive 30 points for the classification and 10 points (30/30 * 10 points) will be added to its TPS because the New Measure classification has a maximum weight of 10 percent. If an HHA reports on 2 of 3 measures, it will receive 20 points of 30 points available for the classification and 6.667 points (20/30 * 10 points) added to its TPS. If an HHA reports on 1 of 3 measures, they will receive 10 points of 30 points available for the classification and 3.333 points (10/30 * 10 points) added to their TPS. If an HHA reports on 0 of 3 measures, they will receive 0 points and have no points added to their TPS. We intend to update these measures through future rulemaking to allow us to study newer, leading-edge measures as well as retire measures that no longer require such analysis.

We invited comments on the proposed scoring methodology for New Measures.

Comment: Several commenters expressed support for CMS limiting the burden on HHAs by allowing them to gain full credit toward their TPS on the New Measures just for reporting data to CMS.

Response: We appreciate the commenters' support for our proposal. In order to reduce the burden of introducing innovative measures not previously endorsed for home health, and to allow HHAs to acclimate to reporting the New Measures, we are finalizing our proposed scoring methodology that awards HHAs full credit for data reporting on New Measures.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing our proposed scoring methodology for New Measures, modified to reflect the removal of one New Measure resulting in a total of three New Measures for PY1.

7. Minimum Number of Cases for Outcome and Clinical Quality Measures

We proposed that while no HHA in a selected state would be exempt from the HHVBP Model, there may be periods when an HHA does not receive a payment adjustment because there are not an adequate number of episodes of care to generate sufficient quality measure data. We proposed, and are finalizing in this rule, that the minimum threshold for an HHA to receive a score on a given measure will be 20 home health episodes of care per year for HHAs that have been certified for at least 6-months. If a competing HHA does not meet this threshold to generate scores on five or more of the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience measures, no payment adjustment will be made, and

the HHA will be paid for HHA services in an amount equivalent to the amount it would have been paid under section 1895 of the Act.[53]

We explained in the proposed rule that HHAs with very low case volumes will either increase their volume in later performance years, and be subject to future payment adjustment, or the HHAs' volume will remain very low and the HHAs would continue to not have their payment adjusted in future years. Based on the most recent data available at this time, a very small number of HHAs are reporting on less than five of the total number of measures included in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications and account for less than 0.5 percent of the claims made over 1,900 HHAs delivering care within the nine selected states. We stated that we expect very little impact of very low service volume HHAs on the model due to the low number of low-volume HHAs and because it is unlikely that a HHA will reduce the amount of service to such a low level to avoid a payment adjustment. Although these HHAs will not be subject to payment adjustments, they will remain in the model and have access to the same technical assistance as all other HHAs in the model, and will receive quality reports on any measures for which they do have 20 episodes of care, and a future opportunity to compete for payment adjustments.

We invited comments on the proposed minimum number of cases to receive a score on outcome and clinical quality measures.

Comment: One commenter expressed concern that some HHAs would artificially suppress the number of cases open in OASIS to below 20 in order to be excluded from a particular measure, or be excluded from a sufficient number of measures to be excluded from payment adjustments entirely.

Response: All Medicare-certified HHAs in selected states are included in the HHVBP Model, even when a particular HHA does not meet the minimum number of cases to generate scores on a sufficient number of quality measures. During a period when an HHA does not receive a payment adjustment the HHA remains in the model, performance is still monitored, and the agency is eligible for technical assistance. HHAs with small patient loads are expected to access technical assistance and engage in quality improvement activities in anticipation of earning scores on all quality measures in the future. HHAs with small patient populations are also expected to enter data on the New Measures via the CMS portal. In addition, HHAs must submit OASIS data in order to receive payment for their services. We do not anticipate HHAs suppressing the number of patients they serve in order to avoid payment adjustments because there are very few HHAs that provide care to such a small number of beneficiaries and the financial losses associated with restricting the volume of care provided would far outweigh the losses associated with the downward payment adjustment.

Final Decision: For these reasons and in consideration of the comments received, we are finalizing our proposal on the minimum number of cases for outcome and clinical quality measures without modification.

We provide below an example of the payment methodology. We note that this is the same example provided in the proposed rule (see 80 FR 39891), modified only to reflect our final policy to include 21 (rather than 25) measures in the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications and three (rather than four) New Measures in the final starter set for PY1.

HHA ''A'' has at least 20 episodes of care in a 12-month period for only nine (9) quality measures out of a possible 21 measures from three of the four classifications (except the New Measures). Under the final scoring methodology outlined above, HHA A would be awarded 0, 0, 3, 4, 5, 7, 7, 9, and 10 points, respectively, for these measures. HHA A's total earned points for the three classifications would be calculated by adding together all the points awarded to HHA A, resulting in a total of 45 points. HHA A's total possible points would be calculated by multiplying the total number of measures for which the HHA reported on least 20 episodes (nine) by the maximum number of points for those measures (10), yielding a total of 90 possible points. HHA A's score for the three classifications would be the total earned points (45) divided by the total possible points (90) multiplied by 90 because as mentioned in section E7, the Clinical Quality of Care, Care Coordination and Efficiency, and Person and Caregiver-Centered Experience classifications account for 90-percent of the TPS and the New Measures classification accounts for 10-percent of the TPS, which yields a result of 45. In this example, HHAs also reported all 3 measures and would receive the full 10 points for the New Measures. As a result, the TPS for HHA A would be 55 (45 plus 10). In addition, as specified in Section E:7—Weighting, all measures have equal weights regardless of their classification (except for New Measures) and the total earned points for the three classifications can be calculated by adding the points awarded for each such measure together.

G. The Payment Adjustment Methodology

We proposed to codify at 42 CFR 484.330 a methodology for applying value-based payment adjustments to home health services under the HHVBP Model. We proposed that payment adjustments would be made to the HH PPS final claim payment amount as calculated in accordance with § 484.205 using a linear exchange function (LEF) similar to the methodology utilized by the HVBP Program. The LEF is used to translate an HHA's TPS into a percentage of the value-based payment adjustment earned by each HHA under the HHVBP Model. The LEF was identified by the HVBP Program as the simplest and most straightforward option to provide the same marginal incentives to all hospitals, and we believe the same to be true for HHAs. We proposed the function's intercept at zero percent, meaning those HHAs that have a TPS that is average in relationship to other HHAs in their cohort (a zero percent), would not receive any payment adjustment. Payment adjustments for each HHA with a score above zero percent would be determined by the slope of the LEF. In addition we proposed to set the slope of the LEF for the first performance year, CY 2016, so that the estimated aggregate value-based payment adjustments for CY 2016 are equal to 5-percent of the estimated aggregate base operating episode payment amount for CY 2018. The estimated aggregate base operating episode payment amount is the total amount of episode payments made to all the HHAs by Medicare in each individual state in the larger- and smaller-volume cohorts respectively.

We provided in Figure 9 of the proposed rule an example of how the LEF is calculated and how it would be applied to calculate the percentage payment adjustment to a HHA's TPS (we refer the reader to 80 FR 39891 through 39892 for further discussion of our proposal). For this example, we applied the 8-percent payment adjustment level that was proposed to be used in the final 2 years of the HHVBP Model, and noted that the rate

[53] HHVBP would follow the Home Health Compare Web site policy not to report measures on HHAs that have less than 20 observations for statistical reasons concerning the power to detect reliable differences in the quality of care.

for the payment adjustments for other years would be proportionally less.

We invited comments on this proposed payment adjustment methodology.

Comment: While offering support for the concept of value-based purchasing, the majority of commenters expressed concern with the magnitude of an 8-percent maximum payment risk such that it might reduce access to care for vulnerable patients. Commenters offered that payment adjustments could be made in later years of the model to provide HHAs with adequate time to ensure readiness to comply with model requirements and to allow CMS more time to study the initial model results. Many commenters also remarked on the differences between the Hospital Value-Based Purchasing (HVBP) Program and HHVBP Model maximum risk corridors and suggested lowering the HHVBP payment adjustments to align with the 2-percent maximum established in the HVBP Program.

Response: We thank commenters for their input. As discussed in the proposed rule, based on lessons learned from Hospital VBP, the 2008 Home Health pay for performance demonstration, and the MedPAC report, we believe that testing high financial incentives is necessary to motivate improvements in quality and patient satisfaction. However, we agree with commenters that providing some additional leeway for HHAs to ensure compliance with the model is important, and would also address concerns associated with moving competing HHAs from FFS incentives to VBP financial incentives tied to quality measures. Accordingly, under our final policy, we are reducing the payment adjustment percentage in CY 2018 from 5-percent to 3-percent. Further, by responding to these practical concerns, the conceptual model remains intact with the capacity to test the effect of higher incentives on quality.

We believe this will provide HHAs more time to become familiar with the operation of the model before applying the higher percentage payment adjustments in later years. Additionally, under our final policy, we are reducing the payment adjustment for CY 2021 from 8-percent to 7-percent to establish a more gradual payment adjustment incentive schedule of 3-percent (in 2018), 5-percent (in 2019), 6-percent (in 2020), 7-percent (in 2021) and, 8-percent (in 2022).

Comment: Several commenters raised concerns with the magnitude of an 8-percent maximum payment risk such that it might reduce access to care for vulnerable patients and threaten the financial viability of HHAs, including their ability to reinvest in infrastructure, care coordination, and financial preparations to participate in the HHVBP Model.

Response: We have conducted financial modeling based on the proposed model and posit the finalized maximum upward and downward payment adjustments (ranging from 3- to 8-percent) are sufficiently significant to improve quality of care and will not have a negative impact on beneficiary access. The model does not reduce the overall payments to HHAs and, as a result, the aggregate average margins of all competing HHAs will be unaffected by the model. Competing HHAs that provide the highest quality of care and that receive the maximum upward adjustment will improve their financial viability that could ensure that the vulnerable population that they serve has access to high quality care. Only HHAs that provide very poor quality of care, relative to the cohort they compete within, would be subject to the highest downward payment adjustments.

Final Decision: For the reasons discussed and in consideration of the comments received, we are finalizing the proposed payment adjustment methodology with modification. As noted, we are finalizing the following maximum payment adjustment percentage for each payment year: in CY 2018, 3-percent; in CY 2019, 5-percent; in CY 2020, 6-percent; in CY 2021, 7-percent; and in CY 2022, 8-percent. Consistent with this final policy, under our final payment adjustment methodology, we set the slope of the LEF for the first performance year, CY 2016, so that the estimated aggregate value-based payment adjustments for CY 2016 are equal to 3-percent of the estimated aggregate base operating episode payment amount for CY 2018, rather than 5-percent as proposed.

Figure 9 provides an example of how the LEF is calculated and how it is applied to calculate the percentage payment adjustment to a HHA's TPS under our final policy. For this example, we applied the 8-percent payment adjustment level that will be used in the final year of the HHVBP Model (CY 2022) under our final policy. The rate for the payment adjustments for other years would be proportionally less.

Step #1 involves the calculation of the 'Prior Year Aggregate HHA Payment Amount' (*See* C2 in Figure 9) that each HHA was paid in the prior year. From claims data, all payments are summed together for each HHA for CY 2015, the year prior to the HHVBP Model.

Step #2 involves the calculation of the '8-percent Payment Reduction Amount' (C3 of Figure 9) for each HHA. The 'Prior Year Aggregate HHA Payment Amount' is multiplied by the '8-percent Payment Reduction Rate'. The aggregate of the '8-percent Payment Reduction Amount' is the numerator of the LEF.

Step #3 involves the calculation of the 'Final TPS Adjusted Reduction Amount' (C4 of Figure 9) by multiplying the '8-percent Payment Reduction Amount' from Step #2 by the TPS (C1) divided by 100. The aggregate of the 'TPS Adjusted Reduction Amount' is the denominator of the LEF.

Step #4 involves calculating the LEF (C5 of Figure 9) by dividing the aggregate '8-percent Payment Reduction Amount' by the aggregate 'TPS Adjusted Reduction Amount'.

Step #5 involves the calculation of the 'Final TPS Adjusted Payment Amount' (C6 of Figure 9) by multiplying the 'TPS Adjusted Reduction Amount' (C4) by the LEF (C5). This is an intermediary value used to calculate 'Quality Adjusted Payment Rate'.

Step #6 involves the calculation of the 'Quality Adjusted Payment Rate' (C7 of Figure 9) that the HHA will receive instead of the 8-percent reduction in payment. This is an intermediary step to determining the payment adjustment rate. For CY 2022, the payment adjustment in this column will range from 0-percent to 16-percent depending on the quality of care provided.

Step #7 involves the calculation of the 'Final Percent Payment Adjustment' (C8 of Figure 9) that will be applied to the HHA payments after the performance period. It simply involves the CY payment adjustment percent (as finalized, in 2018, 3-percent; in 2019, 5-percent; in 2020, 6-percent; in 2021, 7-percent; and in 2022, 8-percent). In this example, we use the maximum eight-percent (8-percent) subtraction to the 'Quality Adjusted Payment Rate'. Note that the payment adjustment percentage is capped at no more than plus or minus 8-percent for each respective performance period and the payment adjustment will occur on the final claim payment amount.

FIGURE 9—8-PERCENT REDUCTION SAMPLE

HHA	TPS	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
		Prior year aggregate HHA payment *	8-Percent payment reduction amount (C2*8%)	TPS adjusted reduction amount (C1/100)*C3	Linear exchange function (LEF) (Sum of C3/ Sum of C4)	Final TPS adjusted payment amount (C4*C5)	Quality adjusted payment rate (C6/C2) *100	Final percent payment adjustment +/− (C7–8%)
	(C1)	(C2)	(C3)	(C4)	(C5)	(C6)	(C7)	(C8)
HHA1	38	$100,000	$8,000	$3,040	1.93	$5,867	5.9 %	−2.1%
HHA2	55	145,000	11,600	6,380	1.93	12,313	8.5	0.5
HHA3	22	800,000	64,000	14,080	1.93	27,174	3.4	−4.6
HHA4	85	653,222	52,258	44,419	1.93	85,729	13.1	5.1%
HHA5	50	190,000	15,200	7,600	1.93	14,668	7.7	−0.3%
HHA6	63	340,000	27,200	17,136	1.93	33,072	9.7	1.7
HHA7	74	660,000	52,800	39,072	1.93	75,409	11.4	3.4
HHA8	25	564,000	45,120	11,280	1.93	21,770	3.9	−4.1
Sum			276,178	143,007		276,002		

* Example cases.

H. Preview and Period to Request Recalculation

We proposed that Medicare-certified HHAs be provided two separate opportunities to review scoring information under the HHVBP Model. First, HHAs will have the opportunity to review their quarterly quality reports following each quarterly posting; second, competing HHAs will have the opportunity to review their TPS and payment adjustment calculations, and request a recalculation if a discrepancy is identified due to a CMS error as described in this section. These processes would help educate and inform each competing Medicare-certified HHA on the direct relation between the payment adjustment and performance measure scores.

We proposed to inform HHAs quarterly of their performance on each of the individual quality measures used to calculate the TPS. We proposed that an HHA would have ten days after the quarterly reports are provided to request a recalculation of measure scores if it believes there is evidence of a discrepancy. We stated that we will adjust the score if it is determined that the discrepancy in the calculated measure scores was the result of our failure to follow measurement calculation protocols.

In addition, we proposed to inform each competing HHA of the TPS and payment adjustment amount in an annual report. We proposed that these annual reports would be provided to competing HHAs each August 1st prior to the calendar year for which the payment adjustment would be applied. Similar to quarterly reports, we proposed that HHAs will have ten days to request a recalculation of their TPS and payment adjustment amount from the date information is made available. For both the quarterly reports and the annual report containing the TPS and payment adjustments, competing HHAs will only be permitted to request scoring recalculations, and must include a specific basis for the requested recalculation. We will not be responsible for providing HHAs with the underlying source data utilized to generate performance measure scores. Each HHA has access to this data via the QIES system. The final TPS and payment adjustment will then be provided to competing Medicare-certified HHAs in a final report no later than 60 days in advance of the payment adjustment taking effect.

The TPS from the annual performance report will be calculated based on the calculation of performance measures contained in the quarterly reports that have already been provided and reviewed by the HHAs. As a result, we stated in the proposed rule that we believe that quarterly reviews will provide substantial opportunity to identify and correct errors and resolve discrepancies, thereby minimizing the challenges to the annual performance scores linked to payment adjustment.

As described above, a quarterly performance report will be provided to all competing HHAs within the selected states beginning with the first quarter of CY 2016 being reported in July 2016. We proposed that HHAs would submit recalculation requests for both quarterly quality performance measure reports and for the TPS and payment adjustment reports via an email link provided on the model-specific Web page. We proposed that the request form would be entered by a person who has authority to sign on behalf of the HHA and be submitted within 10 days of receiving the quarterly data report or the annual TPS and payment adjustment report.

We proposed that requests for both quarterly report measure score recalculations or TPS and payment adjustment recalculations would contain the following information:

- The provider's name, address associated with the services delivered, and CMS Certification Number (CCN);
- The basis for requesting recalculation to include the specific quality measure data that the HHA believes is inaccurate or the calculation the HHA believes is incorrect;
- Contact information for a person at the HHA with whom CMS or its agent can communicate about this request, including name, email address, telephone number, and mailing address (must include physical address, not just a post office box); and,
- A copy of any supporting documentation the HHA wishes to submit in electronic form via the model-specific Web page.

Following receipt of a request for quarterly report measure score recalculations or a request for TPS and payment adjustment recalculation, we proposed that CMS or its agent would:

- Provide an email acknowledgement, using the contact information provided in the recalculation request, to the HHA contact notifying the HHA that the request has been received;
- Review the request to determine validity, and determine whether the requested recalculation results in a score change altering performance measure scores or the HHA's TPS;
- If recalculation results in a performance measure score or TPS

change, conduct a review of quality data and if an error is found, recalculate the TPS using the corrected performance data; and,

• Provide a formal response to the HHA contact, using the contact information provided in the recalculation request, notifying the HHA of the outcome of the review and recalculation process.

We proposed that recalculation and subsequent communication of the results of these determinations would occur as soon as administratively feasible following the submission of requests. Additionally, we stated that we will develop and adopt an appeals mechanism under the model through future rulemaking in advance of the application of any payment adjustments.

The following is a summary of comments we received on the proposed quarterly quality measure reports and annual TPS preview periods.

Comment: Several commenters suggested that the HHVBP Model provide 30 days, instead of 10 days, after quarterly and annual reports are provided to request a recalculation of the measure scores if the HHA believes there is evidence of discrepancy. In addition to allowing more time to challenge report contents, one commenter recommended another level of appeal be added with an independent entity to perform the calculation to determine if the discrepancy is valid.

Response: We agree the review period for performance scores should be greater than 10 days to allow a more complete opportunity for HHAs to review, and are extending the time period for HHAs to preview their quarterly performance reports and annual payment adjustment reports (with requests for recalculations) from 10 days to 30 days. As noted in the proposed rule, CMS intends to propose an appeals mechanism in future rulemaking prior to the application of the first payment adjustments scheduled for 2018.

Final Decision: For the reasons stated and in consideration of the comments received, we are finalizing the processes described above with modification. Specifically, under our final policy, the recalculation request form must be submitted within 30 days, rather than 10 days, of posting the quarterly data report or the annual TPS and payment adjustment reports on the model-specific Web site. We are not making any other changes to the proposed policies as described in this section.

I. Evaluation

We proposed, and are finalizing in this rule, to codify at § 484.315(c) that competing HHAs in selected states will be required to collect and report information to CMS necessary for the purposes of monitoring and evaluating this model as required by statute.[54] An evaluation of the HHVBP Model will be conducted in accordance with section 1115A(b)(4) of the Act, which requires the Secretary to evaluate each model tested by CMMI. We consider an independent evaluation of the model to be necessary to understand its impacts on care quality in the home health setting. The evaluation will be focused primarily on understanding how successful the model is in achieving quality improvement as evidenced by HHAs' performance on clinical care process measures, clinical outcome measures (for example, functional status), utilization/outcome measures (for example, hospital readmission rates, emergency room visits), access to care, and patient's experience of care, and Medicare costs. We also intend to examine the likelihood of unintended consequences. We intend to select an independent evaluation contractor to perform this evaluation. The procurement for the selection of the evaluation contractor is in progress, thus we cannot provide a detailed description of the evaluation methodology here.

We intend to use a multilevel approach to evaluation. Here, we intend to conduct analyses at the state, HHA, and patient levels. Based on the state groupings discussed in the section on selection of competing HHAs, we believe there are several ways in which we can draw comparison groups and remain open to scientifically-sound, rigorous methods for evaluating the effect of the model intervention.

The evaluation effort may require of HHAs participating in the model additional data specifically for evaluation purposes. Such requirements for additional data to carry out model evaluation will be in compliance with 42 CFR 403.1105 which, as of January 1, 2015, requires entities participating in the testing of a model under section 1115A to collect and report such information, including protected health information (as defined at 45 CFR 160.103), as the Secretary determines is necessary to monitor and evaluate the model. We will consider all Medicare-certified HHAs providing services within a state selected for the model to be participating in the testing of this model because the competing HHAs will be receiving payment from CMS under the model.[55]

We invited comments on the proposed evaluation plan.

Comment: Several commenters highlighted the importance of closely monitoring and evaluating Medicare beneficiary access to home healthcare to ensure the model does not inadvertently negatively impact beneficiary access to necessary and appropriate care. In addition, some commenters suggested the model may cause some HHAs in selected states to leave the market, thereby creating insufficient HHA supply. Other commenters specifically raised the concern that some HHAs may attempt to avoid treating beneficiaries they fear will have a negative impact on performance scores. These commenters suggest that CMS monitor whether Medicare beneficiaries experience problems with access to care, and if they do, immediately address issues to ensure beneficiaries receive needed services. One commenter specifically suggests surveying Medicare beneficiaries to help measure access and ensure proactive monitoring.

Response: Beneficiary access to care is of paramount concern to us, and as indicated in the proposed rule, we will observe the progress of the model to guard against unintended consequences. Our monitoring and evaluation designs will be able to detect the types of concerns mentioned above. Adjustments to the monitoring and evaluation plans will be made as needed. As part of the development of this model, we have identified counties with low HHA market penetration, high dually-eligible populations, proportions of beneficiaries with high levels of acuity (as measured by hierarchical condition categories or HCCs), and organizational types. Future monitoring activities will include a continuous review of beneficiary-level claims data, Medicare cost reports, and beneficiary enrollment data to understand whether any unintended consequences arise across all competing HHAs in the Model.

Comment: Several commenters suggested that CMS employ a process to continuously monitor quality improvement and evaluate other aspects of the model in conjunction with all stakeholders, including home health agencies. Commenters also recommended sharing lessons learned from the model to inform, educate and engage beneficiaries and the general public of lessons learned. Several commenters specifically recommended that CMS establish a HHVBP learning

[54] See section 1115A(b)(4) of the Act (42 U.S.C. 1315a).

[55] 79 FR 67751 through 67755.

network to foster smoother post-pilot implementation of VBP in home health.

Response: We agree that wherever possible, competing HHAs should have every opportunity to share lessons learned from the model. We appreciate all suggestions related to learning from the HHVBP Model, both for competing HHAs and the public. The model contains multiple mechanisms for sharing information, including the use of a model-specific Web site, a collaboration Web site, and model-specific technical assistance efforts.

Comment: Several commenters specifically requested subsequent revisions to the HHVBP Model following initial evaluation in order to ensure that payment reflects a broad range of patients and does not incentivize under or over provision of services. These commenters recommended independent evaluation that includes state specific data on changes in home health quality outcomes, changes in home health utilization and access to home health for patients with specific diagnosis and functional status, with breakdowns by geographic location of patients (for example, rural, urban).

Response: We appreciate the recommendations provided. An independent evaluation is planned. As discussed in the proposed rule, we intend to use a multilevel approach to evaluation. We intend to conduct analyses at the state, HHA, and patient levels. The evaluation will be conducted in accordance with section 1115A(b)(4) of the Act and will include analysis of quality improvement as evidenced by HHAs' performance on clinical care process measures, clinical outcome measures (for example, functional status), utilization/outcome measures (for example, hospital readmission rates, emergency room visits), access to care, and patient's experience of care, and changes in Medicare costs. We also intend to examine the likelihood of unintended consequences. The evaluation will use a scientifically rigorous approach for evaluating the model intervention and making necessary alterations to the model as needed.

Final Decision: For these reasons and in consideration of the comments received, we are finalizing the evaluation plan as proposed.

V. Provisions of the Home Health Care Quality Reporting Program (HHQRP) and Response to Comments

A. Background and Statutory Authority

Section 1895(b)(3)(B)(v)(II) of the Act requires that for 2007 and subsequent years, each HHA submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary is directed to reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage for a particular year, the 2 percentage point reduction under section 1895(b)(3)(B)(v)(I) of the Act may result in this percentage increase, after application of the productivity adjustment under section 1895(b)(3)(B)(vi)(I) of the Act, being less than 0.0 percent for a year, and may result in payment rates under the Home Health PPS for a year being less than payment rates for the preceding year.

Section 2(a) of the Improving Medicare Post-Acute Care Transformation Act of 2014 (the IMPACT Act) (Pub. L. 113–185, enacted on Oct. 6, 2014) amended Title XVIII of the Act, in part, by adding a new section 1899B, which imposes new data reporting requirements for certain post-acute care (PAC) providers, including HHAs. New section 1899B of the Act is titled, ''Standardized Post-Acute Care (PAC) Assessment Data for Quality, Payment, and Discharge Planning''. Under section 1899B(a)(1) of the Act, certain post-acute care (PAC) providers (defined in section 1899B(a)(2)(A) of the Act to include HHAs, SNFs, IRFs, and LTCHs) must submit standardized patient assessment data in accordance with section 1899B(b) of the Act, data on quality measures required under section 1899B(c)(1) of the Act, and data on resource use, and other measures required under section 1899B(d)(1) of the Act. The Act also sets out specified application dates for each of the measures. The Secretary must specify the quality, resource use, and other measures no later than the applicable specified application date defined in section 1899B(a)(2)(E) of the Act.

Section 1899B(b) of the Act describes the standardized patient assessment data that PAC providers are required to submit in accordance with section 1899B(b)(1) of the Act; requires the Secretary, to the extent practicable, to match claims data with standardized patient assessment data in accordance with section 1899B(b)(2) of the Act; and requires the Secretary, as soon as practicable, to revise or replace existing patient assessment data to the extent that such data duplicate or overlap with standardized patient assessment data, in accordance with section 1899B(b)(3) of the Act.

Sections 1899B(c)(1) and (d)(1) of the Act direct the Secretary to specify measures that relate to at least five stated quality domains and three stated resource use and other measure domains. Section 1899B(c)(1) of the Act provides that the quality measures on which PAC providers, including HHAs, are required to submit standardized patient assessment data and other necessary data specified by the Secretary must be in accordance with, at least, the following domains:

- Functional status, cognitive function, and changes in function and cognitive function;
- Skin integrity and changes in skin integrity;
- Medication reconciliation;
- Incidence of major falls; and
- Accurately communicating the existence of and providing for the transfer of health information and care preferences of an individual to the individual, family caregiver of the individual, and providers of services furnishing items and services to the individual when the individual transitions (1) from a hospital or Critical Access Hospital (CAH) to another applicable setting, including a PAC provider or the home of the individual, or (2) from a PAC provider to another applicable setting, including a different PAC provider, hospital, CAH, or the home of the individual.

Section 1899B(c)(2)(A) provides that, to the extent possible, the Secretary must require such reporting through the use of a PAC assessment instrument and modify the instrument as necessary to enable such use.

Section 1899B(d)(1) of the Act provides that the resource use and other measures on which PAC providers, including HHAs, are required to submit any necessary data specified by the Secretary, which may include standardized assessment data in addition to claims data, must be in accordance with, at least, the following domains:

- Resource use measures, including total estimated Medicare spending per beneficiary;
- Discharge to community; and
- Measures to reflect all-condition risk-adjusted potentially preventable hospital readmission rates.

Sections 1899B(c) and (d) of the Act indicate that data satisfying the eight measure domains in the IMPACT Act is the minimum data reporting requirement. The Secretary may specify additional measures and additional domains.

Section 1899B(e)(1) of the Act requires that the Secretary implement the quality, resource use, and other measures required under sections 1899B(c)(1) and (d)(1) of the Act in phases consisting of measure specification, data collection, and data analysis; the provision of feedback reports to PAC providers in accordance with section 1899B(f) of the Act; and public reporting of PAC providers' performance on such measures in accordance with section 1899B(g) of the Act. Section 1899B(e)(2) of the Act generally requires that each measure specified by the Secretary under section 1899B of the Act be National Quality Forum (NQF)-endorsed, but authorizes an exception under which the Secretary may select non-NQF-endorsed quality measures in the case of specified areas or medical topics determined appropriate by the Secretary for which a feasible or practical measure has not been endorsed by the NQF, as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary. Section 1899B(e)(3) of the Act provides that the pre-rulemaking process required by section 1890A of the Act applies to quality, resource use, and other measures specified under sections 1899B(c)(1) and (d)(1) of the Act, but authorizes exceptions under which the Secretary may (1) use expedited procedures, such as ad hoc reviews, as necessary in the case of a measure required for data submissions during the 1-year period before the applicable specified application date, or (2) alternatively, waive section 1890A of the Act in the case of such a measure if applying section 1890A of the Act (including through the use of expedited procedures) would result in the inability of the Secretary to satisfy any deadline specified under section 1899B of the Act for the measure.

Section 1899B(f)(1) of the Act requires the Secretary to provide confidential feedback reports to PAC providers on the performance of such PAC providers for quality, resource use, and other measures required under sections 1899B(c)(1) and (d)(1) of the Act beginning 1 year after the applicable specified application date.

Section 1899B(g) of the Act requires the Secretary to establish procedures for making available to the public information regarding the performance of individual PAC providers for quality, resource use, and other measures required under sections 1899B(c)(1) and (d)(1) beginning not later than 2 years after the applicable specified application date. The procedures must ensure, including through a process consistent with the process applied under section 1886(b)(3)(B)(viii)(VII) for similar purposes, that each PAC provider has the opportunity to review and submit corrections to the data and information that are to be made public for the PAC provider prior to such data being made public.

Section 1899B(h) of the Act sets out requirements for removing, suspending, or adding quality, resource use, and other measures required under sections 1899B(c)(1) and (d)(1) of the Act. In addition, section 1899B(j) of the Act requires the Secretary to allow for stakeholder input, such as through town halls, open door forums, and mailbox submissions, before the initial rulemaking process to implement section 1899B of the Act.

Section 2(c)(1) of the IMPACT Act amended section 1895 of the Act to address the payment consequences for HHAs for the additional data which HHAs are required to submit under section 1899B of the Act. These changes include the addition of a new section 1895(b)(3)(B)(v)(IV), which requires HHAs to submit the following additional data: (1) For the year beginning on the specified application date and each subsequent year, data on the quality, resource use, and other measures required under sections 1899B(c)(1) and (d)(1) of the Act; and (2) for 2019 and subsequent years, the standardized patient assessment data required under section 1899B(b)(1) of the Act. Such data must be submitted in the form and manner, and at the time, specified by the Secretary.

As noted, the IMPACT Act adds a new section 1899B of the Act that imposes new data reporting requirements for certain post-acute care (PAC) providers, including HHAs. Sections 1899B(c)(1) and 1899B(d)(1) of the Act collectively require that the Secretary specify quality measures and resource use and other measures with respect to certain domains not later than the specified application date that applies to each measure domain and PAC provider setting. Section 1899B(a)(2)(E) of the Act delineates the specified application dates for each measure domain and PAC provider. The IMPACT Act also amends other sections of the Act, including section 1895(b)(3)(B)(v), to require the Secretary to reduce the otherwise applicable PPS payment to a PAC provider that does not report the new data in a form and manner, and at a time, specified by the Secretary. For HHAs, amended section 1895(b)(3)(B)(v) of the Act will require the Secretary to reduce the payment update for any HHA that does not satisfactorily submit the newly required data.

Under the current HH QRP, the general timeline and sequencing of measure implementation occurs as follows: Specification of measures; proposal and finalization of measures through notice-and-comment rulemaking; HHA submission of data on the adopted measures; analysis and processing of the submitted data; notification to HHAs regarding their quality reporting compliance for a particular year; consideration of any reconsideration requests; and imposition of a payment reduction in a particular year for failure to satisfactorily submit data for that year. Any payment reductions that are taken for a year begin approximately 1 year after the end of the data submission period for that year and approximately 2 years after we first adopt the measure.

To the extent that the IMPACT Act could be interpreted to shorten this timeline, so as to require us to reduce HH PPS payment for failure to satisfactorily submit data on a measure specified under section 1899B(c)(1) or (d)(1) of the IMPACT Act beginning with the same year as the specified application date for that measure, such a timeline would not be feasible. The current timeline discussed above reflects operational and other practical constraints, including the time needed to specify and adopt valid and reliable measures, collect the data, and determine whether a HHA has complied with our quality reporting requirements. It also takes into consideration our desire to give HHAs enough notice of new data reporting obligations so that they are prepared to timely start reporting data. Therefore, we intend to follow the same timing and sequence of events for measures specified under sections 1899B(c)(1) and (d)(1) of the Act that we currently follow for other measures specified under the HH QRP. We intend to specify each of these measures no later than the specified application dates set forth in section 1899B(a)(2)(E) of the Act and will adopt them consistent with the requirements in the Act and Administrative Procedure Act. To the extent that we finalize a proposal to adopt a measure for the HH QRP that satisfies an IMPACT Act measure domain, we intend to require HHAs to report data on the measure for the year that begins 2 years after the specified application date for that measure. Likewise, we intend to require HHAs to begin reporting any other data specifically required under the IMPACT Act for the year that begins 2 years after we adopt requirements that

would govern the submission of that data.

Lastly, on April 1, 2014, the Congress passed the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93), which stated the Secretary may not adopt ICD–10 prior to October 1, 2015. On August 4, 2014, HHS published a final rule titled ''Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision (ICD–10–CM and ICD–10–PCS Medical Data Code Sets'' (79 FR 45128), which announced October 1, 2015 as the new compliance date. The OASIS–C1 data item set had been previously approved by the Office of Management and Budget (OMB) on February 6, 2014 and scheduled for implementation on October 1, 2014. We intended to use the OASIS–C1 to coincide with the original implementation date of the ICD–10. The approved OASIS–C1 included changes to accommodate coding of diagnoses using the ICD–10–CM coding set and other important stakeholder concerns such as updating clinical concepts, and revised item wording and response categories to improve item clarity. This version included five (5) data items that required the use of ICD–10 codes.

Since OASIS–C1 was revised to incorporate ICD–10 coding, it was not feasible to implement the OASIS–C1/ICD–10 version prior to October 1, 2015, when ICD–10 was scheduled to be implemented. Due to this delay, we had to ensure the collection and submission of OASIS data continued, until ICD–10 was implemented. Therefore, we made interim changes to the OASIS–C1 data item set to allow use with ICD–9 until ICD–10 was adopted. The OASIS–C1/ICD–9 version was submitted to OMB for approval until the OASIS–C1/ICD–10 version could be implemented. A 6-month emergency approval was granted on October 7, 2014 and CMS subsequently applied for an extension. The extension of the OASIS–C1/ICD–9 version was reapproved under OMB control number 0938–0760 with a current expiration date of March 31, 2018. It is important to note, that this version of the OASIS will be discontinued once the OASIS–C1/ICD–10 version is approved and implemented. In addition, to facilitate the reporting of OASIS data as it relates to the implementation of ICD–10 on October 1, 2015, we submitted a new request for approval to OMB for the OASIS–C1/ICD–10 version under the Paperwork Reduction Act (PRA) process. We requested a new OMB control number for the proposed revised OASIS item as announced in the 30-day **Federal Register** notice (*80 FR 15796*). The new information collection request for OASIS–C1/ICD–10 version was approved under OMB control number 0938–1279 with a current expiration date of May 31, 2018. Information regarding the OASIS–C1 can be located on the OASIS C–1 Data Sets Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/OASIS-C1.html.* Additional information regarding the adoption of ICD–10 can be located on the ICD–10 Web page at: *http://www.cms.gov/Medicare/Coding/ICD10/index.html?redirect=/icd10.*

We received multiple public comments pertaining to the general timeline and plan for implementation of the IMPACT Act, sequencing of measure implementation, and standardization of PAC assessment tools. The following is a summary of the comments we received on this topic and our responses.

Comment: We received several comments requesting the development of a comprehensive implementation plan for all settings covered by the IMPACT Act. Commenters stated that a comprehensive implementation plan would give home health providers an opportunity to plan for the potential impact on their operations, and enable all stakeholders to understand CMS's approach to implementing the IMPACT Act across care settings. Some commenters requested that CMS plans be communicated as soon as possible and that CMS develop setting-specific communications to facilitate understanding of the IMPACT Act requirements. Another commenter urged CMS to provide clear and transparent explanations of each measure's specifications, providing as much information as possible to the public about the measures proposed. This commenter added that the detailed information submitted for NQF consensus development process would be helpful to stakeholders, and offered to work with CMS on measure development and specifications. One commenter specifically expressed the importance of a transparent process in relation to measure development, noting that the Act calls for informing the public of the measure's numerator, denominator, exclusions, and any other aspects the Secretary determines necessary. Another commenter requested that CMS abide by certain principles such as: Provide implementation timelines for data collection and reporting requirements in a timely manner; implement measures that are reliable, feasible and setting appropriate that are endorsed as well as included in the pre-rulemaking Measure Applications Partnership (MAP) process; minimize unnecessary provider burden; and finally that CMS ensure the standardization of measures and data collection across post-acute care settings as feasible.

Response: We appreciate and agree with the commenters' requests for a comprehensive and transparent plan for implementation of the IMPACT Act, as well as the need for timely stakeholder input, the development of reliable, accurate measures that are endorsed and have undergone the pre-rulemaking MAP process, clarity on the level of standardization of items and measures, the importance of feasibility and standardization, and the avoidance of unnecessary burden on PAC providers. Our intent has been to comply with these principles in the implementation and rollout of QRPs in the various care settings, and we will continue to adhere to these principles as the agency moves forward with implementing IMPACT Act requirements.

In addition to implementing the IMPACT Act requirements, we will follow the strategy for identifying cross-cutting measures, timelines for data collection, and timelines for reporting as outlined in the IMPACT Act. As described more fully above, the IMPACT Act requires CMS to specify measures that relate to at least five stated quality domains and three stated resource use and other measure domains. The IMPACT Act also outlines timelines for data collection and timelines for reporting. We intend to adopt measures that comply with the IMPACT Act in a manner that is consistent with the sequence we follow in other quality reporting programs. We intend to follow all processes in place for adoption of measures including the MAP review and the notice and comment rulemaking process. In the selection and specification of measures, we employ a transparent process in which we seek input from stakeholders and national experts and engage in a process that allows for pre-rulemaking input on each measure, as required by section 1890A of the Act. This process is based on a private-public partnership, and it occurs via the MAP. The MAP is composed of multi-stakeholder groups convened by the NQF, our current contractor under section 1890 of the Act, to provide input on the selection of quality and efficiency measures described in section 1890(b)(7)(B). The NQF must convene these stakeholders and provide us with the stakeholders' input on the selection of such measures. We, in turn, must take this input into consideration in selecting such

measures. In addition, the Secretary must make available to the public by December 1 of each year a list of such measures that the Secretary is considering under Title XVIII of the Act. Additionally, proposed measures and specifications are to be announced through the Notice of Proposed Rulemaking (NPRM) process in which proposed rules are published in the **Federal Register** and are available for public view and comment.

We further note that we are committed to the principles surrounding public input as part of its measure development that occurs prior to rule making. As part of this measure development process, we seek input from the public on the measure specifications under development by CMS and our measure contractors. We have a designated Web page where we solicit public comment on measure constructs during measure development. This is a key component to how we develop and maintain quality measures, as outlined in the CMS Blueprint for Measures Management System. You can find more information about the CMS Blueprint for Measures Management System on the CMS Measure Management System Web page at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/index.html.* The CMS Quality Measures Public Comment page is located at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/MMS/CallforPublicComment.html.*

Comment: Several commenters requested that CMS continue in its public engagement with stakeholders. They stated their appreciation for the opportunity to work with CMS during the implementation phases of the IMPACT Act. These commenters noted a need for more opportunities for stakeholder input into various aspects of the measure and assessment instrument development process. Commenters requested opportunities to provide ongoing input into measure and assessment instrument development and modifications.

Response: We appreciate the commenters' feedback and the continued involvement of stakeholders in all phases of measure development and implementation, as we see the value in strong public-private partnerships. We also believe that ongoing stakeholder input is important to the success of the IMPACT Act and look forward to continued and regular input from the provider communities as we continue to implement the IMPACT Act. It is our intent to move forward with IMPACT Act implementation in a manner in which the measure and assessment instrument development process continues to be transparent, and includes input and collaboration from experts, the PAC provider community, and the public. It is of the utmost importance to CMS to continue to engage stakeholders, including patients and their families, throughout the measure and assessment instrument development lifecycle through our measure development public comment periods, the pre-rulemaking activities, participation in the Technical Expert Panels (TEPs) convened by our measure development contractors, as well as open door forums, and other opportunities. We have already provided multiple opportunities for stakeholder input, including the following activities: Our measure development contractor(s) convened TEPs for many of the measures in development under the IMPACT Act such as the functional assessment TEP, Discharge to Community TEP, Potentially Preventable Readmissions TEP, and the Drug Regimen Review TEP. We intend to continue this form of stakeholder engagement with future TEPs that will assess data standardization and Medicare Spending per Beneficiary measure concepts, among other topics. We also convened two separate listening sessions on February 10, 2015 and March 24, 2015 in order to receive stakeholder input on IMPACT Act implementation. In addition, we heard stakeholder input during the February 9, 2015 ad hoc MAP meeting provided for the sole purpose of reviewing the measures proposed in response to the IMPACT Act. We also implemented a public mail box for the submission of comments in January 2015, *PACQualityInitiative@cms.hhs.gov,* which is listed on our IMPACT Act of 2014 & Cross-Setting Measures Web site at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014-and-Cross-Setting-Measures.html,* and we held a Special Open Door Forum to seek input on the measures on February 25, 2015. The slides from the Special Open Door Forum are available *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014-and-Cross-Setting-Measures.html.*

Comment: We received several comments requesting that CMS ensure that the data used to satisfy the IMPACT Act measure domains be aligned across PAC settings to maximize the reliability and validity of such data and to enable data comparability. Commenters noted the importance of standardized patient assessment data for cross-setting comparisons of patient outcomes. Another commenter expressed concern about the level of standardization of data collection instruments across PAC settings, specifically the importance of assessment item alignment for items selected for use in the various PAC settings, and urged CMS to consider such data alignment issues. One commenter recommended CMS move as quickly as possible to collect interoperable and standardized data, and one commenter recommended that CMS conduct testing to evaluate comparability across settings. One commenter expressed concern related to the inconsistencies in the measures proposed, suggesting that there was significant variance in relation to their numerator, denominator and exclusions.

We received a few comments requesting details pertaining to the timing of the development and implementation of the standardized patient assessment data, measures, data collection, and reporting. Commenters requested a detailed timeline and schedule that specifies planned changes to standardize assessment data, including dates and sequencing of changes. Specifically, one commenter stated that although the sequencing for the quality measures and specified application dates were provided in the proposed rule, the detail related to the timing of the standardized data appeared to have been left out. The commenter requested that this final rule provide such timeline and sequencing.

Response: We agree that standardization is important for data comparability and outcome analysis. We will work to ensure that items pertaining to measures required under the IMPACT Act that are included in assessment instruments are standardized and aligned across the assessment instruments. In addition, we will ensure that the data used to satisfy the IMPACT Act measure domains will be aligned across PAC settings to maximize the reliability and validity of such data and to enable data comparability. We recognize the need for transparency as we move forward to implement the IMPACT Act and we intend to continue to engage stakeholders and ensure that our approach to implementation and timing is communicated in an open and informative manner. We will continue this communication through various means, such as open door forums, national provider calls, email blasts, and announcements. We intend to provide

ongoing information pertaining to the implementation and development of standardized patient assessment data, measures, data collection, and reporting to the public. We will also continue to provide information about development and implementation of the IMPACT Act on the IMPACT Act of 2014 & Cross-Setting Measures Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014-and-Cross-Setting-Measures.html.* In addition to the Web site updates and provider calls, we intend to provide information about development and implementation through pre-rulemaking activities surrounding the development of quality measures, which includes public input as part of our process. We intend to engage stakeholders and experts in developing the assessment instrument modifications necessary to meet data standardization requirements of the IMPACT Act. We also will use the rulemaking process to communicate timelines for implementation, including timelines for the replacement of items in PAC assessment tools, timelines for implementation of new or revised quality measures, and timelines for public reporting.

Regarding the timeline and sequencing surrounding the standardized patient assessment data, we interpret the commenters' concern to refer to the standardized data assessment domains listed within the Act under section 2(b) ''Standardized patient assessment data''. As stated in the preamble to the CY 2016 HH PPS proposed rule, we intend to require HHAs to begin reporting data on the quality measures required under the IMPACT Act for the year that begins 2 years after we adopt requirements that govern the submission of that data.

Comment: We received a few comments supporting and encouraging the use of NQF-endorsed measures and recommending that measures be NQF-endorsed prior to implementation. Specifically, commenters urged CMS to seek and receive NQF endorsement for measures in each PAC setting, noting that quality measure endorsement in one setting, such as a skilled nursing facility, may not mean a measure is appropriate, reliable, or valid for use in the home health setting.

Response: We will propose appropriate measures that meet the requirements of the IMPACT Act measure domains and that have been endorsed or adopted by a consensus organization whenever possible. However, when this is not feasible because there is no NQF-endorsed measure that meets all the requirements for a specified IMPACT Act measure domain, we intend to rely on the exception authority given to the Secretary in section 1899B(e)(2)(B) of the Act. This statutory exception allows the Secretary to specify a measure for the HH QRP setting that is not NQF-endorsed where, as here, we have not been able to identify other measures on the topic that are endorsed or adopted by a consensus organization. For all quality measures for the HH QRP, we seek MAP review, as well as expert opinion on the validity and reliability of those measures in the HH setting. For the proposed quality measure, the Percent of Residents/Patients/Persons with Pressure Ulcers That Are New or Worsened, the MAP PAC LTC Off-Cycle Workgroup conditionally supported the quality measure for HH QRP. We wish to note that we intend to seek consensus endorsement for the IMPACT Act measures in each PAC setting.

Comment: We received several comments about the burden on PAC providers of meeting new requirements imposed as a result of the implementation of the IMPACT Act. Specifically, commenters requested that CMS consider minimizing the burden for PAC providers when possible and avoiding duplication in data collection.

Response: We appreciate the importance of avoiding undue burden and will continue to evaluate and consider any burden the IMPACT Act and the HH QRP places on home health providers. In implementing the IMPACT Act thus far, we have taken into consideration any new burden that our requirements might place on PAC providers. In this respect, we note that many assessment items used to calculate the measure proposed for use in the HH QRP, the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened are currently being collected in the OASIS instrument.

Comment: We received one comment requesting that, in the future, cross-setting measures and assessment data changes related to the IMPACT Act be addressed in one stand-alone notice and rule that applies to all four post-acute care settings.

Response: We will take this request under consideration.

Comment: We received one comment expressing interest in learning about any proposed changes to the OASIS assessment instrument in the next version of the item set and when these changes might occur.

Response: We are committed to transparent communication about updates to the PAC assessment instruments required to support the IMPACT Act measures, as well as any new measures for the HH QRP. We wish to clarify that the draft revisions to the integumentary portion of the OASIS were posted along with the proposed rule on the Home Health Quality Measures Web page at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.* We intend to make publically available the final item set with its revisions as well as the submission specifications in a manner consistent with our previous postings of such information in the coming months.

Comment: We received one comment expressing concern that data used in reformulating the payment model and assessing quality in PAC settings be gathered by qualified clinicians. Specifically, the commenter emphasized the unique contributions of occupational therapists to support the intent of the IMPACT Act.

Response: We appreciate the feedback and concur on the important role played by qualified clinicians in collecting the data needed to support the requirements of the IMPACT Act.

Comment: One commenter recommended that CMS invest in training clinicians for any new data collection requirements that address the quality measures, the assessment items, and how the measures and the items are developed to meet the mandate of the IMPACT Act objectives. This commenter additionally noted that the training should address different settings of care and how patient populations differ across PAC settings, to support consistency in data collection.

Response: We agree that training is critical to assure both provider accuracy and understanding of the assessment and data collection requirements. We intend to provide training on updates to the OASIS assessment instrument as suggested, and intend to ensure that such training includes the information necessary to ensure consistent data collection.

Comment: One commenter underscored cognitive function as an important aspect of the IMPACT Act, because of its significant relationship to Medicare resource use, length of stay, and patients' long term outcomes. The commenter recommended that assessment of functional cognition be incorporated as part of CMS's efforts to meet the requirements of the IMPACT Act and added that providers need more training around appropriate functional activities for patients with cognitive impairments. This commenter also

offered to provide research studies and related materials to support CMS in this area.

Response: We concur on the importance of cognitive function and its relationship to quality outcomes for PAC patients. We are working toward developing quality measures that assess areas of cognition, recognizing that this quality topic is intrinsically linked to the function domain. We appreciate the commenter's offer of assistance and encourage the submission of comments and measure specification details to our comment email *PACQualityInitiative@cms.hhs.gov.*

Comment: One commenter supported the inclusion of new standardized self-care and mobility functional items in PAC assessment tools that utilize the data source of the CARE Tool. The commenter anticipated that functional measures based on CARE items that are being implemented in other PAC settings will be eventually added to the HH QRP. This commenter noted that use of these new items would facilitate accurate representation of patient function across the spectrum of PAC settings.

Response: We appreciate the commenter's feedback and support of the self-care and functional items that utilize data elements derived from the CARE Tool item set source. We believe that standardization of assessment items and measures, such as measures of functional status, across post-acute care settings is an important goal.

Comment: One commenter expressed concern regarding harmonization of measures across settings and outcomes measurement when multiple populations are included. This commenter urged that proposed IMPACT Act measures be limited to Medicare FFS beneficiaries, noting that to include other populations (Medicaid, Medicare Advantage, and MCO Medicaid) will complicate the interpretation of outcome results. The commenter expressed support of the construct of the Total Cost per Beneficiary. The commenter also suggested that a measure such as the Percent of Patients Discharged to a Higher Level of Care versus Community, which the commenter suggested could be used across all patients receiving home care, be included in future measure development. In addition, the commenter expressed support for measures related to falls and nutritional assessment, and hospitalizations, but requested clarification about the population that would be measured and recommended that all of these measures be limited to Medicare FFS patients only. The commenter additionally recommended that the uniqueness of home health care be considered when developing a standardized falls measure, noting that home health staff are not present 24 hours a day, seven days a week and are reliant on patients and caregivers in reporting and preventing falls.

Response: We appreciate the commenter's feedback about comparison of outcomes across different payer populations and appreciate the commenter's support for quality measure standardization as mandated by the IMPACT Act. The cross-setting measures: (1) *Payment Standardized Medicare Spending Per Beneficiary (MSPB),* (2) *Percentage residents/patients at discharge assessment, who discharged to a higher level of care versus to the community, (Application of NQF #2510),* (3) *Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM),* and (4) *Application of the LTCH/IRF All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from LTCHs/IRFs* are currently under development for all four PAC settings. These quality measures are being developed using Medicare claims data, thus the denominators for these measure constructs are limited to the Medicare FFS population. We intend to standardize denominator and numerator definitions across PAC settings in order to standardize quality measures as required by the IMPACT Act.

We acknowledge the unique constraints home health agencies face in monitoring patient falls. We are in the process of standardizing a quality measure that assesses one or more falls with a major injury, rather than just a measure assessing if a fall occurred. In the FY 2016 IPPS/LTCH PPS final rule, FY 2016 IRF PPS final rule and FY 2016 SNF PPS final rule, we finalized an application of the quality measure, the Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) measure (NQF #0674). This application of the quality measure assesses falls resulting in major injuries only, satisfying the domain in the IMPACT Act, the Incidence of Major Falls. A TEP convened by our measure development contractor provided input on the technical specifications of the application of the quality measure, the Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674), including the feasibility of implementing the measure across PAC settings, including home health care. The TEP was supportive of the implementation of this measure across PAC settings and was also supportive of our efforts to standardize this measure for cross-setting development. We have taken steps to standardize the numerator, denominator, and other facets of the quality measure across all PAC settings. As part of best clinical practice, the HHA should take steps to mitigate falls with major injury, especially since such falls are considered to be ''never events'' as they relate to healthcare acquired conditions.

Finally, we appreciate the commenter's concern that home health staff are not present 24 hours, 7 days a week and may not be able to track falls as they occur.

B. General Considerations Used for the Selection of Quality Measures for the HH QRP

We strive to promote high quality and efficiency in the delivery of health care to the beneficiaries we serve. Performance improvement leading to the highest quality health care requires continuous evaluation to identify and address performance gaps and reduce the unintended consequences that may arise in treating a large, vulnerable, and aging population. Quality reporting programs, coupled with public reporting of quality information, are critical to the advancement of health care quality improvement efforts.

We seek to adopt measures for the HH QRP that promote better, safer, and more efficient care. Valid, reliable, relevant quality measures are fundamental to the effectiveness of our quality reporting programs. Therefore, selection of quality measures is a priority for CMS in all of its quality reporting programs.

The measures selected will address the measure domains as specified in the IMPACT Act and align with the *CMS Quality Strategy,* which is framed using the three broad aims of the *National Quality Strategy*:

- Better Care: Improve the overall quality of care by making healthcare more patient-centered, reliable, accessible, and safe.
- Healthy People, Healthy Communities: Improve the health of the U.S. population by supporting proven interventions to address behavioral, social, and environmental determinants of health in addition to delivering higher-quality care.
- Affordable Care: Reduce the cost of quality healthcare for individuals, families, employers, and government.

In addition, our measure selection activities for the HH QRP take into consideration input we receive from the MAP. Input from the MAP is located on the MAP PAC LTC Programmatic Deliverable—Final Report Web page at:

http://www.qualityforum.org/Publications/2015/02/MAP_PAC-LTC_Programmatic_Deliverable_-_Final_Report.aspx. We also take into account national priorities, such as those established by the National Priorities Partnership at *http://www.qualityforum.org/npp/,* and the HHS Strategic Plan at: *http://www.hhs.gov/secretary/about/priorities/priorities.html.*

We initiated an Ad Hoc MAP process for the review of the measures under consideration for implementation in preparation of the measures for adoption into the HH QRP that we proposed through this fiscal year's rule, in order to begin implementing such measures by 2017. We included under the List of Measures under Consideration (MUC List) measures that the Secretary must make available to the public, as part of the pre-rulemaking process, as described in section 1890A(a)(2) of the Act. The MAP Off-Cycle Measures under Consideration for PAC–LTC Settings can be accessed on the National Quality Forum Web site at: *http://www.qualityforum.org/Publications/2015/03/MAP_Off-Cycle_Deliberations_2015_-_Final_Report.aspx.* The NQF MAP met in February 2015 and provided input to us as required under section 1890A(a)(3) of the Act. The MAP issued a pre-rulemaking report on March 6, 2015 entitled MAP Off-Cycle Deliberations 2015: Measures under Consideration to Implement Provisions of the IMPACT Act—Final Report, which is available for download at: *http://www.qualityforum.org/Publications/2015/03/MAP_Off-Cycle_Deliberations_2015_-_Final_Report.aspx.* The MAP's input for the proposed measure is discussed in this section.

To meet the first specified application date applicable to HHAs under section 1899B(a)(2)(E) of the Act, which is January 1, 2017, we focused on measures that:

- Correspond to a measure domain in sections 1899B(c)(1) or (d)(1) of the Act and are setting-agnostic: For example falls with major injury and the incidence of pressure ulcers;
- Are currently adopted for 1 or more of our PAC quality reporting programs, are already either NQF-endorsed and in use or finalized for use, or already previewed by the Measure Applications Partnership (MAP) with support;
- Minimize added burden on HHAs;
- Minimize or avoid, to the extent feasible, revisions to the existing items in assessment tools currently in use (for example, the OASIS); and
- Where possible, avoid duplication of existing assessment items.

As discussed in section V.A. of this final rule, section 1899B(j) of the Act requires that we allow for stakeholder input, such as through town halls, open door forums, and mailbox submissions, before the initial rulemaking process to implement section 1899B. To meet this requirement, we provided the following opportunities for stakeholder input: (1) We convened a Technical Expert Panel (TEP) that included stakeholder experts and patient representatives on February 3, 2015; (2) we provided two separate listening sessions on February 10 and March 24, 2015; (3) we sought public input during the February 2015 ad hoc MAP process regarding the measures under consideration for IMPACT Act domains; (4) we sought public comment as part of our measure maintenance work; and (5) we implemented a public mail box for the submission of comments in January 2015 located at *PACQualityInitiative@cms.hhs.gov.* The CMS public mailbox can be accessed on our IMPACT Act of 2014 & Cross-Setting Measures Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014-and-Cross-Setting-Measures.html.* Lastly, we held a National Stakeholder Special Open Door Forum to seek input on the measures on February 25, 2015.

In the absence of NQF endorsement on measures for the home health (HH) setting, or measures that are not fully supported by the MAP for the HH QRP, we intend to propose for adoption measures that most closely align with the national priorities discussed above and for which the MAP supports the measure concept. Further discussion as to the importance and high-priority status of these measures in the HH setting is included under each quality measure in this final rule. In addition, for measures not endorsed by the NQF, we have sought, to the extent practicable, to adopt measures that have been endorsed or adopted by a national consensus organization, recommended by multi-stakeholder organizations, and/or developed with the input of providers, purchasers/payers, and other stakeholders.

C. HH QRP Quality Measures and Measures Under Consideration for Future Years

In the CY 2014 HH PPS final rule, (78 FR 72256–72320), we finalized a proposal to add two claims-based measures to the HH QRP, and stated that we would begin reporting the data from these measures to HHAs beginning in CY 2014. These claims based measures are: (1) Rehospitalization during the first 30 days of HH; and (2) Emergency Department Use without Hospital Readmission during the first 30 days of HH. In an effort to align with other updates to Home Health Compare, including the transition to quarterly provider preview reports, we made the decision to delay the reporting of data from these measures until July 2015 (*http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQISpotlight.html*). Also in that rule, we finalized our proposal to reduce the number of process measures reported on the Certification and Survey Provider Enhanced Reporting (CASPER) reports by eliminating the stratification by episode length for nine (9) process measures. The removal of these measures from the CASPER folders occurred in October 2014. The CMS Home Health Quality Initiative Web site identifies the current HH QRP measures located on the Quality Measures Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.* In addition, as stated in the CY 2012 and CY 2013 HH PPS final rules (*76 FR 68575* and *77 FR 67093,* respectively), we finalized that we will also use measures derived from Medicare claims data to measure home health quality. This effort ensures that providers do not have an additional burden of reporting quality of care measures through a separate mechanism, and that the costs associated with the development and testing of a new reporting mechanism are avoided.

(a) We proposed one standardized cross-setting new measure for CY 2016 to meet the requirements of the IMPACT Act. The proposed quality measure addressing the domain of skin integrity and changes in skin integrity is the National Quality Forum (NQF)-endorsed measure: Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) (NQF #0678) (*http://www.qualityforum.org/QPS/0678*).

The IMPACT Act requires the specification of a quality measure to address skin integrity and changes in skin integrity in the home health setting by January 1, 2017. We proposed the implementation of quality measure NQF #0678, Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay) in the HH QRP as a cross-setting quality measure to meet the requirements of the IMPACT Act for the CY 2018 payment determination and subsequent years. This measure reports the percent of patients with Stage 2 through 4 pressure

ulcers that are new or worsened since the beginning of the episode of care.

Pressure ulcers are high-volume in post-acute care settings and high-cost adverse events. According to the 2014 Prevention and Treatment Guidelines published by the National Pressure Ulcer Advisory Panel, European Pressure Ulcer Advisory Panel, and Pan Pacific Pressure Injury Alliance, pressure ulcer care is estimated to cost approximately $11 billion annually, and between $500 and $70,000 per individual pressure ulcer.[56] Pressure ulcers are a serious medical condition that result in pain, decreased quality of life, and increased mortality in aging populations.[57 58 59 60] Pressure ulcers typically are the result of prolonged periods of uninterrupted pressure on the skin, soft tissue, muscle, and bone.[61 62 63] Elderly individuals are prone to a wide range of medical conditions that increase their risk of developing pressure ulcers. These include impaired mobility or sensation, malnutrition or undernutrition, obesity, stroke, diabetes, dementia, cognitive impairments, circulatory diseases, dehydration, bowel or bladder incontinence, the use of wheelchairs, the use of medical devices, polypharmacy, and a history of pressure ulcers or a pressure ulcer at admission.[64 65 66 67 68 69 70 71 72 73 74]

The IMPACT Act requires the specification of quality measures that are harmonized across PAC settings. This requirement is consistent with the NQF Steering Committee report, which stated that to understand the impact of pressure ulcers across settings, quality measures addressing prevention, incidence, and prevalence of pressure ulcers must be harmonized and aligned.[75] NQF #0678, Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay) is NQF-endorsed and has been successfully implemented using a harmonized set of data elements in IRF, LTCH, and SNF settings. A new item, M1309 was previously added to the OASIS–C1/ICD–9 version to collect data on new and worsened pressure ulcers in home health patients to support harmonization with NQF #0678 and data collection for this item began January 1, 2015. A new measure, based on this item, was included in the 2014 MUC list and received conditional endorsement from the National Quality Forum. That measure was harmonized with NQF #0678, but differed in the consideration of unstageable pressure ulcers. In this rule, we proposed a HH measure that is fully-standardized with NQF #0678.

A TEP convened by our measure development contractor provided input on the technical specifications of this quality measure, including the feasibility of implementing the measure across PAC settings. The TEP was supportive of the implementation of this measure across PAC settings and supported CMS's efforts to standardize this measure for cross-setting development. Additionally, the NQF MAP met on February 9, 2015 and February 27, 2015 and provided input to CMS. The MAP supported the use of NQF #0678, Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay) in the HH QRP as a cross-setting quality measure implemented under the IMPACT Act. More information about the MAPs recommendations for this measure on the National Quality Forum Web site at: *http://www.qualityforum.org/Publications/2015/02/MAP_PAC-LTC_Programmatic_Deliverable_-_Final_Report.aspx.*

We proposed that data for the standardized quality measure would be collected using the OASIS–C1 with submission through the Quality Improvement and Evaluation System (QIES) Assessment Submission and Processing (ASAP) system. HHAs began submitting data for the OASIS items used to calculate NQF #0678, the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (Short Stay), as part of the Home Health Quality Initiative to assess the number of new or worsened pressure ulcers in January 2015. By building on the existing reporting and submission infrastructure for HHAs, we intend to minimize the administrative burden related to data collection and submission for this measure under the HH QRP. For more information on HH reporting using the QIES ASAP system, refer to OASIS User Manual Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIOASISUserManual.html* and *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/OASIS/index.html?redirect=/oasis/.*

Data collected through the OASIS–C1 would be used to calculate this quality measure. Data items in the OASIS–C1 include M1308 (Current Number of Unhealed Pressure Ulcers at Each Stage or Unstageable) and M1309 (Worsening in Pressure Ulcer Status Since SOC/ROC). Data collected through the OASIS–C1 would be used for risk adjustment of this measure. We

[56] National Pressure Ulcer Advisory Panel, European Pressure Ulcer Advisory Panel and Pan Pacific Pressure Injury Alliance. Prevention and Treatment of Pressure Ulcers: Clinical Practice Guideline. Emily Haesler (Ed.) Cambridge Media; Osborne Park, Western Australia; 2014.

[57] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' Nurs N Z 19(10): 20–24.

[58] Gorzoni, M. L., and S. L. Pires (2011). ''Deaths in nursing homes.'' Rev Assoc Med Bras 57(3): 327–331.

[59] Thomas, J. M., et al. (2013). ''Systematic review: health-related characteristics of elderly hospitalized adults and nursing home residents associated with short-term mortality.'' *J Am Geriatr Soc* 61(6): 902–911.

[60] White-Chu, E. F., et al. (2011). ''Pressure ulcers in long-term care.'' Clin Geriatr Med 27(2): 241–258.

[61] Bates-Jensen BM. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. Ann Int Med. 2001;135 (8 Part 2), 744–51.

[62] Institute for Healthcare Improvement (IHI). Relieve the pressure and reduce harm. May 21, 2007. Available from *http://www.ihi.org/IHI/Topics/PatientSafety/SafetyGeneral/ImprovementStories/FSRelievethePressureandReduceHarm.htm.*

[63] Russo CA, Steiner C, Spector W. Hospitalizations related to pressure ulcers among adults 18 years and older, 2006 (Healthcare Cost and Utilization Project Statistical Brief No. 64). December 2008. Available from *http://www.hcupus.ahrq.gov/reports/statbriefs/sb64.pdf.*

[64] Agency for Healthcare Research and Quality (AHRQ). Agency news and notes: pressure ulcers are increasing among hospital patients. January 2009. Available from *http://www.ahrq.gov/research/jan09/0109RA22.htm.=*

[65] Bates-Jensen BM. Quality indicators for prevention and management of pressure ulcers in vulnerable elders. Ann Int Med. 2001;135 (8 Part 2), 744–51.

[66] Cai, S., et al. (2013). ''Obesity and pressure ulcers among nursing home residents.'' Med Care 51(6): 478–486.

[67] Casey, G. (2013). ''Pressure ulcers reflect quality of nursing care.'' Nurs N Z 19(10): 20–24.

[68] Hurd D, Moore T, Radley D, Williams C. Pressure ulcer prevalence and incidence across post-acute care settings. Home Health Quality Measures & Data Analysis Project, Report of Findings, prepared for CMS/OCSQ, Baltimore, MD, under Contract No. 500–2005–000181 TO 0002. 2010.

[69] MacLean DS. Preventing & managing pressure sores. Caring for the Ages. March 2003;4(3):34–7. Available from *http://www.amda.com/publications/caring/march2003/policies.cfm.*

[70] Michel, J. M., et al. (2012). ''As of 2012, what are the key predictive risk factors for pressure ulcers? Developing French guidelines for clinical practice.'' Ann Phys Rehabil Med 55(7): 454–465

[71] National Pressure Ulcer Advisory Panel (NPUAP) Board of Directors; Cuddigan J, Berlowitz DR, Ayello EA (Eds). Pressure ulcers in America: prevalence, incidence, and implications for the future. An executive summary of the National Pressure Ulcer Advisory Panel Monograph. Adv Skin Wound Care. 2001;14(4):208–15

[72] Park-Lee E, Caffrey C. Pressure ulcers among nursing home residents: United States, 2004 (NCHS Data Brief No. 14). Hyattsville, MD: National Center for Health Statistics, 2009. Available from *http://www.cdc.gov/nchs/data/databriefs/db14.htm.*

[73] Reddy, M. (2011). ''Pressure ulcers.'' Clin Evid (Online) 2011.

[74] Teno, J. M., et al. (2012). ''Feeding tubes and the prevention or healing of pressure ulcers.'' Arch Intern Med 172(9): 697–701.

[75] National Quality Forum. National voluntary consensus standards for developing a framework for measuring quality for prevention and management of pressure ulcers. April 2008. Available from *http://www.qualityforum.org/Projects/Pressure_Ulcers.aspx.*

anticipate risk adjustment items will include, but not be limited to M1850 (Activities of Daily Living Assistance, Transferring), and M1620 (Bowel Incontinence Frequency). OASIS C1 items M1016 (Diagnoses Requiring Medical or Treatment Change Within past 14 Days), M1020 (Primary Diagnoses) and M1022 (Other Diagnoses) would be used to identify patients with a diagnosis of peripheral vascular disease, diabetes, or malnutrition. More information about the OASIS items is available in the downloads section of the Home Health Quality Measures Web page at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.*

The specifications and data items for NQF #0678, the Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay), are available in the downloads section of the Home Health Quality Measures Web page at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.*

As part of our ongoing measure development efforts, we considered a future update to the numerator of the quality measure NQF #0678, Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay). This update would hold providers accountable for the development of unstageable pressure ulcers and suspected deep tissue injuries (sDTIs). Under this proposed change the numerator of the quality measure would be updated to include unstageable pressure ulcers, including sDTIs that are new/developed while the patient is receiving home health care, as well as Stage 1 or 2 pressure ulcers that become unstageable due to slough or eschar (indicating progression to a full thickness [that is, stage 3 or 4] pressure ulcer) after admission. This would be consistent with the specifications of the ''New and Worsened Pressure Ulcer'' measure for HH patients presented to the MAP on the 2014 MUC list. We did not propose the implementation of this change (that is, including sDTIs and unstageable pressure ulcers in the numerator) in the HH QRP, but solicited public feedback on this potential area of measure development.

Our measure development contractor convened a cross-setting pressure ulcer TEP that strongly recommended that CMS hold providers accountable for the development of new unstageable pressure ulcers and sDTIs by including these pressure ulcers in the numerator of the quality measure. Although the TEP acknowledged that unstageable pressure ulcers and sDTIs cannot and should not be assigned a numeric stage, panel members recommended that these be included in the numerator of NQF #0678, the Percent of Residents, or Patients with Pressure Ulcers That Are New or Worsened (Short Stay), as a new pressure ulcer if developed during a home health episode. The TEP also recommended that a Stage 1 or 2 pressure ulcer that becomes unstageable due to slough or eschar should be considered worsened because the presence of slough or eschar indicates a full thickness (equivalent to Stage 3 or 4) wound.[76] [77] These recommendations were supported by technical and clinical advisors and the National Pressure Ulcer Advisory Panel.[78] Additionally, exploratory data analysis conducted by our measure development contractor suggested that the addition of unstageable pressure ulcers, including sDTIs, would increase the observed incidence of new or worsened pressure ulcers at the agency level and may improve the ability of the quality measure to discriminate between poor- and high-performing facilities.

In addition, we also considered whether body mass index (BMI) should be used as a covariate for risk-adjusting NQF #0678 in the home health setting, as is done in other post-acute care settings. We invited public feedback to inform our direction to include unstageable pressure ulcers and sDTIs in the numerator of the quality measure NQF #0678 Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay), as well as on the possible collection of height and weight data for risk-adjustment, as part of our future measure development efforts.

We invited public comment on our proposal to adopt NQF #0678 Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay) for the HH QRP to fulfill the requirements of the IMPACT Act for CY 2018 HH payment determination and subsequent years. The following is a summary of the comments received and our responses.

Comment: The majority of commenters supported the addition of the proposed quality measure, the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678) to the Home Health Quality Reporting Program. Commenters appreciated that CMS chose a measure that uses data home health agencies already collect.

Response: We appreciate the commenters' support for implementing the proposed quality measure, the Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678).

Comment: A few commenters raised concerns about the fairness of using NQF #0678 to compare performance within home health and across PAC providers. One commenter noted that pressure ulcer improvement is challenging to measure in limited timeframes and disadvantages providers serving frailer populations and requested CMS consider risk adjustment based on sociodemographic, diagnostic, and care coordination factors. Commenters also recommended that CMS take into account the discrepancy in the control providers have over patient care in home health, relative to institutional settings. Another commenter additionally raised concerns about the reliability of the implementation of the Wound, Ostomy, and Continence Nurses (WOCN) Society guidelines used in staging pressure ulcers, and the lack of information about the status of the wound beyond staging while the patient is in the care of the provider. In addition, one commenter recommended that CMS conduct ongoing evaluation of the risk adjustment methodology for this proposed quality measure.

Response: We appreciate the commenters' concerns about ensuring fair comparisons within and across PAC settings. We also appreciate that such comparisons take into account the discrepancy in the control providers have over patient care in home health,

[76] Schwartz, M., Nguyen, K.H., Swinson Evans, T.M., Ignaczak, M.K., Thaker, S., and Bernard, S.L.: Development of a Cross-Setting Quality Measure for Pressure Ulcers: OY2 Information Gathering, Final Report. Centers for Medicare & Medicaid Services, November 2013. Available: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Quality-Measure-for-Pressure-Ulcers-Information-Gathering-Final-Report.pdf.*

[77] Schwartz, M., Ignaczak, M.K., Swinson Evans, T.M., Thaker, S., and Smith, L.: The Development of a Cross-Setting Pressure Ulcer Quality Measure: Summary Report on November 15, 2013, Technical Expert Panel Follow-Up Webinar. Centers for Medicare & Medicaid Services, January 2014. Available: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Pressure-Ulcer-Quality-Measure-Summary-Report-on-November-15-2013-Technical-Expert-Pa.pdf.*

[78] Schwartz, M., Nguyen, K.H., Swinson Evans, T.M., Ignaczak, M.K., Thaker, S., and Bernard, S.L.: Development of a Cross-Setting Quality Measure for Pressure Ulcers: OY2 Information Gathering, Final Report. Centers for Medicare & Medicaid Services, November 2013. Available: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/Downloads/Development-of-a-Cross-Setting-Quality-Measure-for-Pressure-Ulcers-Information-Gathering-Final-Report.pdf.*

relative to institutional settings. We are committed to developing risk models that take into account differences in patient characteristics, including chronic conditions and frailty. We believe that as with provider services within institutional settings, home health agencies aim to provide high quality care and therefore assess for and put into place care planning and services that mitigate poor quality outcomes. However, we will also take into account potential variation that may exist in relation to home based services as opposed to institutional services. Therefore, as part of measure maintenance, we intend to continue to evaluate for risk factors associated with pressure ulcers including those unique to the individuals receiving home health services. We intend to provide specific guidance through the OASIS manual and provider trainings to support clinicians in appropriately coding the stages of the pressure ulcers. In addition, we plan to conduct field testing on all the new and revised OASIS items that support the IMPACT Act measures, to assess inter-rater reliability and to further refine guidance and training.

This proposed quality measure underwent recent review as part of its measure maintenance by CMS's measure development contractor. Under Technical Expert Panel review, which included national experts and members of a various professional wound organizations such as the National Pressure Ulcer Advisory Panel (NPUAP), the current staging was not adjusted. We confirm our commitment to ongoing monitoring and re-evaluation of the risk models for all applicable outcome measures.

While we appreciate these comments and the importance of the role that sociodemographic status plays in the care of patients, we continue to have concerns about holding providers to different standards for the outcomes of their patients of low sociodemographic status because we do not want to mask potential disparities or minimize incentives to improve the outcomes of disadvantaged populations. We routinely monitor the impact of sociodemographic status on facilities' results on our measures.

NQF is currently undertaking a 2-year trial period in which new measures and measures undergoing maintenance review will be assessed to determine if risk-adjusting for sociodemographic factors is appropriate for each measure. For 2 years, NQF will conduct a trial of a temporary policy change that will allow inclusion of sociodemographic factors in the risk-adjustment approach for some performance measures. At the conclusion of the trial, NQF will determine whether to make this policy change permanent. Measure developers must submit information such as analyses and interpretations as well as performance scores with and without sociodemographic factors in the risk adjustment model.

Furthermore, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting research to examine the impact of socioeconomic status on quality measures, resource use, and other measures under the Medicare program as directed by the IMPACT Act. We will closely examine the findings of these reports and related Secretarial recommendations and consider how they apply to our quality programs at such time as they are available.

Comment: A commenter expressed concern that the proposed implementation of NQF #0678 did not include risk adjustment, just exclusion of patients who die.

Response: The Percent of Residents or Patients with Pressure Ulcers That Are New or Worsened (NQF #0678) is risk-adjusted based on an evaluation of covariates that predict the outcome, including low body mass, diabetes, arterial and peripheral vascular disease, med mobility and bowel incompetence. As stated in the CY 2016 HH PPS proposed rule, a discussion pertaining to risk adjustment for this measure can be found in the downloads section on the Home Health Quality Measures Web page at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIQualityMeasures.html.*

Comment: One commenter appreciated the revision in the organization of the pressure ulcer items in section M1308 that makes the section easier to understand and suggested similar revisions to other items. The commenter also questioned why data on the number and stage of pressure ulcers was collected on both M1309 and M1308, noting that this might confuse clinicians. This commenter suggested deleting M1309 and making additional revisions to M1308 to capture the number of new or worsened pressure ulcers since the most recent SOC/ROC, and further suggested adding M1308 at recertification. Another commenter noted that OASIS Item M1309 is complex and recommended CMS develop an algorithm to assist HHAs with completing this item, adding that this complexity may lead to a wide variation of responses from HHAs and affect data reliability. This commenter further noted that home health agencies might be reliant on caregivers and patients to follow instructions related to pressure ulcer prevention in order to achieve quality outcomes for pressure ulcers.

Response: We appreciate the commenters' positive feedback on items M1308, and suggestions related to M1309 in the current OASIS C1 item set, which we will take into consideration. We wish to clarify that M1308 would be collected at recertification. We also wish to clarify that the revised version of M1309 builds upon the current version of this item in the OASIS instrument and has been adjusted to be standardized to ensure comparable data capture of these items across the PAC settings. We appreciate the potential for confusion between the item sections M1308 and M1309. The items used in the skin assessment that inform this measure were tested during the development of the Minimum Data Set version 3.0. The inter-rater reliability and validity of these items was very strong suggesting that there was little confusion in the coding of these items by clinicians. We believe that training is important in assuring accurate assessments and OASIS coding. Therefore, we plan to issue new guidance on these items, as part of the update to the OASIS manual, well in advance of their implementation, and to provide further support through training and other education materials. We appreciate the unique role of patients and caregivers in achieving quality health outcomes in the home setting, where skilled care is intermittent in nature. We believe that as part of home health services, the provider ensures that adequate person and family centered education is provided to help in the avoidance and mitigation of pressure ulcers, or other events. Thus, CMS currently has implemented several process measures in the HH QRP, which assess whether care plans and other best practices have been implemented to help patients achieve the best possible outcomes.

Comment: A commenter noted strong support for assessing and considering other wounds in addition to pressure ulcers when determining the clinical and functional status of the patient. This commenter additionally recommended that CMS expand the list of active diagnoses that are typically barriers to good outcomes and clarify whether these are diagnoses or symptomology.

Response: We appreciate the comment supporting assessment and monitoring all wounds, as well as the recommendation to expand the list of active diagnoses. We believe that as part of providing quality care, home health

agencies assess, care for, document, and ensure surveillance of all wound types. We will consider this feedback in future refinements of this proposed quality measure. In addition, we will consider expanding the items referencing active diagnoses and better clarifying whether items are referencing new diagnoses or symptomology of a disease.

Comment: Several commenters commented on the collection of a patient's height and weight in the OASIS, in order to calculate body mass index (BMI) as a risk adjustor for this proposed quality measure. CMS received several comments in support of the proposal of this quality measure. One commenter supported the efforts to standardize data to improve data accuracy and to help facilitate best practices for the prevention of pressure ulcers, while assuring appropriate care for pressure ulcers is given in all settings. The commenter expressed that there is relevance of low BMI and the incidence of pressure ulcers and recommended that CMS consider evaluating high BMI as a risk factor for developing new or worsened pressure ulcers. One commenter believed that CMS should not use BMI obtained in the home health setting, suggesting that physician offices and care centers obtain such information. One commenter did not support the use of BMI as a covariate for the New or Worsened Pressure Ulcer proposed quality measure without additional evidence of its relevance in the home care setting.

Several commenters expressed concerns about the situations in which providers are unable to collect accurate height and weight data in the home care setting safely, including situations such as, but not limited to, bedbound patients who are unable to stand on scales or whose self-reported height may be invalid due to memory deficits. Commenters additionally cited the lack of appropriate equipment to obtain this information in the home, including scales and Hoyer lifts for patients who cannot transfer. An additional commenter recommended that CMS add an option box to the new OASIS items to allow coding for those patients who cannot be weighed. Finally, one commenter requested clarification of ''base weight'' and the expectation for recording a weight that is measured during the visit versus a weight which could be reported by the patient when they are weighed in their home or based a recent healthcare provider appointment or hospitalization.

Response: We appreciate the comments received pertaining to the relevance of low BMI as a risk factor for developing pressure ulcers, the inclusion of low BMI in the measure and the suggestion that we evaluate the inclusion of high BMI as a risk factor for pressure ulcers. We further appreciate the comments regarding the challenge of obtaining height and weight data in the home for home health patients. This information is collected in order to standardize risk adjustment for measuring the incidence of new and worsened pressure ulcers to facilitate the comparison of quality data within and across post-acute care settings for this outcome measure.

Low body mass index, which is derived from a patient's height and weight, is a known correlate of developing pressure ulcers. We recognize that there will be instances in which obtaining height and weight cannot occur, and coding response options will be available in order to indicate when such data cannot be obtained. We intend to issue specific guidance through the OASIS manual on obtaining these data, including a definition of ''base weight''. We will also offer support through training, Open Door Forums, and other communication mechanisms.

In response to the commenter who suggested that physician offices and wound care centers obtain information related to height and weight, we will take this feedback into consideration in our ongoing maintenance of this proposed quality measure. In the cross-setting Technical Expert Panel held by our measure contractor, it was advised that we continue to use BMI, as collected, to indicate low body mass. We appreciate those comments that suggest enhancements to the measure's risk adjustment and we will take into consideration revisions to the measure and risk adjustment model in our ongoing maintenance of the measure.

Comment: One commenter expressed support for the integration of unstageable pressure ulcers and sDTIs into the measure, and stressed the importance of education on the additional options prior to implementing this change, citing the challenges to correct staging and the importance of inter-rater reliability across PAC settings.

Response: We appreciate the feedback on future integration of unstageable pressure ulcers and sDTIs into this measure, and will consider it when undertaking any revisions. We also appreciate the commenter's emphasis on the important of education and training as the OASIS is revised and the quality measures are developed. We historically have and will continue to provide comprehensive training each time the assessment items change. In addition to the manual and training sessions, we will provide training materials through the CMS webinars, open door forums, and help desk support. As provided previously, item testing revealed very strong inter-rater reliability. Additionally, with the measure development and maintenance process, we will continue to test this proposed measure's reliability and validity across settings.

Final Action: After consideration of the comments received, we are finalizing as proposed the adoption of NQF #0678 Percent of Residents or Patients with Pressure Ulcers that are New or Worsened (Short Stay) for use in the HH QRP for CY 2018 HH payment determination and subsequent years.

TABLE 19—FUTURE CROSS-SETTING MEASURE CONSTRUCTS UNDER CONSIDERATION TO MEET IMPACT ACT REQUIREMENTS

[Home Health Timeline for Implementation—January 1, 2017]

IMPACT Act Domain	Measures to reflect all-condition risk-adjusted potentially preventable hospital readmission rates.
Measures	*Application of (NQF #2510): Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM).* CMS is the steward.
	Application of the LTCH/IRF All-Cause Unplanned Readmission Measure for 30 Days Post Discharge from LTCHs/IRFs.
IMPACT Act Domain:	Resource Use, including total estimated Medicare spending per beneficiary.
Measure	*Payment Standardized Medicare Spending Per Beneficiary (MSPB).*
IMPACT Act Domain	Discharge to community.
Measure	*Percentage residents/patients at discharge assessment, who discharged to a higher level of care versus to the community.*
IMPACT Act Domain	Medication Reconciliation.
Measure	*Percent of patients for whom any needed medication review actions were completed.*

We also identified four future, cross-setting measure constructs to potentially meet requirements of the IMPACT Act domains of: (1) All-condition risk-adjusted potentially preventable hospital readmission rates; (2) resource use, including total estimated Medicare spending per beneficiary; (3) discharge to community; and (4) medication reconciliation. These are shown in Table 19; we solicited public feedback to inform future measure development of these constructs as it relates to meeting the IMPACT Act requirements in these areas. These measures will be proposed in future rulemaking. The comments we received on this topic, with our responses, are summarized below.

Comment: One commenter encouraged CMS to include clinical experts in the development of measures for cognition, expressive and receptive language, and swallowing stressing that without clinical expertise, substandard data, barriers to data collection, and risks in improving patient outcomes could occur. The commenter asked that these suggested measures be considered as items of function and not exclusively as risk adjustors. This commenter supported the risk adjustment of all outcome measures based on key case-mix variables due to the variability of patients treated in PAC settings.

Response: We intend to incorporate clinical expertise in our ongoing measure refinement activities to better inform the development of these quality measures. One way we incorporate this form of clinical input is through the inclusion of Technical Expert Panels supported by the quality measurement development contractor. We also encourage public input on our measure development, and comments may be submitted to our quality reporting program email *HomeHealthQualityQuestions@cms.hhs.gov*

We are working toward developing quality measures that assess areas of cognition and expression, recognizing that these quality topic domains are intrinsically linked or associated to the domain of function and cognitive function. In this measure development, we will take into consideration the variability of the PAC population and the appropriate risk-adjustment based on case-mix. In addition, we will take into consideration the suggestion that these measures operate as items of function and not exclusively as risk adjustors.

Comment: One commenter requested that CMS consider the CARE–C and CARE–F items based on the National Outcomes Measurement System (NOMS) to capture communication, cognition, and swallowing as additional measures to be adopted in post-acute care settings for future measures.

Response: We appreciate the suggestion that we consider refinements to functional items such as communication, cognition, and swallowing, which may provide a more meaningful picture of patients with impairments in these areas. We will consider these recommendations in our item, measure, and testing efforts for both measure development as well as standardized assessment domain development.

Comment: One commenter expressed concern regarding the cross-setting all-cause potentially preventable hospital readmissions measure. The commenter suggested that additional research on the effectiveness of this measure be pursued. The commenter proposed that the measure include rewards for sustained achievement as well as for improvement; and that actions outside of the agency's control (for example, timely physician signatures on orders) be taken into consideration in the application of the all-cause readmission measure. In addition, the commenter recommends that CMS consider risk adjustment to address family-requested hospitalizations and increased risk of hospitalization due to select diagnoses and comorbidities.

One commenter noted difficulty in providing meaningful comment on specific measures and measure constructs without further information. Regarding the measure ''Percent of patients for whom any needed medication review actions were completed'', the commenter stated it is unclear from the table how one would determine whether a medication review action is needed for purposes of the measure. One commenter stated they need additional time to review more thoroughly, and plans to provide further feedback in the future.

Finally, one commenter recommended the inclusion of nurse practitioners in both the development and implementation of care plans based on quality indicators.

Response: We appreciate the commenters' feedback and suggestions regarding the cross-setting all-cause potentially preventable hospital readmissions measure, and will consider them in future revisions. We intend to risk adjust this outcome measure, based on evaluation of statistically significant covariates, including diagnoses and co-morbidities.

We appreciate the comments pertaining to the quality measure, the percent of patients for whom any needed medication review actions were completed. As we continue to develop and test this measure construct, we will make information about the measurement specifications available through posting specifications on our Web site and public comment periods. We recognize the need for transparency as we move forward to implement the IMPACT Act and will continue to engage stakeholders to ensure that our approach to measure development and implementation is communicated in an open and informative manner. We

would like to note that anyone can submit feedback on the measures by means of our mailbox *PACQualityInitiative@cms.hhs.gov.*

Finally, we appreciate the important role played by nurse practitioners in patient health and home care outcomes, and encourage their participation through the variety of modes of stakeholder engagement noted above.

We will take all comments into consideration when developing and modifying assessment items and quality measures.

TABLE 20—FUTURE SETTING-SPECIFIC MEASURE CONSTRUCTS UNDER CONSIDERATION

National Quality Strategy Domain	Measure Construct
Safety	*Falls risk composite process measure:* Percentage of home health patients who were assessed for falls risk and whose care plan reflects the assessment, and which was implemented appropriately.
	Nutrition assessment composite measure: Percentage of home health patients who were assessed for nutrition risk with a validated tool and whose care plan reflects the assessment, and which was implemented appropriately.
Effective Prevention and Treatment	*Improvement in Dyspnea in Patients with a Primary Diagnosis of Congestive Heart Failure (CHF), Chronic Obstructive Pulmonary Disease (COPD), and/or Asthma:* Percentage of home health episodes of care during which a patient with a primary diagnosis of CHF, asthma and/or COPD became less short of breath or dyspneic.
	Improvement in Patient-Reported Interference due to Pain: Percent of home health patients whose self-reported level of pain interference on the Patient-Reported Objective Measurement Information System (PROMIS) tool improved.
	Improvement in Patient-Reported Pain Intensity: Percent of home health patients whose self-reported level of pain severity on the PROMIS tool improved.
	Improvement in Patient-Reported Fatigue: Percent of home health patients whose self-reported level of fatigue on the PROMIS tool improved.
	Stabilization in 3 or more Activities of Daily Living (ADLs): Percent of home health patients whose functional scores remain the same between admission and discharge for at least 3 ADLs.

(b) We worked with our measure development and maintenance contractor to identify setting-specific measure concepts for future implementation in the HH QRP that align with or complement current measures and new measures to meet domains specified in the IMPACT Act. In identifying priority areas for future measure enhancement and development, we took into consideration results of environmental scans and resulting gap analysis for relevant home health quality measure constructs, along with input from numerous stakeholders, including the Measures Application Partnership (MAP), the Medicare Payment Advisory Commission (MedPAC), Technical Expert Panels, and national priorities, such as those established by the National Priorities Partnership, the HHS Strategic Plan, the National Strategy for Quality Improvement in Healthcare, and the CMS Quality Strategy. Based on input from stakeholders, CMS identified several high priority concept areas for future measure development in Table 20.

These measure concepts are under development, and details regarding measure definitions, data sources, data collection approaches, and timeline for implementation will be communicated in future rulemaking. We invited feedback about these seven high priority concept areas for future measure development. Public comments and our responses to comments are summarized below.

Comment: Multiple commenters expressed support for the potential constructs for future development, and especially cited stabilization in function. One commenter expressed appreciation that the basic timeline for implementation of future measures is consistent with the IMPACT Act's requirements.

One commenter recommended four new quality measure constructs related to family caregivers. These included: Home health agency documentation of whether the beneficiary has a family caregiver; whether the care or discharge plan relies on the family caregiver to provide assistance; whether the family caregiver was provided supports they need as part of the plan after determining the need for such supports; and family caregiver experience of care. A few commenters recommended that CMS ensure new measures provide meaningful information and minimize burden.

One commenter urged CMS to provide clear and transparent explanations of measure specifications, and to provide as much information as possible about the measures proposed. One commenter recommended CMS only use measures after they have been tested in the home health setting and proved to have meaningful risk adjustment, as well as to be person-centered and realistic for patients' disease state. Two commenters recommended that CMS consider consolidating or removing measures prior to expanding the current set of measures to minimize administrative burden. One additionally noted that some existing measures could prove to be redundant or unnecessary when the IMPACT Act measures are implemented. A few commenters encouraged CMS to employ a transparent process for measure development that allows for multiple avenues for stakeholder input. One commenter welcomed the opportunity to work with CMS in the development of these measures and their specifications.

In response to the specific constructs listed in the Notice for Proposed Rule Making, one commenter said that a nutrition assessment conducted in the home setting, to support a nutritional assessment process measure, must comprise data elements that would not be included in a facility assessment, such as access to, and resources for food shopping. This commenter additionally recommended that new measures take into account patient-centered decisions and goals, including refusal of care, and balance these against provider accountability.

MedPAC expressed concern about the number of quality measures in the Medicare Program, specifically the number currently used in the HH QRP. MedPAC suggested that prior to expanding the current set of measures in the HH QRP, CMS should consider

whether any of the current measures can be consolidated or removed, recognizing that some measures are proposed in response to legislation. MedPAC further suggested that CMS consider whether any of its measures are unnecessary or redundant for the HH QRP, once the IMPACT Act measures are implemented.

Response: We appreciate the feedback on potential constructs for future measure development and concur with the importance of valid and reliable stabilization measures for home health patients. Additionally, we agree that caregiver constructs are high priority areas to consider for future measure development.

With all new measure development, we are committed to assessing the burden and utility of proposed measures, through Technical Expert Panels, public comment periods and other opportunities for stakeholder input. In addition, we are planning to conduct field testing of new and existing OASIS items to assess their reliability, validity and relevance in the home health setting. This field testing will inform new measure development.

We agree with MedPAC, as well as other commenters, regarding the importance of a modest set of measures for the HH QRP and are re-evaluating the entire set to determine which measures are candidates for revision or retirement. CMS's measure contractor has convened a Technical Expert Panel of providers, caregiver representatives, and other clinical experts to aid in the re-evaluation process. This process has included: (1) Analysis of historical measure trends, as well as reliability, validity and variability; (2) a review of the scientific basis for the measure construct in the literature and guidelines; and (3) feedback on the value of the measures to providers and patients for assessing and improving quality. Ongoing evaluation of measures used in HH QRP will continue as measures intended to satisfy the IMPACT Act's specified domains are made operational.

In the current HH QRP outcome measures are risk-adjusted for a wide array of covariates and these risk models undergo periodic review and updating. We would extend this practice to new outcome measures as appropriate.

We recognize the unique circumstances of home health patients, who have greater control and potentially greater barriers for maintaining good nutritional status. Additionally, we recognize that home health patients may make decisions that align with their personal choice but may be at odds with high quality outcomes.

Comment: One commenter recommended that the OASIS capture information on cerebral palsy, traumatic brain injury, and cognitive impairment for long-term home health patients.

Response: We appreciate the commenter's recommendation to capture information on the OASIS for all individuals with cerebral palsy, traumatic brain injury, and cognitive impairment and will take these comments into consideration when developing and modifying assessment items and quality measures.

D. Form, Manner, and Timing of OASIS Data Submission and OASIS Data for Annual Payment Update

1. Regulatory Authority

The HH conditions of participation (CoPs) at § 484.55(d) require that the comprehensive assessment must be updated and revised (including the administration of the OASIS) no less frequently than: (1) The last 5 days of every 60 days beginning with the start of care date, unless there is a beneficiary-elected transfer, significant change in condition, or discharge and return to the same HHA during the 60-day episode; (2) within 48 hours of the patient's return to the home from a hospital admission of 24-hours or more for any reason other than diagnostic tests; and (3) at discharge.

It is important to note that to calculate quality measures from OASIS data, there must be a complete quality episode, which requires both a Start of Care (initial assessment) or Resumption of Care OASIS assessment and a Transfer or Discharge OASIS assessment. Failure to submit sufficient OASIS assessments to allow calculation of quality measures, including transfer and discharge assessments, is a failure to comply with the CoPs.

HHAs do not need to submit OASIS data for those patients who are excluded from the OASIS submission requirements. As described in the December 23, 2005 Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies final rule (70 FR 76202), we defined the exclusion as those patients:

- Receiving only non-skilled services;
- For whom neither Medicare nor Medicaid is paying for HH care (patient receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement);
- Receiving pre- or post-partum services; or
- Under the age of 18 years.

As set forth in the CY 2008 HH PPS final rule (72 FR 49863), HHAs that become Medicare certified on or after May 31 of the preceding year are not subject to the OASIS quality reporting requirement nor any payment penalty for quality reporting purposes for the following year. For example, HHAs certified on or after May 31, 2014 are not subject to the 2 percentage point reduction to their market basket update for CY 2015. These exclusions only affect quality reporting requirements and do not affect the HHA's reporting responsibilities as announced in the December 23, 2005 final rule.

2. Home Health Quality Reporting Program Requirements for CY 2016 Payment and Subsequent Years

In the CY 2014 HH PPS Final rule (78 FR 72297), we finalized a proposal to consider OASIS assessments submitted by HHAs to CMS in compliance with HH CoPs and Conditions for Payment for episodes beginning on or after July 1, 2012, and before July 1, 2013 as fulfilling one portion of the quality reporting requirement for CY 2014.

In addition, we finalized a proposal to continue this pattern for each subsequent year beyond CY 2014. OASIS assessments submitted for episodes beginning on July 1 of the calendar year 2 years prior to the calendar year of the Annual Payment Update (APU) effective date and ending June 30 of the calendar year one year prior to the calendar year of the APU effective date, fulfill the OASIS portion of the HH QRP requirement.

3. Previously Established Pay-for-Reporting Performance Requirement for Submission of OASIS Quality Data

Section 1895(b)(3)(B)(v)(I) of the Act states that for 2007 and each subsequent year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points if a home health agency does not submit data to the Secretary in accordance with subclause (II) for such a year. This pay-for-reporting requirement was implemented on January 1, 2007. In the CY 2015 HH PPS Final rule (79 FR 38387), we finalized a proposal to define the quantity of OASIS assessments each HHA must submit to meet the pay-for-reporting requirement.

We believe that defining a more explicit performance requirement for the submission of OASIS data by HHAs would better meet the intent of the statutory requirement.

In the CY 2015 HH PPS Final rule (79 FR 38387), we reported information on a study performed by the Department of

Health & Human Services, Office of the Inspector General (OIG) in February 2012 to: (1) Determine the extent to which HHAs met federal reporting requirements for the OASIS data; (2) to determine the extent to which states met federal reporting requirements for OASIS data; and (3) to determine the extent to which CMS was overseeing the accuracy and completeness of OASIS data submitted by HHAs. Based on the OIG report we proposed a performance requirement for submission of OASIS quality data, which would be responsive to the recommendations of the OIG.

In response to these requirements and the OIG report, we designed a pay-for-reporting performance system model that could accurately measure the level of an HHA's submission of OASIS data. The performance system is based on the principle that each HHA is expected to submit a minimum set of two matching assessments for each patient admitted to their agency. These matching assessments together create what is considered a quality episode of care, consisting ideally of a Start of Care (SOC) or Resumption of Care (ROC) assessment and a matching End of Care (EOC) assessment. However, it was determined that there are several scenarios that could meet this matching assessment requirement of the new pay-for-reporting performance requirement. These scenarios or quality assessments are defined as assessments that create a quality episode of care during the reporting period or could create a quality episode if the reporting period were expanded to an earlier reporting period or into the next reporting period.

Seven types of assessments submitted by an HHA fit this definition of a quality assessment. These are:

1. A Start of Care (SOC; M0100 = '01') or Resumption of Care (ROC; M0100 = '03') assessment that can be matched to an End of Care (EOC; M0100 = '06', '07', '08', or '09') assessment. These SOC/ROC assessments are the first assessment in the pair of assessments that create a standard quality of care episode describe in the previous paragraph.
2. An End of Care (EOC) assessment that can be matched to a Start of Care (SOC) or Resumption of Care (ROC) assessment. These EOC assessments are the second assessment in the pair of assessments that create a standard quality of care episode describe in the previous paragraph.
3. A SOC/ROC assessment that could begin an episode of care, but the assessment occurs in the last 60 days of the performance period. This is labeled as a Late SOC/ROC quality assessment. The assumption is that the EOC assessment will occur in the next reporting period.
4. An EOC assessment that could end an episode of care that began in the previous reporting period, (that is, an EOC that occurs in the first 60 days of the performance period). This is labeled as an Early EOC quality assessment. The assumption is that the matching SOC/ROC assessment occurred in the previous reporting period.
5. A SOC/ROC assessment that is followed by one or more follow-up assessments, the last of which occurs in the last 60 days of the performance period. This is labeled as an SOC/ROC Pseudo Episode quality assessment.
6. An EOC assessment is preceded by one or more follow-up assessments, the first of which occurs in the first 60 days of the performance period. This is labeled an EOC Pseudo Episode quality assessment.
7. A SOC/ROC assessment that is part of a known one-visit episode. This is labeled as a One-Visit episode quality assessment. This determination is made by consulting HH claims data.

SOC, ROC, and EOC assessments that do not meet any of these definitions are labeled as Non-Quality assessments. Follow-up assessments (that is, where the M0100 Reason for Assessment = '04' or '05') are considered Neutral assessments and do not count toward or against the pay-for-reporting performance requirement.

Compliance with this performance requirement can be measured through the use of an uncomplicated mathematical formula. This pay-for-reporting performance requirement metric has been titled as the ''Quality Assessments Only'' (QAO) formula because only those OASIS assessments that contribute, or could contribute, to creating a quality episode of care are included in the computation.

The formula based on this definition is as follows:

$$\text{QAO} = \frac{(\text{\# of Quality Assessments})}{(\text{\# of Quality Assessments} + \text{\# of NonQuality Assessments})} * 100$$

Our ultimate goal is to require all HHAs to achieve a pay-for-reporting performance requirement compliance rate of 90 percent or more, as calculated using the QAO metric illustrated above. In the CY 2015 HH PPS final rule (79 FR 66074), we proposed implementing a pay-for-reporting performance requirement over a 3-year period. After consideration of the public comments received, we adopted as final our proposal to establish a pay-for-reporting performance requirement for assessments submitted on or after July 1, 2015 and before June 30, 2016 with appropriate start of care dates, HHAs must score at least 70 percent on the QAO metric of pay-for-reporting performance requirement or be subject to a 2 percentage point reduction to their market basket update for CY 2017.

HHAs have been statutorily required to report OASIS for a number of years and therefore should have many years of experience with the collection of OASIS data and transmission of this data to CMS. Given the length of time that HHAs have been mandated to report OASIS data and based on preliminary analyses that indicate that the majority of HHAs are already achieving the target goal of 90 percent on the QAO metric, we believe that HHAs would adapt quickly to the implementation of the pay-for-reporting performance requirement, if phased in over a 3-year period.

In the CY 2015 rule, we did not finalize a proposal to increase the reporting requirement in 10 percent increments over a 2-year period beginning July 1, 2016 until the maximum rate of 90 percent is reached. Instead, we proposed to analyze historical data to set the reporting requirements. To set the threshold for the 2nd year, we analyzed the most recently available data, from 2013 and 2014, to make a determination about what the pay-for-reporting performance requirement should be. Specifically, we reviewed OASIS data from this time period simulating the pay-for-reporting performance 70 percent submission requirement to determine the hypothetical performance of each HHA as if the pay-for-reporting performance requirement were in effect during the reporting period preceding its implementation. This analysis indicated a nominal increase of 10 percent each year would provide the greatest opportunity for successful implementation versus an increase of 20 percent from year 1 to year 2.

Based on this analysis, we proposed to set the performance threshold at 80 percent for the reporting period from July 1, 2016 through June 30, 2017. For the reporting period from July 1, 2017 through June 30, 2018 and thereafter, we proposed the performance threshold would be 90 percent.

We provided a report to each HHA of their hypothetical performance under the pay-for-reporting performance requirement during the 2014–2015 pre-implementation reporting period in June 2015. On January 1, 2015, the data submission process for OASIS converted from the current state-based OASIS submission system to a new national OASIS submission system known as the Assessment Submission and Processing (ASAP) System. On July 1, 2015, when the pay-for-reporting performance requirement of 70 percent went into effect, providers were required to submit their OASIS assessment data into the ASAP system. Successful submission of an OASIS assessment consist of the submission of the data into the ASAP system with a receipt of no ''fatal error'' messages. Error messages received during submission can be an indication of a problem that occurred during the submission process and could also be an indication that the OASIS assessment was rejected. Successful submission can be verified by ascertaining that the submitted assessment data resides in the national database after the assessment has met all of the quality standards for completeness and accuracy during the submission process. Should one or more OASIS assessments submitted by a HHA be rejected due to an IT/server issue caused by CMS, we may at our discretion, excuse the non-submission of OASIS data. We anticipate that such a scenario would rarely, if ever, occur. In the event that a HHA believes that they were unable to submit OASIS assessments due to an IT/server issue on the part of CMS, the HHA should be prepared to provide any documentation or proof available, which could demonstrate that no fault on their part contributed to the failure of the OASIS records to transmit to CMS.

The initial performance period for the pay-for-reporting performance requirement is July 1, 2015 through June 30, 2016. Prior to and during this performance period, we have scheduled Open Door Forums and webinars to educate HHA personnel as needed about the pay-for-reporting performance requirement program and the pay-for-reporting performance QAO metric, and distributed individual provider preview reports. Additionally, OASIS Education Coordinators (OECs) have been trained to provide state-level instruction on this program and metric. We have posted a report, which provides a detailed explanation of the methodology for this pay-for-reporting QAO methodology. To view this report, go to the downloads section at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Reporting-Requirements.html.* Training announcements and additional educational information related to the pay-for-reporting performance requirement have been provided on the HH Quality Initiatives Web page.

We invited public comment on our proposal to implement an 80 percent Pay-for-Reporting Performance Requirement for Submission of OASIS Quality Data for Year 2 reporting period July 1, 2016 to June 30, 2017 as described previously, for the HH QRP. Public comments and our responses to comments are summarized below.

Comment: Several commenters supported CMS' proposed phased-in approach for the ''Quality Assessments Only'' (QAO) reporting requirements and the submission of OASIS data; one additionally noted appreciation for the added clarity about the QAO benchmarks for the next two assessment periods. A few commenters noted that the proposed increase to 80 percent for the 2016–2017 was acceptable, but encouraged CMS to defer subsequent increases, pending evaluation. One of these commenters additionally requested that CMS provide continuing status updates on the progress toward these goals so that HHAs could make changes to their processes in order to be compliant.

Response: We appreciate the feedback and support for the QAO reporting thresholds and intend to conduct ongoing monitoring of the effect of increasing the QAO threshold on the percent of agencies that are compliant with this pay-for-reporting requirement. We do not intend to defer the increase to 90 percent beyond the schedule included in the rule; this threshold was chosen based on analysis indicating compliance was already at this level for the vast majority of agencies. We designed the pay-for-reporting performance system model in response to federal reporting requirements for the OASIS data and the recommendation in the OIG report entitled, ''Limited Oversight of Home Health Agency OASIS Data,'' that we ''identify all HHAs that failed to submit OASIS data and apply the 2 percent payment reduction to them''. As the OASIS reporting requirements have been in existence for 16 years, HHAs should already possess knowledge of these requirements and know what they need to do to bring their agency into compliance. We provided a report to each HHA of their hypothetical performance under the pay-for-reporting performance requirement during the 2014–2015 pre-implementation reporting period in June 2015; additionally we are considering options for ongoing communication with agencies about their compliance levels.

Comment: One commenter requested CMS provide additional clarification about the definition of ''OASIS submission'' and whether it required acceptance of the submission by the state agency, as well as whether the QAO calculation included Medicare Advantage and Medicaid patients, in addition to traditional Medicare. This commenter recommended the standard be applied only to assessments completed for traditional Medicare patients and requested CMS provide comprehensive education on the new standard at least six months before it is effective.

Response: On January 1, 2015, the data submission process for OASIS converted from the former state-based OASIS submission system to a new national OASIS submission system known as the Assessment Submission and Processing (ASAP) System. Therefore, the commenter's question about whether successful submission requires both submission and acceptance of OASIS data by the state agency is not applicable because the state-based OASIS submission system is no longer in existence.

Providers are required to submit their OASIS assessment data into the ASAP system. Successful submission of an OASIS assessment consists of the submission of the data into the ASAP system with a receipt of no fatal error messages. Error messages received during submission can be an indication of a problem that occurred during the submission process and could also be an indication that the OASIS assessment was rejected. Successful submission can be verified by ascertaining that the submitted assessment data resides in the national database after the assessment has met all of the quality standards for completeness and accuracy during the submission process.

As noted previously, should one or more OASIS assessments submitted by a HHA be rejected due to an IT/server issue caused by CMS, we may at our discretion, excuse the non-submission of OASIS data. We anticipate that such a scenario would rarely, if ever, occur. In the event that a HHA believes they were unable to submit OASIS

assessments due to an IT/server issue on the part of CMS, the HHA should be prepared to provide any documentation or proof available which demonstrates no fault on their part contributed to the failure of the OASIS transmission to CMS.

Patients receiving care under a Medicare or Medicaid managed care plan are not excluded from the OASIS reporting requirements, and HHAs are required to submit OASIS assessments for these patients. OASIS reporting is mandated for all Medicare beneficiaries (under 42 CFR 484.250(a), 484.225(i), and 484.55). The HH CoPs require that the HH Registered Nurse (RN) or qualified therapist perform an initial assessment within 48 hours of referral, within 48 hours of the patient's return home, or on the physician-ordered start of care date. The HH RN or qualified therapist must also complete a comprehensive assessment within 5 days from the start of care. During these assessments, the HH RN or qualified therapist must determine the patient's eligibility for the Medicare HH benefit, including homebound status (42 CFR 484.55(a)(1) and (b)). In addition, the requirement for OASIS reporting on Medicare and Medicaid Managed Care patients was established in a final rule titled ''Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set Data as Part of the Conditions of Participation for Home Health Agencies Final Rule'' dated December 23, 2005 (70 FR 76200), which stated the following:

''In the January 25, 1999, interim final rule with comment period (64 FR 3749), we generally mandated that all HHAs participating in Medicare and Medicaid (including managed care organizations providing home health services to Medicare and Medicaid beneficiaries) report their OASIS data to the database we established within each State via electronic transmission.''

We do not believe that there is more burden associated with the collection of OASIS assessment data for a Medicare Managed Care patient than there is for a HH patient that receives traditional Medicare fee-for-service (FFS) benefits. The requirements for the HH RN or qualified therapist to perform an initial and comprehensive assessment and complete all required OASIS assessments is the same for all Medicare patients regardless of the type of Medicare or Medicaid benefits they receive. The completion of these activities is a condition of payment of both Medicare FFS and managed care claims.

We are committed to stakeholder education and as such conducted a Special Open Door forum on the QAO methodology and compliance rates on June 2, 2015; materials from this Special Open Door Forum, along with additional educational information, are available in the downloads section at: *https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/Home-Health-Quality-Reporting-Requirements.html.* CMS anticipates communicating ongoing educational opportunities through the regular HH QRP communication channels, including Open Door Forums, webinars, listening sessions, memos, email notification, and web postings.

Final Action: After consideration of the comments received, we are adopting as final our proposal to implement an 80 percent Pay-for-Reporting Performance Requirement for Submission of OASIS Quality Data for Year 2 reporting period July 1, 2016 to June 30, 2017, and a 90 percent Pay-for-Reporting Performance Requirement for Submission of OASIS Quality Data for the reporting period July 1, 2017 to June 30, 2018 and thereafter.

e. Home Health Care CAHPS® Survey (HHCAHPS)

In the CY 2015 HH PPS final rule (79 FR 66031), we stated that the home health quality measures reporting requirements for Medicare-certified agencies includes the Home Health Care CAHPS® (HHCAHPS) Survey for the CY 2015 Annual Payment Update (APU). We are continuing to maintain the stated HHCAHPS data requirements for CY 2016 that were stated in CY 2015 and in previous rules, for the continuous monthly data collection and quarterly data submission of HHCAHPS data.

1. Background and Description of HHCAHPS

As part of the HHS Transparency Initiative, we implemented a process to measure and publicly report patient experiences with home health care, using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program and endorsed by the NQF in March 2009 (NQF Number 0517) and recently NQF re-endorsed in 2015. The HHCAHPS Survey is approved under OMB Control Number 0938–1066 through May 31, 2017. The HHCAHPS survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The Home Health Care CAHPS® (HHCAHPS) survey presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care.

Prior to this survey, there was no national standard for collecting information about patient experiences that enabled valid comparisons across all HHAs. The history and development process for HHCAHPS has been described in previous rules and is also available on the official HHCAHPS Web site at: *https://homehealthcahps.org* and in the annually-updated *HHCAHPS Protocols and Guidelines Manual,* which is downloadable from *https://homehealthcahps.org.*

Since April 2012, for public reporting purposes, we report five measures from the HHCAHPS Survey—three composite measures and two global ratings of care that are derived from the questions on the HHCAHPS survey. The publicly reported data are adjusted for differences in patient mix across HHAs. We update the HHCAHPS data on Home Health Compare on *www.medicare.gov* quarterly. Each HHCAHPS composite measure consists of four or more individual survey items regarding one of the following related topics:

- Patient care (Q9, Q16, Q19, and Q24);
- Communications between providers and patients (Q2, Q15, Q17, Q18, Q22, and Q23); and
- Specific care issues on medications, home safety, and pain (Q3, Q4, Q5, Q10, Q12, Q13, and Q14).

The two global ratings are the overall rating of care given by the HHA's care providers (Q20), and the patient's willingness to recommend the HHA to family and friends (Q25).

The HHCAHPS survey is currently available in English, Spanish, Chinese, Russian, and Vietnamese. The OMB number on these surveys is the same (0938–1066). All of these surveys are on the Home Health Care CAHPS® Web site, *https://homehealthcahps.org.* We continue to consider additional language translations of the HHCAHPS in response to the needs of the home health patient population.

All of the requirements about home health patient eligibility for the HHCAHPS survey and conversely, which home health patients are ineligible for the HHCAHPS survey are delineated and detailed in the *HHCAHPS Protocols and Guidelines Manual,* which is downloadable at *https://homehealthcahps.org.* Home health patients are eligible for HHCAHPS if they received at least two skilled home health visits in the past 2 months, which are paid for by Medicare or Medicaid.

Home health patients are *ineligible* for inclusion in HHCAHPS surveys if one of these conditions pertains to them:

- Are under the age of 18;
- Are deceased prior to the date the sample is pulled;
- Receive hospice care;
- Receive routine maternity care only;
- Are not considered survey eligible because the state in which the patient lives restricts release of patient information for a specific condition or illness that the patient has; or
- No Publicity patients, defined as patients who on their own initiative at their first encounter with the HHAs make it very clear that no one outside of the agencies can be advised of their patient status, and no one outside of the HHAs can contact them for any reason.

We stated in previous rules that Medicare-certified HHAs are required to contract with an approved HHCAHPS survey vendor. This requirement continues, and Medicare-certified agencies also must provide on a monthly basis a list of their patients served to their respective HHCAHPS survey vendors. Agencies are not allowed to influence at all how their patients respond to the HHCAHPS survey.

As previously required, HHCAHPS survey vendors are required to attend introductory and all update trainings conducted by CMS and the HHCAHPS Survey Coordination Team, as well as to pass a post-training certification test. We have approximately 30 approved HHCAHPS survey vendors. The list of approved HHCAHPS survey vendors is available at: *https://homehealthcahps.org*.

2. HHCAHPS Oversight Activities

We stated in prior final rules that all approved HHCAHPS survey vendors are required to participate in HHCAHPS oversight activities to ensure compliance with HHCAHPS protocols, guidelines, and survey requirements. The purpose of the oversight activities is to ensure that approved HHCAHPS survey vendors follow the *HHCAHPS Protocols and Guidelines Manual*. As stated in previous HH PPS final rules, all HHCAHPS approved survey vendors must develop a Quality Assurance Plan (QAP) for survey administration in accordance with the *HHCAHPS Protocols and Guidelines Manual*. An HHCAHPS survey vendor's first QAP must be submitted within 6 weeks of the data submission deadline date after the vendor's first quarterly data submission. The QAP must be updated and submitted annually thereafter and at any time that changes occur in staff or vendor capabilities or systems. A model QAP is included in the *HHCAHPS Protocols and Guidelines Manual*. The QAP must include the following:

- Organizational Background and Staff Experience;
- Work Plan;
- Sampling Plan;
- Survey Implementation Plan;
- Data Security, Confidentiality and Privacy Plan; and
- Questionnaire Attachments

As part of the oversight activities, the HHCAHPS Survey Coordination Team conducts on-site visits to all approved HHCAHPS survey vendors. The purpose of the site visits is to allow the HHCAHPS Survey Coordination Team to observe the entire HHCAHPS Survey implementation process, from the sampling stage through file preparation and submission, as well as to assess data security and storage. The HHCAHPS Survey Coordination Team reviews the HHCAHPS survey vendor's survey systems, and assesses administration protocols based on the *HHCAHPS Protocols and Guidelines Manual* posted at: *https://homehealthcahps.org*. The systems and program site visit review includes, but is not limited to the following:

- Survey management and data systems;
- Printing and mailing materials and facilities;
- Telephone call center facilities;
- Data receipt, entry and storage facilities; and
- Written documentation of survey processes.

After the site visits, HHCAHPS survey vendors are given a defined time period in which to correct any identified issues and provide follow-up documentation of corrections for review. HHCAHPS survey vendors are subject to follow-up site visits on an as-needed basis.

In the CY 2013 HH PPS final rule (77 FR 67094, 67164), we codified the current guideline that all approved HHCAHPS survey vendors fully comply with all HHCAHPS oversight activities. We included this survey requirement at § 484.250(c)(3).

3. HHCAHPS Requirements for the CY 2016 APU

In the CY 2015 HH PPS final rule (79 FR 66031), we stated that for the CY 2016 APU, we would require continued monthly HHCAHPS data collection and reporting for four quarters. The data collection period for the CY 2016 APU includes the second quarter 2014 through the first quarter 2015 (the months of April 2014 through March 2015). Although these dates are past, we wished to state them in this rule so that HHAs are again reminded of what months constituted the requirements for the CY 2016 APU.

For the 2016 APU, we required that all HHAs that had fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2013 through March 31, 2014 are exempted from the HHCAHPS data collection and submission requirements for the CY 2016 APU, upon completion of the CY 2016 HHCAHPS Participation Exemption Request form, and upon CMS verification of the HHA patient counts. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2013, through March 31, 2014, were required to submit their patient counts on the HHCAHPS Participation Exemption Request form for the CY 2016 APU posted on *https://homehealthcahps.org* from April 1, 2014, to 11:59 p.m., EST on March 31, 2015. This deadline for the exemption form is firm, as are all of the quarterly data submission deadlines for the HHAs that participate in HHCAHPS.

We automatically exempt HHAs receiving Medicare certification after the period in which HHAs do their patient counts. HHAs receiving Medicare certification on or after April 1, 2014 were exempt from the HHCAHPS reporting requirement for the CY 2016 APU. These newly-certified HHAs did not need to complete the HHCAHPS Participation Exemption Form for the CY 2016 APU.

4. HHCAHPS Requirements for the CY 2017 APU

For the CY 2017 APU, we require continued monthly HHCAHPS data collection and reporting for four quarters. The data collection period for the CY 2017 APU includes the second quarter 2015 through the first quarter 2016 (the months of April 2015 through March 2016). HHAs are required to submit their HHCAHPS data files to the HHCAHPS Data Center for the second quarter 2015 by 11:59 p.m., EST on October 15, 2015; for the third quarter 2015 by 11:59 p.m., EST on January 21, 2016; for the fourth quarter 2015 by 11:59 p.m., EST on April 21, 2016; and for the first quarter 2016 by 11:59 p.m., EST on July 21, 2016. These deadlines are firm; no exceptions are permitted.

For the CY 2017 APU, we require that all HHAs with fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2014, through March 31, 2015 are exempt from the HHCAHPS data collection and submission requirements for the CY 2017 APU, upon completion of the CY 2017 HHCAHPS Participation Exemption Request form, and upon

CMS verification of the HHA patient counts. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2014, through March 31, 2015, are required to submit their patient counts on the CY 2017 HHCAHPS Participation Exemption Request form posted on *https://homehealthcahps.org* from April 1, 2015, to 11:59 p.m., EST to March 31, 2016. This deadline is firm, as are all of the quarterly data submission deadlines for the HHAs that participate in HHCAHPS.

We automatically exempt HHAs receiving Medicare certification after the period in which HHAs do their patient count. HHAs receiving Medicare-certification on or after April 1, 2015 are exempt from the HHCAHPS reporting requirement for the CY 2017 APU. These newly-certified HHAs do not need to complete the HHCAHPS Participation Exemption Request Form for the CY 2017 APU.

5. HHCAHPS Requirements for the CY 2018 APU

For the CY 2018 APU, we require continued monthly HHCAHPS data collection and reporting for four quarters. The data collection period for the CY 2018 APU includes the second quarter 2016 through the first quarter 2017 (the months of April 2016 through March 2017). HHAs will be required to submit their HHCAHPS data files to the HHCAHPS Data Center for the second quarter 2016 by 11:59 p.m., EST on October 20, 2016; for the third quarter 2016 by 11:59 p.m., EST on January 19, 2017; for the fourth quarter 2016 by 11:59 p.m., EST on April 20, 2017; and for the first quarter 2017 by 11:59 p.m., EST on July 20, 2017. These deadlines are firm; no exceptions will be permitted.

For the CY 2018 APU, we require that all HHAs with fewer than 60 HHCAHPS-eligible unduplicated or unique patients in the period of April 1, 2015 through March 31, 2016 are exempt from the HHCAHPS data collection and submission requirements for the CY 2018 APU, upon completion of the CY 2018 HHCAHPS Participation Exemption Request form, and upon CMS verification of the HHA patient counts. Agencies with fewer than 60 HHCAHPS-eligible, unduplicated or unique patients in the period of April 1, 2015 through March 31, 2016 are required to submit their patient counts on the CY 2018 HHCAHPS Participation Exemption Request form posted on *https://homehealthcahps.org* from April 1, 2016 to 11:59 p.m., EST to March 31, 2017. This deadline is firm, as are all of the quarterly data submission deadlines for the HHAs that participate in HHCAHPS.

We automatically exempt HHAs receiving Medicare certification after the period in which HHAs do their patient count. HHAs receiving Medicare-certification on or after April 1, 2016 are exempt from the HHCAHPS reporting requirement for the CY 2018 APU. These newly-certified HHAs do not need to complete the HHCAHPS Participation Exemption Request Form for the CY 2018 APU.

6. HHCAHPS Reconsiderations and Appeals Process

HHAs should monitor their respective HHCAHPS survey vendors to ensure that vendors submit their HHCAHPS data on time, by accessing their HHCAHPS Data Submission Reports on *https://homehealthcahps.org*. This helps HHAs ensure that their data are submitted in the proper format for data processing to the HHCAHPS Data Center.

We continue HHCAHPS oversight activities as finalized in the previous rules. In the CY 2013 HH PPS final rule (77 FR 6704, 67164), we codified the current guideline that all approved HHCAHPS survey vendors must fully comply with all HHCAHPS oversight activities. We included this survey requirement at § 484.250(c)(3).

We continue the OASIS and HHCAHPS reconsiderations and appeals process that we have finalized and that we have used for prior all periods cited in the previous rules, and utilized in the CY 2012 to CY 2016 APU determinations. We have described the HHCAHPS reconsiderations and appeals process requirements in the APU Notification Letter that we send to the affected HHAs annually in September. HHAs have 30 days from their receipt of the letter informing them that they did not meet the HHCAHPS requirements to reply to CMS with documentation that supports their requests for reconsideration of the annual payment update to CMS. It is important that the affected HHAs send in comprehensive information in their reconsideration letter/package because CMS will not contact the affected HHAs to request additional information or to clarify incomplete or inconclusive information. If clear evidence to support a finding of compliance is not present, then the 2 percent reduction in the annual payment update will be upheld. If clear evidence of compliance is present, then the 2 percent reduction for the APU will be reversed. CMS notifies affected HHAs by December 31 of the decisions that affects payments in the annual year beginning on January 1. If CMS determines to uphold the 2 percent reduction for the annual payment update, the affected HHA may further appeal the 2 percent reduction via the Provider Reimbursement Review Board (PRRB) appeals process, which is described in the December letter.

The following is a summary of the comments that we received regarding HHCAHPS:

Comment: We received one comment that HHCAHPS is an unfunded administrative mandate that entails financial and resource burdens to HHAs.

Response: The collection of the patient's perspectives of care data for similar CAHPS surveys, such as Hospital CAHPS (HCAHPS), follow the same model where providers pay the approved survey vendors for the data collection and implementation of the survey, and CMS pays for the HHCAHPS survey administration and technical assistance processes, the vendor approval, the vendor training, and vendor oversight activities, technical support to the home health agencies and for the vendors, and the data compilation, data analysis, and public reporting of the data's findings on *www.Medicare.gov*. HHAs are strongly encouraged to report their HHCAHPS costs on their respective annual cost reports, but HHAs should note that HHCAHPS costs are not reimbursable under the HH PPS. We post the list of the approved HHCAHPS vendors on *https://homehealthcahps.org,* and we encourage HHAs to contact the vendors for cost and service information pertaining to HHCAHPS since the HHAs may find differences among the vendors and will very likely find a vendor that is very suitable to their particular cost and administrative needs for HHCAHPS.

Comment: We received a comment of concern regarding the fact that in the CY 2013 HH PPS final rule we codified the current guideline that all approved HHCAHPS survey vendors must fully comply with all HHCAHPS oversight activities. We included this survey requirement at § 484.250(c)(3).

Response: We appreciate this commenter's continuing concern about the policy set forth in the regulation several years ago. The implementation of the policy in the past 3 years has worked out very well and it is working as intended.

Comment: We received a comment that the HHCAHPS Star Rating methodology does not include Q25, ''Would you recommend this agency to your family or friends if they needed home health care?'' with the answer

choices of ''Definitely no, Probably no, Probably yes, and Definitely yes''. The commenter recommends that we include a Star Rating that is the average of two questions on the HHCAHPS survey, Q25 (the question above, ''Would you recommend this agency to your family or friends'') and Q20 (''Using a number from 0 to 10, where 0 is the worst home health care possible and 10 is the best home health care possible, what number would you use to rate your care from this agency's home health providers?'') or remove Q25 from the composite measure.

Response: We thank the commenter for the comments, but will continue to retain Q20 and Q25 because they are standalone questions and they are not part of an HHCAHPS composite (which is a measure combining several survey questions).

Comment: We received one comment that CMS should establish a minimum number of completed HHCAHPS surveys (at 50 surveys) per agency if the data are going to be used in HHVBP or any other quality assessment program.

Response: We are going to start publicly reporting Star Ratings in January 2016. We introduced the methodology in several CMS Open Door Forums in spring 2015 and announcements on our Web sites. After extensive data testing, our statisticians established that at least 40 surveys are needed in order to report Star Ratings for a home health agency. The commenter was correct; a minimum number of surveys are needed to have Star Ratings. In testing, it was found that there is no statistically significant difference between 40 surveys and 50 surveys as a minimum number for the HHCAHPS data.

Comment: We received one comment in support of the continuation of the Home Health CAHPS® requirements that are in line with previous years' requirements.

Response: We thank this commenter for their support.

Final Decision: We are not recommending any changes to the HHCAHPS requirements as a result of comments received.

7. Summary

We did not propose any changes to the participation requirements, or to the requirements pertaining to the implementation of the Home Health CAHPS® Survey (HHCAHPS). We only updated the information to reflect the dates in the future APU years. We again strongly encourage HHAs to keep up-to-date about the HHCAHPS by regularly viewing the official Web site for the HHCAHPS at *https://homehealthcahps.org*. HHAs can also send an email to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org,* or telephone toll-free (1–866–354–0985) for more information about HHCAHPS.

F. Public Display of Home Health Quality Data for the HH QRP

Section 1895(b)(3)(B)(v)(III) of the Act and section 1899B(f) of the IMPACT Act states the Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public for the agency prior to such data being made public. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to ensuring that the data made available to the public be meaningful and that comparing performance across home health agencies requires that measures be constructed from data collected in a standardized and uniform manner. We also recognize the need to ensure that each home health agency has the opportunity to review the data before publication. Medicare home health regulations, as codified at § 484.250(a), requires HHAs to submit OASIS assessments and Home Health Care Consumer Assessment of Healthcare Providers and Systems Survey® (HHCAHPS) data to meet the quality reporting requirements of section 1895(b)(3)(B)(v) of the Act.

In addition, beginning April 1, 2015 HHAs began to receive Provider Preview Reports (for all Process Measures and Outcome Measures) on a quarterly, rather than annual, basis. The opportunity for providers to review their data and to submit corrections prior to public reporting aligns with the other quality reporting programs and the requirement for provider review under the IMPACT Act. We provide quality measure data to HHAs via the Certification and Survey Provider Enhanced Reports (CASPER reports), which are available through the CMS Health Care Quality Improvement and Evaluation System (QIES).

As part of our ongoing efforts to make healthcare more transparent, affordable, and accountable, the HH QRP has developed a CMS Compare Web site for home health agencies, which identifies home health providers based on the areas they serve. Consumers can search for all Medicare-certified home health providers that serve their city or ZIP code and then find the agencies offering the types of services they need. A subset of the HH quality measures has been publicly reported on the Home Health Compare (HH Compare) Web site since 2003. The selected measures that are made available to the public can be viewed on the HH Compare Web site located at *http://www.medicare.gov/HHCompare/Home.asp*

The Affordable Care Act calls for transparent, easily understood information on provider quality to be publicly reported and made widely available. To provide home health care consumers with a summary of existing quality measures in an accessible format, we published a star rating based on the quality of care measures for home health agencies on Home Health Compare starting in July 2015. This is part of our plan to adopt star ratings across all Medicare.gov Compare Web sites. Star ratings are currently publicly displayed on Nursing Home Compare, Physician Compare, Hospital Compare, Dialysis Facility Compare, and the Medicare Advantage Plan Finder.

The Quality of Patient Care star rating methodology assigns each home health agency a rating between one (1) and five (5) stars, using half stars for adjustment and reporting. All Medicare-certified home health agencies are eligible to receive a Quality of Patient Care star rating providing that they have quality data reported on at least 5 out of the 9 quality measures that are included in the calculation.

Home health agencies will continue to have prepublication access to their agency's quality data, which enables each agency to know how it is performing before public posting of the data on the Compare Web site. Starting in April 2015, HHAs are receiving quarterly preview reports showing their Quality of Patient Care star rating and how it was derived well before public posting. HHAs have several weeks to review and provide feedback.

The Quality of Patient Care star ratings methodology was developed through a transparent process the included multiple opportunities for stakeholder input, which was subsequently the basis for refinements to the methodology. An initial proposed methodology for calculating the Quality of Patient Care star ratings was posted on the CMS.gov Web site in December 2014. CMS then held two Special Open Door Forums (SODFs) on December 17, 2014 and February 5, 2015 to present the proposed methodology and solicit input. At each SODF, stakeholders provided immediate input, and were invited to submit additional comments via the Quality of Patient Care star ratings Help Desk mailbox *HHC_Star_Ratings_Helpdesk@cms.hhs.gov*. CMS

refined the methodology, based on comments received and additional analysis. The final methodology report is posted on the new star ratings Web page *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIHomeHealthStarRatings.html*. A Frequently-Asked-Questions (FAQ) document is also posted on the same Web page, addressing the issues raised in the comments that were received. We tested the Web site language used to present the Quality of Patient Care star ratings with Medicare beneficiaries to assure that it allowed them to accurately understand the significance of the various star ratings.

Additional information regarding the Quality of Patient Care star rating is posted on the star ratings Web page at: *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/HomeHealthQualityInits/HHQIHomeHealthStarRatings.html*. Additional communications regarding the Quality of Patient Care star ratings will be announced via regular HH QRP communication channels.

Summaries of public comments and our responses to comments regarding the Public Display of Home Health Quality Data for the HH QRP are provided below:

Comment: A commenter recommended that CMS include stabilization measures in the Quality of Patient Care star ratings algorithm.

Response: We appreciate the feedback on the Quality of Patient Care star ratings methodology, and agree that stabilization is an important goal for some home health patients. CMS is committed to ongoing evaluation and improvement of the algorithm to calculate the star rating, including potential inclusion of new measures that meet the inclusion criteria for variability, reportability, and clinical relevance.

VI. Collection of Information Requirements

While this rule contains information collection requirements, this rule does not add new, nor revise any of the existing information collection requirements, or burden estimate. The information collection requirements discussed in this rule for the OASIS–C1 data item set had been previously approved by the Office of Management and Budget (OMB) on February 6, 2014 and scheduled for implementation on October 1, 2014. The extension of OASIS–C1/ICD–9 version was reapproved under OMB control number 0938–0760 with a current expiration date of March 31, 2018. This version of the OASIS will be discontinued once the OASIS–C1/ICD–10 version is approved and implemented. In addition, to facilitate the reporting of OASIS data as it relates to the implementation of ICD–10 on October 1, 2015, CMS submitted a new request for approval to OMB for the OASIS–C1/ICD–10 version under the Paperwork Reduction Act (PRA) process. The proposed revised OASIS item was announced in the 30-day **Federal Register** notice (80 FR 15797) and received OMB approval and assigned OMB control number 0938–1279.

VII. Regulatory Impact Analysis

A. Statement of Need

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of HH services paid under Medicare. In addition, section 1895(b)(3)(A) of the Act requires (1) the computation of a standard prospective payment amount include all costs for HH services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary, and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to HH services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(3)(B)(iv) of the Act provides the Secretary with the authority to implement adjustments to the standard prospective payment amount (or amounts) for subsequent years to eliminate the effect of changes in aggregate payments during a previous year or years that was the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. Section 1895(b)(5) of the Act provides the Secretary with the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase.

Section 421(a) of the MMA requires that HH services furnished in a rural area, for episodes and visits ending on or after April 1, 2010, and before January 1, 2016, receive an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act. Section 210 of the MACRA amended section 421(a) of the MMA to extend the 3 percent increase to the payment amounts for serviced furnished in rural areas for episodes and visits ending before January 1, 2018.

Section 3131(a) of the Affordable Care Act mandates that starting in CY 2014, the Secretary must apply an adjustment to the national, standardized 60-day episode payment rate and other amounts applicable under section 1895(b)(3)(A)(i)(III) of the Act to reflect factors such as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other relevant factors. In addition, section 3131(a) of the Affordable Care Act mandates that rebasing must be phased-in over a 4-year period in equal increments, not to exceed 3.5 percent of the amount (or amounts) as of the date of enactment (2010) under section 1895(b)(3)(A)(i)(III) of the Act, and be fully implemented in CY 2017.

The HHVBP Model will apply a payment adjustment based on an HHA's performance on quality measures to test the effects on quality and costs of care. This HHVBP Model was developed based on the experiences we gained from the implementation of the Home Health Pay-for-Performance (HHPP) demonstration as well as the successful implementation of the HVBP program. The model design was also developed from the public comments received on the discussion of a HHVBP model being considered in the CY 2015 HH PPS proposed and final rules. Value-based purchasing programs have also been included in the President's budget for most provider types, including Home Health.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order

12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The net transfer impacts related to the changes in payments under the HH PPS for CY 2016 are estimated to be −$260 million. The savings impacts related to the HHVBP model are estimated at a total projected 5-year gross savings of $380 million assuming a very conservative savings estimate of a 6 percent annual reduction in hospitalizations and a 1.0 percent annual reduction in SNF admissions. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

1. HH PPS

The update set forth in this rule applies to Medicare payments under HH PPS in CY 2016. Accordingly, the following analysis describes the impact in CY 2016 only. We estimate that the net impact of the policies in this rule is approximately $260 million in decreased payments to HHAs in CY 2016. We applied a wage index budget neutrality factor and a case-mix weights budget neutrality factor to the rates as discussed in section III.C.3 of this final rule. Therefore, the estimated impact of the 2016 wage index and the recalibration of the case-mix weights for 2016 is zero. The −$260 million impact reflects the distributional effects of the 1.9 percent HH payment update percentage ($345 million increase), the effects of the third year of the four-year phase-in of the rebasing adjustments to the national, standardized 60-day episode payment amount, the national per-visit payment rates, and the NRS conversion factor for an impact of −2.4 percent ($440 million decrease), and the effects of the −0.97 percent adjustment to the national, standardized 60-day episode payment rate to account for nominal case-mix growth ($165 million decrease). The $260 million in decreased payments is reflected in the last column of the first row in Table 21 as a 1.4 percent decrease in expenditures when comparing CY 2015 payments to estimated CY 2016 payments.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any one year. For the purposes of the RFA, we estimate that almost all HHAs are small entities as that term is used in the RFA. Individuals and states are not included in the definition of a small entity. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare-paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. Based on our analysis, we conclude that the policies finalized in this rule will result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of HHAs. Therefore, the Secretary has determined that this HH PPS final rule will have a significant economic impact on a substantial number of small entities. Further detail is presented in Table 24, by HHA type and location.

With regards to options for regulatory relief, we note that in the CY 2014 HH PPS final rule we finalized rebasing adjustments to the national, standardized 60-day episode rate, non-routine supplies (NRS) conversion factor, and the national per-visit payment rates for each year, 2014 through 2017 as described in section II.C and III.C.3 of this final rule. Since the rebasing adjustments are mandated by section 3131(a) of the Affordable Care Act, we cannot offer HHAs relief from the rebasing adjustments for CY 2016. For the 1.4 percent reduction to the national, standardized 60-day episode payment amount for CY 2016 described in section III.B.2 of this final rule, we believe it is appropriate to reduce the national, standardized 60-day episode payment amount to account for the estimated increase in nominal case-mix in order to move towards more accurate payment for the delivery of home health services where payments better align with the costs of providing such services. In the alternatives considered section for the CY 2016 HH PPS proposed rule (80 FR 39839), we note that we considered reducing the 60-day episode rate in CY 2016 only to account for nominal case-mix growth between CY 2012 and CY 2014. However, we instead proposed to reduce the 60-day episode rate over a two-year period (CY 2016 and CY 2017) to account for estimated nominal case-mix growth between CY 2012 and CY 2014 in order to lessen the impact on HHAs in a given year. As discussed in III.B.2 of this final rule, we are implementing a reduction of 0.97 percent to the 60-day episode rate in each of the next three calendar years (CY 2016 through CY 2018.

Executive Order 13563 specifies, to the extent practicable, agencies should assess the costs of cumulative regulations. However, given potential utilization pattern changes, wage index changes, changes to the market basket forecasts, and unknowns regarding future policy changes, we believe it is neither practicable nor appropriate to forecast the cumulative impact of the rebasing adjustments on Medicare payments to HHAs for future years at this time. Changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes will make it difficult to predict accurately the full scope of the impact upon HHAs for future years beyond CY 2016. We note that the rebasing adjustments to the national, standardized 60-day episode payment rate and the national per-visit rates are capped at the statutory limit of 3.5 percent of the CY 2010 amounts (as described in the preamble in section II.C. of this final rule) for each year, 2014 through 2017. The NRS rebasing adjustment will be −2.82 percent in each year, 2014 through 2017.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of RFA. For purposes of section 1102(b)

of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule is applicable exclusively to HHAs. Therefore, the Secretary has determined this rule will not have a significant economic impact on the operations of small rural hospitals.

2. HHVBP Model

To test the impact of upside and downside value-based payment adjustments, beginning in calendar year 2018 and in each succeeding calendar year through calendar year 2022, the HHVBP Model will adjust the final claim payment amount for a home health agency for each episode in a calendar year by an amount equal to the applicable percent. For purposes of this final rule, we have limited our analysis of the economic impacts to the value-based incentive payment adjustments. Under the model design, the incentive payment adjustments will be limited to the total payment reductions to home health agencies included in the model and would be no less than the total amount available for value-based incentive payment adjustment. Overall, the distributive impact of this rule is estimated at $380 million for CY 2018–2022. Therefore, this rule is economically significant and thus a major rule under the Congressional Review Act. The model will test the effect on quality and costs of care by applying payment adjustments based on HHAs' performance on quality measures. This rule was developed based on extensive research and experience with value-based purchasing models.

Guidance issued by the Department of Health and Human Services interpreting the Regulatory Flexibility Act considers the effects economically 'significant' only if greater than 5-percent of providers reach a threshold of 3- to 5-percent or more of total revenue or total costs. Among the over 1900 HHAs in the selected states that would be expected to be included in the HHVBP Model, we estimate that the maximum percent payment adjustment resulting from this rule will only be greater than minus 3 percent for 10 percent of the HHAs included in the model (using the 8 percent maximum payment adjustment threshold to be applied in CY2022). As a result, only 2-percent of all HHA providers nationally would be significantly impacted, falling well below the RFA threshold. In addition, only HHAs that are impacted with lower payments are those providers that provide the poorest quality which is the main tenet of the model. This falls well below the threshold for economic significance established by HHS for requiring a more detailed impact assessment under the RFA. Thus, we are not preparing an analysis under the RFA because the Secretary has determined that this final rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural HHAs. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we have identified less than 5 percent of HHAs included in the selected states that primarily serve beneficiaries that reside in rural areas (greater than 50 percent of beneficiaries served). We are not preparing an analysis under section 1102(b) of the Act because the Secretary has determined that the HHVBP Model would not have a significant impact on the operations of a substantial number of small rural HHAs.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

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. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

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

C. Detailed Economic Analysis

1. HH PPS

This final rule sets forth updates for CY 2016 to the HH PPS rates contained in the CY 2015 HH PPS final rule (79 FR 66032 through 66118). The impact analysis of this final rule presents the estimated expenditure effects of policy changes finalized in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare HH benefit, based primarily on Medicare claims data from 2014. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 24 represents how HHA revenues are likely to be affected by the policy changes finalized in this rule. For this analysis, we used an analytic file with linked CY 2014 OASIS assessments and HH claims data for dates of service that ended on or before December 31, 2014 (as of June 30, 2015). The first column of Table 24 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the number of facilities in the impact analysis. The third column shows the payment effects of the CY 2016 wage index. The fourth column shows the payment effects of the CY 2016 case-mix weights. The fifth column shows the effects the 0.97 percent reduction to the national, standardized 60-day episode payment amount to account for nominal case-mix growth. The sixth column shows the effects of the rebasing adjustments to the national, standardized 60-day episode payment rate, the national per-visit payment rates, and NRS conversion factor. For CY 2016, the average impact for all HHAs due to the effects of rebasing is an estimated 2.4 percent decrease in payments. The seventh column shows the effects of the CY 2016 home health payment update percentage (*i.e.,* the home health market basket update adjusted for multifactor productivity as discussed in section III.C.1. of this final rule).

The last column shows the combined effects of all the policies finalized in this rule. Overall, it is projected that aggregate payments in CY 2016 will decrease by 1.4 percent. As illustrated in Table 24, the combined effects of all of the changes vary by specific types of providers and by location. We note that some individual HHAs within the same group may experience different impacts on payments than others due to the distributional impact of the CY 2016 wage index, the extent to which HHAs had episodes in case-mix groups where the case-mix weight decreased for CY 2016 relative to CY 2015, the percentage of total HH PPS payments that were subject to the low-utilization payment adjustment (LUPA) or paid as outlier payments, and the degree of Medicare utilization.

TABLE 21—ESTIMATED HOME HEALTH AGENCY IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY, CY 2016

	Number of agencies	CY 2016 wage index [1]	CY 2016 case-mix weights [2]	60-day episode rate nominal case-mix reduction [3]	Rebasing [4]	HH payment update percentage [5]	Total
All Agencies	11,609	0.0%	0.0%	−0.9%	−2.4%	1.9%	−1.4%
Facility Type and Control:							
Free-Standing/Other Vol/NP	1,094	0.0%	0.0%	−0.9%	−2.3%	1.9%	−1.3%
Free-Standing/Other Proprietary	9,076	0.0%	−0.1%	−0.9%	−2.4%	1.9%	−1.5%
Free-Standing/Other Government	382	−0.1%	0.2%	−0.9%	−2.3%	1.9%	−1.2%
Facility-Based Vol/NP	718	0.1%	0.2%	−0.9%	−2.3%	1.9%	−1.0%
Facility-Based Proprietary	117	−0.3%	0.1%	−0.9%	−2.3%	1.9%	−1.5%
Facility-Based Government	222	−0.3%	0.3%	−0.9%	−2.3%	1.9%	−1.3%
Subtotal: Freestanding	10,552	0.0%	0.0%	−0.9%	−2.4%	1.9%	−1.4%
Subtotal: Facility-based	1,057	0.0%	0.2%	−0.9%	−2.3%	1.9%	−1.1%
Subtotal: Vol/NP	1,812	0.1%	0.1%	−0.9%	−2.3%	1.9%	−1.1%
Subtotal: Proprietary	9,193	0.0%	−0.1%	−0.9%	−2.4%	1.9%	−1.5%
Subtotal: Government	604	−0.2%	0.3%	−0.9%	−2.3%	1.9%	-1.2%
Facility Type and Control: Rural:							
Free-Standing/Other Vol/NP	191	−0.9%	0.3%	−0.9%	−2.3%	1.9%	−1.9%
Free-Standing/Other Proprietary	149	−0.4%	0.1%	−0.9%	−2.3%	1.9%	−1.6%
Free-Standing/Other Government	448	−0.6%	0.0%	−0.9%	−2.3%	1.9%	−1.9%
Facility-Based Vol/NP	218	−0.7%	0.3%	−0.9%	−2.4%	1.9%	−1.8%
Facility-Based Proprietary	27	−0.1%	0.1%	−0.9%	−2.3%	1.9%	−1.3%
Facility-Based Government	131	−0.5%	0.5%	−0.9%	−2.3%	1.9%	−1.3%
Facility Type and Control: Urban:							
Free-Standing/Other Vol/NP	942	0.1%	0.0%	−0.9%	−2.3%	1.9%	−1.2%
Free-Standing/Other Proprietary	8,760	0.0%	−0.1%	−0.9%	−2.4%	1.9%	−1.5%
Free-Standing/Other Government	154	−0.3%	0.1%	−0.9%	−2.4%	1.9%	−1.6%
Facility-Based Vol/NP	500	0.2%	0.2%	−0.9%	−2.3%	1.9%	−0.9%
Facility-Based Proprietary	90	−0.4%	0.1%	−0.9%	−2.2%	1.9%	−1.5%
Facility-Based Government	91	−0.2%	0.2%	−0.9%	−2.4%	1.9%	−1.4%
Facility Location: Urban or Rural:							
Rural	1,072	−0.6%	0.1%	−0.9%	−2.3%	1.9%	−1.8%
Urban	10,537	0.0%	0.0%	−0.9%	−2.4%	1.9%	−1.4%
Facility Location: Region of the Country:							
Northeast	837	0.0%	0.0%	−0.9%	−2.2%	1.9%	−1.2%
Midwest	3,078	0.0%	0.1%	−0.9%	−2.4%	1.9%	−1.3%
South	5,713	−0.2%	−0.1%	−0.9%	−2.4%	1.9%	−1.7%
West	1885	0.5%	0.0%	−0.9%	−2.3%	1.9%	−0.8%
Other	96	−0.2%	0.0%	−0.9%	−2.4%	1.9%	−1.6%
Facility Location: Region of the Country (Census Region):							
New England	294	−0.2%	0.0%	−0.9%	−2.1%	1.9%	−1.3%
Mid Atlantic	543	0.1%	0.0%	−0.9%	−2.3%	1.9%	−1.2%
East North Central	2,447	0.0%	0.0%	−0.9%	−2.4%	1.9%	−1.4%
West North Central	631	−0.2%	0.2%	−0.9%	−2.4%	1.9%	−1.4%
South Atlantic	1,883	0.0%	0.0%	−0.9%	−2.4%	1.9%	−1.4%
East South Central	432	−0.3%	−0.1%	−0.9%	−2.5%	1.9%	−1.9%
West South Central	3,398	−0.3%	−0.2%	−0.9%	−2.4%	1.9%	−1.9%
Mountain	621	0.0%	0.1%	−0.9%	−2.3%	1.9%	−1.2%
Pacific	1,264	0.7%	0.0%	−0.9%	−2.4%	1.9%	−0.7%
Facility Size (Number of 1st Episodes):							
<100 episodes	2,911	0.1%	0.1%	−0.9%	−2.4%	1.9%	−1.2%
100 to 249	2,726	0.1%	0.1%	−0.9%	−2.4%	1.9%	−1.2%
250 to 499	2,522	0.1%	0.0%	−0.9%	−2.4%	1.9%	−1.3%
500 to 999	1,857	0.1%	0.0%	−0.9%	−2.4%	1.9%	−1.3%
1,000 or More	1,593	−0.1%	−0.1%	−0.9%	−2.4%	1.9%	−1.6%

Source: CY 2014 Medicare claims data for episodes ending on or before December 31, 2014 (as of June 30, 2015) for which we had a linked OASIS assessment.

[1] The impact of the CY 2016 home health wage index is offset by the wage index budget neutrality factor described in section III.C.3 of this final rule.

[2] The impact of the CY 2016 home health case-mix weights reflects the recalibration of the case-mix weights as outlined in section III.B.1 of this final rule offset by the case-mix weights budget neutrality factor described in section III.C.3 of this final rule.

[3] The 0.97 percent reduction to the national, standardized 60-day episode payment amount in CY 2016 is estimated to have a 0.9 percent impact on overall HH PPS expenditures.

[4] The impact of rebasing includes the rebasing adjustments to the national, standardized 60-day episode payment rate (−2.74 percent after the CY 2016 payment rate was adjusted for the wage index and case-mix weight budget neutrality factors and the nominal case-mix reduction), the national per-visit rates (+2.9 percent), and the NRS conversion factor (−2.82 percent). The estimated impact of the NRS conversion factor rebasing adjustment is an overall −0.01 percent decrease in estimated payments to HHAs.

[5] The CY 2016 home health payment update percentage reflects the home health market basket update of 2.3 percent, reduced by a 0.4 percentage point multifactor productivity (MFP) adjustment as required under section 1895(b)(3)(B)(vi)(I) of the Act, as described in section III.C.1 of this final rule.

REGION KEY: New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic=Pennsylvania, New Jersey, New York; South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central=Alabama, Kentucky, Mississippi, Tennessee; West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central=Arkansas, Louisiana, Oklahoma, Texas; Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific=Alaska, California, Hawaii, Oregon, Washington; Other=Guam, Puerto Rico, Virgin Islands.

2. HHVBP Model

Table 22 displays our analysis of the distribution of possible payment adjustments at the 3-percent, 5-percent, 6-percent, 7-percent, and 8-percent rates that are being used in the model based on 2013–2014 data, providing information on the estimated impact of this rule. We note that this impact analysis is based on the aggregate value of all 9 states identified in section IV.C.2. of this final rule by applying the state selection methodology.

Table 23 displays our analysis of the distribution of possible payment adjustments based on 2013–2014 data, providing information on the estimated impact of this final rule. We note that this impact analysis is based on the aggregate value of all nine (9) states (identified in section IV.C.2. of this rule) by applying the state selection methodology.

All Medicare-certified HHAs that provide services in Massachusetts, Maryland, North Carolina, Florida, Washington, Arizona, Iowa, Nebraska, and Tennessee will be required to compete in this model.

Value-based incentive payment adjustments for the estimated 1,900 plus HHAs in the selected states that will compete in the HHVBP Model are stratified by the size as defined in section F. For example, Arizona has 31 HHAs that do not provide services to enough beneficiaries to be required to complete HHCAHPS surveys and therefore are considered to be in the state's smaller-volume cohort under the model. Using 2013–2014 data and the highest payment adjustment of 5-percent (as applied in CY 2019), based on ten (10) process and outcome measures currently available on Home Health Compare, the smaller-volume HHAs in Arizona would have a mean payment adjustment of positive 0.64 percent. Only 10-percent of home health agencies would be subject to downward payment adjustments of more than minus 3.3 percent (−3.3 percent).

The next columns provide the distribution of scores by percentile; we see that the value-based incentive percentage payments for home health agencies in Arizona range from −3.3 percent at the 10th percentile to +5.0 percent at the 90th percentile, while the value-based incentive payment at the 50th percentile is 0.56 percent.

The smaller-volume HHA cohorts table identifies that some consideration will have to be made for MD, WA, and TN where there are too few HHAs in the smaller-volume cohort and will be included in the larger-volume cohort without being measured on HHCAHPS.

Table 24 provides the payment adjustment distribution based on proportion of dual-eligible beneficiaries, average case mix (using HCC scores), proportion that reside in rural areas, as well as HHA organizational status. Besides the observation that higher proportion of dually-eligible beneficiaries serviced is related to better performance, the payment adjustment distribution is consistent with respect to these four categories.

The TPS score and the payment methodology at the state and size level were calculated so that each home health agency's payment adjustment was calculated as it will be in the model. Hence, the values of each separate analysis in the tables are representative of what they would be if the baseline year was 2013 and the performance year was 2014.

There were 1,931 HHAs in the nine selected states out of 1,991 HHAs that were found in the HHA data sources that yielded a sufficient number of measures to receive a payment adjustment in the model. It is expected that a certain number of HHAs will not be subject to the payment adjustment because they may be servicing too small of a population to report on an adequate number of measures to calculate a TPS.

TABLE 22: Adjustment Distribution by Percentile Level of Quality Total Performance Score at Different Model Payment Adjustment Rates

		Lowest Quality providers					Highest Quality Providers			
Payment Adjustment Distribution	Range	Lowest 10th pctile*	20th pctile*	30th pctile*	40th pctile*	50th pctile*	60th pctile*	70th pctile*	80th pctile*	Highest 10th pctile*
3% Payment Adjustment for Performance Year 1 of Model	4.62%	-1.80%	-1.23%	-0.75%	-0.33%	0.09%	0.51%	1.05%	1.86%	2.82%
5% Payment Adjustment for Performance Year 2 of Model	7.69%	-2.98%	-2.04%	-1.23%	-0.54%	0.16%	0.83%	1.74%	3.08%	4.71%
6% Payment Adjustment for Performance Year 3 of Model	9.24%	-3.60%	-2.46%	-1.50%	-0.66%	0.18%	1.02%	2.10%	3.72%	5.64%
7% Payment Adjustment for Performance Year 4 of Model	10.77%	-4.17%	-2.86%	-1.72%	-0.75%	0.22%	1.16%	2.43%	4.31%	6.60%
8% Payment Adjustment for Performance Year 5 of Model	12.31%	-4.77%	-3.27%	-1.97%	-0.86%	0.25%	1.33%	2.78%	4.92%	7.54%

*pctile = percentile

TABLE 23—HHA COHORT PAYMENT ADJUSTMENT DISTRIBUTIONS BY STATE

[Based on a 5 percent payment adjustment]

State	# of HHAs	Average payment adjustment %	10%	20%	30%	40%	50%	60%	70%	80%	90%
Smaller-volume HHA Cohort by State											
AZ	31	0.64	−3.33	−2.72	−2.17	−0.82	0.56	1.31	3.36	4.75	5.00
FL	353	0.44	−3.01	−1.76	−1.00	−0.39	0.21	0.94	1.84	3.04	4.38
IA	23	0.17	−3.14	−2.53	−2.01	−1.41	−0.97	0.31	2.74	3.25	5.00
MA	29	0.39	−3.68	−1.75	−0.70	−0.10	0.39	0.79	1.33	2.46	4.68
MD	2	−0.47	−2.71	−2.71	−2.71	−2.71	−0.47	1.78	1.78	1.78	1.78
NC	9	0.72	−2.38	−1.84	−1.41	−1.23	−0.68	0.34	3.67	5.00	5.00
NE	16	−0.51	−2.26	−1.80	−1.64	−1.43	−1.13	−0.44	0.40	0.42	1.46
TN	2	2.48	−0.05	−0.05	−0.05	−0.05	2.48	5.00	5.00	5.00	5.00
WA	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Larger-volume HHA Cohort by State											
AZ	82	0.39	−3.31	−2.75	−2.19	−0.81	0.56	1.31	3.38	4.75	5.00
FL	672	0.41	−3.00	−1.75	−1.60	−0.38	0.19	0.94	1.81	3.06	4.38
IA	129	−0.31	−3.13	−2.31	−2.70	−1.13	−0.56	0.13	0.56	1.19	3.50
MA	101	0.64	−2.88	−2.19	−1.50	−0.38	0.63	1.25	2.06	3.81	4.88
MD	50	0.41	−2.75	−2.06	−2.30	−0.88	0.00	0.81	2.38	2.94	4.13
NC	163	0.65	−2.75	−1.56	−1.30	−0.06	0.38	0.94	1.88	3.06	4.88
NE	48	0.37	−2.63	−2.19	−1.40	−0.56	−0.19	0.50	1.31	2.31	5.00
TN	134	0.39	−2.56	−1.81	−2.00	−0.63	−0.06	0.81	1.44	2.50	4.69
WA	55	0.39	−2.75	−1.63	−2.00	−0.94	−0.19	0.69	1.94	3.31	4.06

TABLE 24—PAYMENT ADJUSTMENT DISTRIBUTIONS BY CHARACTERISTICS

[Based on a 5 percent payment adjustment]

Percentage dually-eligible	# of HHAs	10%	20%	30%	40%	50%	60%	70%	80%	90%
Low % Dually-eligible	498	−3.21	−2.57	−1.86	−1.29	−0.60	0.12	0.78	2.13	3.97
Medium % Dually-eligible	995	−2.91	−2.10	−1.33	−0.63	0.01	0.67	1.39	2.47	4.12
High % Dually-eligible	498	−2.46	−1.04	−0.24	0.59	1.29	2.34	3.38	4.53	5.00
Acuity (HCC):										
Low Acuity	499	−2.83	−1.76	−0.94	−0.23	0.46	1.16	2.03	3.40	5.00
Middle acuity	993	−3.05	−2.08	−1.24	−0.50	0.19	0.90	1.71	2.81	4.51
High Acuity	499	−3.04	−2.04	−1.29	−0.51	0.26	1.06	2.00	3.16	4.91
% Rural Beneficiaries:										
All non-rural	800	−2.81	−1.51	−0.66	0.08	0.78	1.54	2.64	3.94	5.00

TABLE 24—PAYMENT ADJUSTMENT DISTRIBUTIONS BY CHARACTERISTICS—Continued

[Based on a 5 percent payment adjustment]

Percentage dually-eligible	# of HHAs	10%	20%	30%	40%	50%	60%	70%	80%	90%
Up to 35% rural	925	−3.12	−2.37	−1.71	−1.01	−0.42	0.32	1.18	2.24	3.97
over 35% rural	250	−2.91	−2.01	−1.17	−0.62	−0.11	0.56	1.32	2.86	4.58
Organizational Type:										
Church	62	−2.92	−2.04	−1.33	−0.46	0.12	0.64	1.30	2.58	4.22
Private Not-For-Profit	194	−2.78	−1.74	−0.97	−0.42	0.27	0.85	1.77	2.89	4.55
Other	93	−2.62	−1.68	−0.95	−0.38	0.36	1.08	1.86	3.09	4.63
Private For-Profit	1538	−3.09	−2.08	−1.27	−0.53	0.24	1.02	1.88	3.02	4.83
Federal	83	−2.44	−1.61	−0.67	0.01	0.53	1.13	1.80	3.09	4.58
State	5	−3.03	−1.11	−0.37	−0.01	0.24	0.42	1.66	2.96	3.24
Local	61	−2.30	−1.28	−0.48	0.16	0.98	1.91	2.88	4.11	5.00

D. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*), in Table 25, we have prepared an accounting statement showing the classification of the transfers and costs associated with the HH PPS provisions of this final rule. Table 25 provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this final rule for the HH PPS provisions.

TABLE 25—ACCOUNTING STATEMENT: HH PPS CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS, FROM THE CYS 2015 TO 2016 *

Category	Transfers
Annualized Monetized Transfers.	−$260 million.
From Whom to Whom?	Federal Government to HHAs.

* The estimates reflect 2016 dollars.

Table 26 provides our best estimate of the decrease in Medicare payments under the proposed HHVBP Model.

TABLE 26—ACCOUNTING STATEMENT: HHVBP MODEL CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS FOR CY 2018–2022

Category	Transfers
5-Year Gross Transfers.	−$380 million.
From Whom to Whom?	Federal Government to Hospitals and SNFs.

E. Conclusion

1. HH PPS

In conclusion, we estimate that the net impact of the HH PPS policies in this rule is a decrease of 1.4 percent, or $260 million, in Medicare payments to HHAs for CY 2016. The $260 million decrease in estimated payments to HHAs for CY 2016 reflects the effects of the 1.9 percent CY 2016 HH payment update percentage ($345 million increase), a 0.9 percent decrease in payments due to the 0.97 percent reduction to the national, standardized 60-day episode payment rate in CY 2016 to account for nominal case-mix growth from 2012 through 2014 ($165 million decrease), and a 2.4 percent decrease in payments due to the third year of the 4-year phase-in of the rebasing adjustments required by section 3131(a) of the Affordable Care Act ($440 million decrease). This analysis, together with the remainder of this preamble, provides the final Regulatory Flexibility Analysis.

2. HHVBP Model

In conclusion, we estimate there will be no net impact (to include either a net increase or reduction in payments) in this final rule in Medicare payments to HHAs competing in the HHVBP Model for CY 2016. However, the overall economic impact of the HHVBP Model provision is an estimated $380 million in total savings from a reduction in unnecessary hospitalizations and SNF usage as a result of greater quality improvements in the home health industry over the life of the HHVBP Model. The financial estimates were based on the analysis of hospital, home health and skilled nursing facility claims data from nine states using the most recent 2014 Medicare claims data. A study published in 2002 by the Journal of the American Geriatric Society (JAGS), ''Improving patient outcomes of home health care: Findings from two demonstration trials of outcome-based quality improvement,'' formed the basis for CMMI's projections.[79] That study observed a hospitalization relative rate of decline of 22-percent to 26-percent over the 3-year and 4-year demonstration periods (the 1st year of each being the base year) for the national and New York trials. CMMI assumed a conservative savings estimate of up to a 6-percent ultimate annual reduction in hospitalizations and up to a 1.0-percent ultimate annual reduction in SNF admissions and took into account costs incurred from the beneficiary remaining in the HHA if the hospitalization did not occur; resulting in total projected five performance year gross savings of $380 million. Based on the JAGS study, which observed hospitalization reductions of over 20-percent, the 6-percent ultimate annual hospitalization reduction assumptions are considered reasonable.

[79] Shaughnessy, *et al.* ''Improving patient outcomes of home health care: Findings from two demonstration trials of outcome-based quality improvement,'' available at *http://www.ncbi.nlm.nih.gov/pubmed/12164991.*

VIII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have substantial direct effects on the rights, roles, and responsibilities of states, local or tribal governments.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 409.43 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 409.43 Plan of care requirements.

* * * * *

(e) * * *

(1) * * *

(iii) Discharge with goals met and/or no expectation of a return to home health care and the patient returns to home health care during the 60-day episode.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 3. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.22 [Amended]

■ 4. Section 424.22 is amended by redesignating paragraph (a)(1)(v)(B)(*1*) as paragraph (a)(2) and removing reserved paragraph (a)(1)(v)(B)(*2*).

PART 484—HOME HEALTH SERVICES

■ 5. The authority citation for part 484 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

■ 6. Section 484.205 is amended by revising paragraphs (d) and (e) to read as follows:

§ 484.205 Basis of payment.

* * * * *

(d) *Partial episode payment adjustment.* (1) An HHA receives a national 60-day episode payment of a predetermined rate for home health services unless CMS determines an intervening event, defined as a beneficiary elected transfer or discharge with goals met or no expectation of return to home health and the beneficiary returned to home health during the 60-day episode, warrants a new 60-day episode for purposes of payment. A start of care OASIS assessment and physician certification of the new plan of care are required.

(2) The PEP adjustment will not apply in situations of transfers among HHAs of common ownership. Those situations will be considered services provided under arrangement on behalf of the originating HHA by the receiving HHA with the common ownership interest for the balance of the 60-day episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moves to a different MSA or Non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA in situations of common ownership not only serves as a billing agent, but must also exercise professional responsibility over the arranged-for services in order for services provided under arrangements to be paid.

(3) If the intervening event warrants a new 60-day episode payment and a new physician certification and a new plan of care, the initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. A partial episode payment adjustment is determined in accordance with § 484.235.

(e) *Outlier payment.* An HHA receives a national 60-day episode payment of a predetermined rate for a home health service, unless the imputed cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the imputed costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to no more than 2.5 percent of total outlays under the HHA PPS. An outlier payment is determined in accordance with § 484.240.

■ 7. Section 484.220 is amended by revising paragraph (a)(3) and adding paragraphs (a)(4), (5), and (6) to read as follows:

§ 484.220 Calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels.

* * * * *

(a) * * *

(3) For CY 2011, the adjustment is 3.79 percent.

(4) For CY 2012, the adjustment is 3.79 percent.

(5) For CY 2013, the adjustment is 1.32 percent.

(6) For CY 2016, CY 2017, and CY 2018, the adjustment is 0.97 percent in each year.

* * * * *

■ 8. Section 484.225 is revised to read as follows:

§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.

(a) CMS updates the unadjusted national 60-day episode payment rate on a fiscal year basis (as defined in section 1895(b)(1)(B) of the Act).

(b) For 2007 and subsequent calendar years, in accordance with section 1895(b)(3)(B)(v) of the Act, in the case of a home health agency that submits home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

(c) For 2007 and subsequent calendar years, in accordance with section 1895(b)(3)(B)(v) of the Act, in the case of a home health agency that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus 2 percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be taken into account in computing the prospective payment amount for a subsequent calendar year.

§ 484.230 [Amended]

■ 9. Section 484.230 is amended by removing the last sentence.

■ 10. Section 484.240 is amended by revising paragraphs (b) and (e) and adding paragraph (f) to read as follows:

§ 484.240 Methodology used for the calculation of the outlier payment.

* * * * *

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, or the PEP adjustment amount for the episode, plus a fixed dollar loss amount that is the same for all case-mix groups.

* * * * *

(e) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than 2.5 percent of total payment under home health PPS.

(f) The total amount of outlier payments to a specific home health agency for a year may not exceed an amount equal to 10 percent of the total

payments to the specific agency under home health PPS for the year.

§ 484.245 [Removed and Reserved]

■ 11. Section 484.245 is removed and reserved.

§ 484.250 [Amended]

■ 12. Section 484.250(a)(2) is amended by removing the reference ''§ 484.225(i) of this subpart'' and adding in its place the reference ''§ 484.225(c)''.

■ 13. Subpart F is added to read as follows:

Subpart F—Home Health Value-Based Purchasing (HHVBP) Model Components for Competing Home Health Agencies within State Boundaries

Sec.
484.300 Basis and scope of subpart.
484.305 Definitions.
484.310 Applicability of the Home Health Value-Based Purchasing (HHVBP) model.
484.315 Data reporting for measures and evaluation under the Home Health Value-Based Purchasing (HHVBP) Model.
484.320 Calculation of the Total Performance Score.
484.325 Payments for home health services under Home Health Value-Based Purchasing (HHVBP) Model.
484.330 Process for determining and applying the value-based payment adjustment under the Home Health Value-Based Purchasing (HHVBP) Model.

Subpart F—Home Health Value-Based Purchasing (HHVBP) Model Components for Competing Home Health Agencies Within State Boundaries

§ 484.300 Basis and scope of subpart.

This subpart is established under sections 1102, 1115A, and 1871 of the Act (42 U.S.C. 1315a), which authorizes the Secretary to issue regulations to operate the Medicare program and test innovative payment and service delivery models to improve coordination, quality, and efficiency of health care services furnished under Title XVIII.

§ 484.305 Definitions.

As used in this subpart—

Applicable measure means a measure for which the competing HHA has provided 20 home health episodes of care per year.

Applicable percent means a maximum upward or downward adjustment for a given performance year, not to exceed the following:

(1) For CY 2018, 3-percent.
(2) For CY 2019, 5-percent.
(3) For CY 2020, 6-percent.
(4) For CY 2021, 7-percent.
(5) For CY 2022, 8-percent.

Benchmark refers to the mean of the top decile of Medicare-certified HHA performance on the specified quality measure during the baseline period, calculated separately for the larger-volume and smaller-volume cohorts within each state.

Competing home health agency or agencies means an agency or agencies:

(1) That has or have a current Medicare certification; and,

(2) Is or are being paid by CMS for home health care delivered within any of the states specified in § 484.310.

Home health prospective payment system (HH PPS) refers to the basis of payment for home health agencies as set forth in §§ 484.200 through 484.245.

Larger-volume cohort means the group of competing home health agencies within the boundaries of selected states that are participating in HHCAHPs in accordance with § 484.250.

Linear exchange function is the means to translate a competing HHA's Total Performance Score into a value-based payment adjustment percentage.

New measures means those measures to be reported by competing HHAs under the HHVBP Model that are not otherwise reported by Medicare-certified HHAs to CMS and were identified to fill gaps to cover National Quality Strategy Domains not completely covered by existing measures in the home health setting.

Payment adjustment means the amount by which a competing HHA's final claim payment amount under the HH PPS is changed in accordance with the methodology described in § 484.325.

Performance period means the time period during which data are collected for the purpose of calculating a competing HHA's performance on measures.

Selected state(s) means those nine states that were randomly selected to compete/participate in the HHVBP Model via a computer algorithm designed for random selection and identified at § 484.310(b).

Smaller-volume cohort means the group of competing home health agencies within the boundaries of selected states that are exempt from participation in HHCAHPs in accordance with § 484.250.

Starter set means the quality measures selected for the first year of this model.

Total Performance Score means the numeric score ranging from 0 to 100 awarded to each competing HHA based on its performance under the HHVBP Model.

Value-based purchasing means measuring, reporting, and rewarding excellence in health care delivery that takes into consideration quality, efficiency, and alignment of incentives. Effective health care services and high performing health care providers may be rewarded with improved reputations through public reporting, enhanced payments through differential reimbursements, and increased market share through purchaser, payer, and/or consumer selection.

§ 484.310 Applicability of the Home Health Value-Based Purchasing (HHVBP) Model.

(a) *General rule.* The HHVBP Model applies to all Medicare-certified home health agencies (HHAs) in selected states.

(b) *Selected states.* Nine states have been selected in accordance with CMS's selection methodology. All Medicare-certified HHAs that provide services in Massachusetts, Maryland, North Carolina, Florida, Washington, Arizona, Iowa, Nebraska, and Tennessee will be required to compete in this model.

§ 484.315 Data reporting for measures and evaluation under the Home Health Value-Based Purchasing (HHVBP) Model.

(a) Competing home health agencies will be evaluated using a starter set of quality measures.

(b) Competing home health agencies in selected states will be required to report information on New Measures, as determined appropriate by the Secretary, to CMS in the form, manner, and at a time specified by the Secretary.

(c) Competing home health agencies in selected states will be required to collect and report such information as the Secretary determines is necessary for purposes of monitoring and evaluating the HHVBP Model under section 1115A(b)(4) of the Act (42 U.S.C. 1315a).

§ 484.320 Calculation of the Total Performance Score.

A competing home health agency's Total Performance Score for a model year is calculated as follows:

(a) CMS will award points to the competing home health agency for performance on each of the applicable measures in the starter set, excluding the New Measures.

(b) CMS will award points to the competing home health agency for reporting on each of the New Measures in the starter set, worth up to ten percent of the Total Performance Score.

(c) CMS will sum all points awarded for each applicable measure excluding the New Measures in the starter set, weighted equally at the individual measure level, to calculate a value worth 90-percent of the Total Performance Score.

(d) The sum of the points awarded to a competing HHA for each applicable measure in the starter set and the points awarded to a competing HHA for reporting data on each New Measure is the competing HHA's Total Performance Score for the calendar year.

§ 484.325 Payments for home health services under Home Health Value-Based Purchasing (HHVBP) Model.

CMS will determine a payment adjustment up to the maximum applicable percentage, upward or downward, under the HHVBP Model for each competing home health agency based on the agency's Total Performance Score using a linear exchange function. Payment adjustments made under the HHVBP Model will be calculated as a percentage of otherwise-applicable payments for home health services provided under section 1895 of the Act (42 U.S.C. 1395fff).

§ 484.330 Process for determining and applying the value-based payment adjustment under the Home Health Value-Based Purchasing (HHVBP) Model.

(a) *General.* Competing home health agencies will be ranked within the larger-volume and smaller-volume cohorts in selected states based on the performance standards that apply to the HHVBP Model for the baseline year, and CMS will make value-based payment adjustments to the competing HHAs as specified in this section.

(b) *Calculation of the value-based payment adjustment amount.* The value-based payment adjustment amount is calculated by multiplying the Home Health Prospective Payment final claim payment amount as calculated in accordance with § 484.205 by the payment adjustment percentage.

(c) *Calculation of the payment adjustment percentage.* The payment adjustment percentage is calculated as the product of: The applicable percent as defined in § 484.320, the competing HHA's Total Performance Score divided by 100, and the linear exchange function slope.

Dated: October 27, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: October 28, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2015–27931 Filed 10–29–15; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 80 Thursday,

No. 214 November 5, 2015

Part III

Federal Maritime Commission

46 CFR Part 515

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties; Final Rule

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 13–05]

RIN 3072–AC44

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries. The rule adapts to changing industry conditions, improves regulatory effectiveness, improves transparency, streamlines processes and reduces regulatory burdens.

DATES: This rule is effective December 9, 2015, except for the amendments to § 515.14(c) and (d), which are effective December 9, 2016.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Tel.: (202) 523–5725, Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On October 10, 2014, the Federal Maritime Commission (FMC or Commission) published a Notice of Proposed Rulemaking, 79 FR 61544 (October 10, 2014) significantly amending its regulations governing Ocean Transportation Intermediaries (OTIs) for the first time since it promulgated implementing regulations under the Ocean Shipping Reform Act of 1998, Public Law 105–258, 112 Stat. 1902 (OSRA). The proposed rule was published following an Advance Notice of Proposed Rulemaking (ANPR) published in May 2013. 78 FR 32946 (May 31, 2013). The Commission dropped a number of rulemaking proposals in response to earlier ANPR comments.

Changes proposed to the Commission's current rules include: Adding requirements to renew OTI licenses every three years; providing for simple on-line renewals at the Commission's Web site; providing a single on-line location where the status of an NVOCC's compliance with the Commission's regulations can be quickly verified; and establishing an expedited hearing process for license denials, revocations or suspensions while continuing to provide applicants and licensees due process and the ability to appeal adverse decisions to the full Commission.

The Commission received 25 comments (including three late-filed comments) on the proposed rule from North American Logistics, Inc. (North American); Trans-World Shipping Service, Inc. (Trans-World); J.W. Allen & Co. Inc. (J.W. Allen); Customs Clearance Int. Inc. (Customs Clearance); Kuehne & Nagel Inc. (K&N); John S. Connor, Inc. (John S. Connor); New Direx, Inc. (New Direx); National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA); W.R. Zanes & Co. of La., Inc. (W.R. Zanes); Transportation Intermediaries Association (TIA); Pride International, Inc. (Pride); World Shipping Council (WSC); John S. James Co.; Pacific Coast Council of Brokers & Freight Forwarders Association, Inc. (PCC); [1] Roanoke Trade (the surety bond division of Roanoke Insurance Group Inc.) (Roanoke); Sefco Export Management Company, Inc. and Quinn Corporate Services, Inc. (Sefco); UPS Freight Services, Inc., UPS Europe SPRL and UPS Asia Group Pte. Ltd. and UPS Supply Chain Solutions, Inc. (collectively UPS); New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (NYNJFFF&BA); C J International, Inc. (CJ International); Federazione Nazionale delle Imprese di Spedizioni Internazionali (Fedespedi); [2] Cargo-Link International (Cargo-Link); Mohawk Global Logistics (Mohawk); Vanguard Logistics Services (USA), Inc. (Vanguard); Thunderbolt Global Logistics, LLC (Thunderbolt); and the International Federation of Freight Forwarders Associations (FIATA).[3]

Subpart A—General

Section 515.2—Definitions.

The proposed rule removes several definitions that are no longer relevant to the Commission's regulatory activities, including ''ocean freight broker'' (§ 515.2(n)), ''brokerage'' (§ 515.2(d)) and ''small shipment'' (§ 515.2(u)). NCBFAA and NYNJFFF&BA agree that these terms are no longer necessary.

Section 515.2(n) modifies the definition of ''person'' to conform to the definition of ''person'' in 1 U.S.C. 1, but also specifically includes ''limited liability companies.'' The Commission retains the current language that entities covered are those ''existing under or authorized by the laws of the United States or of a foreign country.'' NCBFAA acknowledges the expansion of the definition to cover new forms of corporate structure to be a beneficial change.

NCBFAA, TIA, NYNJFFF&BA and UPS are concerned that the revision of the term ''principal'' in § 515.2(o) renders it capable of a much broader application than the current definition, imposing duties on Ocean Freight Forwarders (OFFs) to entities with whom such forwarders have no contractual relationship. This concern arises even though the Commission indicated that the revised definition is not intended to change its meaning or scope.

The current definition provides, in pertinent part, that the term ''refers to the shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.'' UPS asserts that the words ''who employs the services of'' makes it clear that OFFs are the agents of those that employ them and not agents to those that do not. The revised definition would have eliminated clarifying text that OFF principals are limited to those who employ licensed forwarders. The Commission finds these concerns have merit and revises the definition to substantially restore the current definition as follows:

> *Principal* refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.

As redrawn, only the introductory phrase ''except as used in Surety Bond Form FMC–48, and Group Bond Form FMC–69'' is deleted from the current definition. The use of ''principal'' in financial responsibility forms is made clear in each form and need not be further distinguished in the § 515.2(o) definition.

The definitions of ''freight forwarding services'' (§ 515.2(h)) and ''non-vessel-operating common carrier services'' (§ 515.2(k)) are revised to better reflect OTIs' current practices and terminology. For example, ''freight forwarding services'' are revised to include preparation of ''export documents, including required 'electronic export information,' '' rather than the legacy paper-based shipper export declarations (§ 515.2(h)(2)). OFF and NVOCC services are both revised to include preparation of ocean common carrier and NVOCC bills of lading ''or other shipping documents'' (§§ 515.2(h)(5) and 515.2(k)(4)). The change acknowledges that OTI services cover preparation of various forms of

[1] PCC supported the comments of NCBFAA in their entirety.

[2] Fedespedi supported the comments of TIA.

[3] FIATA supported the comments of TIA.

documents pursuant to which cargo is transported, whether or not they are ''equivalent'' to ocean bills of lading.

NCBFAA favorably opines that the revisions to ''freight forwarding services'' and ''non-vessel-operating common carrier services'' make the definitions more consistent with the services that OTIs currently provide. However, it also indicates that the definitions could be expanded further to include ''the filing of shipment manifest data with relevant government agencies.'' Inasmuch as these definitions provide that services ''may include, but are not limited to'' those listed, it would appear that the addition of NCBFAA's suggested text is not necessary.

The term ''qualifying individual'' (QI) is added and defines QI as an individual who meets the Shipping Act's experience and character requirements. The QI must meet those requirements at the time a license is issued and must thereafter maintain the necessary character. The OTI must timely replace the QI, as provided by the Commission's rules, when the designated QI ceases to act as the QI, whether by resignation, retirement or death.

Commenting on the definition, NCBFAA opines that the Commission's review process does not adequately address a qualifying individual's competence. NCBFAA asserts that QIs need to have skill sets to comply with Shipping Act, United States export/import requirements and other statutes that apply to international shipping. NCBFAA suggests that the Commission consider adding affirmative competency requirements for QIs as NCBFAA has done with respect to its Certified Export Specialist program.

The QI's three years of OTI experience in the U.S. oceanborne foreign trades provides a foundation for ensuring that QIs are exposed to and gain working knowledge of the Shipping Act and Commission regulations, as well as with other regulations and statutes that apply in the U.S. trades. The NCBFAA's comment that the competence of QIs is not as high as the association would prefer has serious implications for the nation's security and transport policy objectives. Its suggestions for improvements are welcome, however, they are well beyond the scope of the current proposed rulemaking proceeding. The details, procedures, cost to the agency and associated fees to the OTI applicants must be more fully developed by NCBFAA, and made subject to full and open public comment in order to be further considered by the Commission.

Section 515.3—License; When Required

The requirement that ''separately incorporated branch offices'' must be licensed as an OTI is deleted as unnecessary. All separately incorporated entities that perform OTI services for which they assume responsibility for the transportation remain subject to the requirements that they be licensed and otherwise comply with the financial responsibility obligations of part 515.

The Commission also revises § 515.3 to provide that a ''registered NVOCC'' (terminology replacing the use of ''unlicensed NVOCC'') must use licensed OTIs as their agents in the United States with respect to OTI services performed in the U.S. The section is also conformed to provide that only licensed OTIs may provide OTI services in the United States to registered NVOCCs.

NCBFAA comments that these are positive changes as they better reflect the compliance obligations of the parties. TIA, however, expresses a concern that the Commission attempts to regulate the activities of OTI agents contrary to the decision in *Landstar Express America Inc.* v. *Federal Maritime Commission,* 569 F.3d 493 (D.C. Cir. 2009).

TIA asserts that the provision in § 515.3 whereby only licensed OTIs may provide OTI services in the United States for registered NVOCCs in effect regulates the OTI agent. TIA also comments that there is no corresponding definition of ''OTI services'' in the regulations that would delineate the § 515.3 requirement. TIA questions the Commission's authority to require registered NVOCCs to use only licensed OTIs in the United States.

Section 19 of the Shipping Act of 1984 provides that ''[a] person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission.'' 46 U.S.C. 40901. This section imposes the licensing requirement on NVOCCs ''in the United States'' but not on foreign-based NVOCCs that are not in ''in the United States.''

The Commission addressed its authority to regulate unlicensed foreign-based NVOCCs' operations ''in the United States'' in 1999 as a necessary element of its rulemaking implementing OSRA. The Commission stated:

> OSRA requires that all OTIs in the United States be licensed by the Commission. The legislative history of OSRA directs the Commission to determine ''when foreign-based entities conducting business in the United States are to be considered persons in the United States'' for purposes of the licensing requirements of section 19 of the 1984 Act. S. Rep. No. 105–61, 105th Cong., 1st Sess., at 31 (1997).

FMC Docket No. 98–28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries,* 28 SRR 629–54 (March 8, 1999). (Docket No. 98–28 Final Rule).

In that rulemaking, after considering the comments on approaches to meet Congress' instructions (including comments from NCBFAA and American International Freight Association and Transportation Intermediaries Association (AIFA/TIA)), the Commission adopted the current language found in § 515.3, which provides in pertinent part:

> For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States. Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary.

The Commission explained its reasoning in adopting the current rule language:

> We believe it is a good step towards leveling the playing field between OTIs in the United States who are within the Commission's jurisdictional reach and those who are outside of that reach. Moreover, this definition will increase competition, consistent with the intent of OSRA.
> Docket No. 98–28 Final Rule, *supra* at 28 SRR 638.

The Commission expressed its view that the rule presented foreign-based NVOCCs with the option of obtaining a license (and obtaining a bond at the level applicable to NVOCCs in the U.S.) or operating through independently licensed OTI agents after obtaining a bond in the higher amount established for such foreign-based NVOCCs. *Id.*

The Commission exercised the discretion that Congress envisioned and promulgated a rule that recognized that all foreign-based NVOCCs would not obtain a license but ensured that unlicensed NVOCCs that were not ''in the United States'' would not conduct business as if they were resident without first meeting the requirements for a license. The requirement that unlicensed foreign-based NVOCCs use licensed OTIs as their agents in the United States is necessary to make sure that the distinction created by Congress would not be thwarted. Consistent with the court's proscription in *Landstar,* only OTI principals are regulated thereby. Moreover, the rule as proposed

does not substantively change the rule that has long been in effect.

Section 515.4—License; When Not Required

Section 515.4(b)—Branch Offices. The rule eliminates the regulatory burden associated with procuring and maintaining additional financial responsibility to cover an OTI's unincorporated branch offices by deleting the reference to obtaining additional financial responsibility currently set out in § 515.4(b)(ii). A corresponding change is made to § 515.21, deleting the current text of paragraph 515.21(a)(4). The rule also deletes § 515.4(d), which refers to ocean freight brokers, as it is no longer needed. Comments by OTIs and the associations were uniformly in support of the elimination of the additional $10,000 bonding requirements for each unincorporated branch office.

The NYNJFFF&BA opposes the provision in § 515.4(b) that an OTI ''shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.'' NYNJFFF&BA is concerned that the provision will expose OTIs to all manners of liability for acts of their agents, including gross negligence and personal injury.

The most significant change in this provision from that adopted in 1999, is the substitution of ''shall be fully responsible'' in place of ''shall be held strictly responsible.'' The change is intended to clarify that the provision places full responsibility on OTIs for the acts and omissions of their employees and agents for actions that violate the Shipping Act or Commission regulations. The current rule's reference to strict responsibility is imprecise and its elimination avoids any inference that a statutory or regulatory regime relating to strict liability applies. The Commission considers the provision as clarified does not open OTIs to liability beyond the scope of the Shipping Act and, accordingly, no change to the rule as proposed is necessary.

Section 515.5—Forms and Fees

Section 515.5(b) is modified to provide that all license applications and registration forms, including renewal forms, must be filed with the Commission electronically unless a waiver request to file on paper is granted by the Director of the Bureau of Certification and Licensing. Electronic filing anticipates the implementation of on-line filing and processing of all applications and forms. OTIs will also be able to view their on-line applications, reflecting the changes that they make to the application, including license renewal changes, by logging into the Commission's system.

Section 515.5(c)(1) has been added and requires OTIs to pay applicable fees within ten (10) business days of the time of submission of such applications and forms. The Commission has developed the ability to receive on-line payments by credit or debit cards via Pay.gov and the Automated Clearing House system. These developments enable OTIs to pay fees in a timely and convenient manner, consistent within the 10 day window.

Section 515.5(c)(2) is added to make it easier for OTI applicants and licensees to quickly find the fees that apply to filings they make, by setting out all fees applicable under part 515 (*e.g.,* fees for filing of license applications and registrations) in one place. Section 515.5(c)(2) directs OTIs to the substantive sections in Part 515 that give rise to the fees.

NCBFAA supports the changes to § 515.5 providing for the electronic filing of applications and the relocation of all fee amounts. It notes that electronic filing of applications should be no burden to prospective OTIs as virtually all data is already submitted electronically to carriers, banks and government agencies. NYNJFFF&BA also supports the electronic filing provisions and the requirement that fees be paid within 10 days of submission of an application. NYNJFFF&BA also suggested that the OTI be able to check its profile on-line. As indicated above OTIs will be able to check their profile at any time by logging on via the Commission's Web site.

Subpart B—Eligibility and Procedure for Licensing; Procedure for Registration

Section 515.11—Basic Requirements for Licensing; Eligibility

Except for the addition of a sentence clarifying the experience required of a foreign-based NVOCC that elects to become licensed, § 515.11(a)(1) remains unchanged inasmuch as revisions put forward in the ANPR have been deleted. Foreign-based NVOCCs seeking to become licensed must acquire the requisite experience with respect to shipments transported in the United States oceanborne foreign commerce, but may acquire that experience while resident in a foreign country with respect to shipments moving in the U.S. trades. The added sentence reflects the standard that has been applied by the Commission since 1999.

While NCBFAA recognizes the Commission's inclusion of the agency's standard that has been applied to foreign-based NVOCC experience over the years, it would like the Commission to explain its rationale for doing so. NCBFAA largely restates its view that the vetting of QIs does not presently determine the QI's ''knowledge of or competency with the Shipping Act, the Commission's regulations or the myriad of export control and other regulations that affect the function of any OTI and questions whether the requisite three years' U.S. experience differs substantively from OTI working experience gained in non-U.S. trades.

As indicated with respect to NCBFAA's comments on the definition of qualifying individual, the Commission considers that the OTI experience acquired by QIs in the U.S. trades provides them with exposure to and working knowledge of U.S. laws, regulations, and practices, including those of the Shipping Act and Commission regulations. The QIs of foreign-based OTIs also gain experience with U.S. laws and regulations as a result of working on shipments in the U.S. trades. In 1999, the Commission made it possible for foreign-based OTIs to seek OTI licenses by promulgating its current rules permitting the necessary U.S. trade experience to be acquired abroad. The Commission will continue to require U.S. trade experience for QIs of foreign-based OTIs that apply for licenses.

The new content in § 515.11(a)(2) makes it clear that the Commission may consider all information relevant to the determination of whether the applicant has the necessary character to render OTI services. Types of information that may be considered include, but are not limited to: Violations of any shipping laws or statutes relating to the import, export or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; outstanding tax liens; court and administrative judgments and proceedings; non-compliance with immigration status requirements; and denial, revocation, or suspension of a Transportation Worker Identification Credential or of a customs broker's license. The types of information with respect to character, now set out in § 515.11(a)(2), reflect the information that the Commission's Bureau of Certification and Licensing (BCL) has considered and applied during the 15 years since the current regulations went into effect. This section better informs applicants of potential issues that should be addressed in filing their

applications so as not to unnecessarily delay processing of their applications.

NYNJFFF&BA expresses its concern that the information that may be considered by the Commission in assessing an applicant's character could lead to the denial of a license in circumstances that have nothing to do with character. As examples, the association points to the possibility of erroneously filed tax liens and questions the relevance of a suspension or revocation of a TWIC card or customs broker license.

As noted, the factors set out in § 515.11(a)(2) are the types of information that have been considered for years in Commission licensing determinations. The scope of information considered by the Commission does not negatively affect an applicant's character assessment unless there arises a serious and relevant concern for licensing as evidenced by the information obtained. The Commission will continue to refer to the types of information listed but, as it has in the past, will not peremptorily commence the process for denying, revoking or suspending a license without first seeking clarification and an opportunity for response from the applicant. In sum, the listing will result in greater transparency, both facilitating applicants' preparation of their applications and the Commission's consideration of them.

Section 515.12—Application for License

Section 515.12(c) memorializes a process pursuant to which BCL shall close applications where applicants fail to timely provide information or documents needed for review. The date for submission of such information will be provided by BCL to the applicant. The Commission will apply § 515.12(c) reasonably and flexibly. Once the date has been established for a response by BCL, the applicant should keep BCL fully informed as to the reasons for any response delays in order to avoid closure of its application. Applicants whose applications are closed may reapply at any time.

NCBFAA comments favorably on the inclusion, in § 515.12(c), of the application closure process that will be followed by the Commission with respect to applicants that do not timely provide information or documents. NCBFAA indicates its favorable experience with the practice of the BCL flexibly extending deadlines for submission of application information and documents.

Section 515.14—Issuance, Renewal, and Use of License

Section 515.14(c) requires licenses to be renewed every three (3) years. New OTI licenses will be issued for an initial three-year period and renewed every three years thereafter. Existing licenses will be phased-in over a three-year period in order to facilitate smooth and timely processing by Commission staff. Moreover, the renewal requirement will be implemented only when the necessary programming of the Commission's computer systems has been completed and tested so that on-line processing can be reliably activated. To this end, the renewal requirements of § 515.14(c) and (d) will become effective, and implementation of the on-line renewal process will commence, December 9, 2016. All other provisions of the final rule adopted in this rulemaking proceeding become effective December 9, 2015.

The Commission will issue a notice on its Web site of the schedule by which currently licensed OTIs will have to renew their licenses. It is anticipated that current licensees will be grouped for renewal by ranges of license numbers in order to facilitate smooth processing.

OTIs and the OTI associations that filed comments to the proposed rule object generally to the requirement that licenses be renewed every three years. The comments assert that license renewals are not needed to obtain up-to-date information because the Commission's regulations already require that certain changes in a licensee's organization be submitted to the Commission for prior approval (§ 515.20(a)) and certain other changes in material facts be submitted within 30 days of such changes (§ 515.20(e)). As an alternative, NCBFAA suggests that the Commission vigorously enforce its existing rules by assessing penalties against OTIs that fail to update their information. NYNJFFF&BA suggests that the data the Commission presented in the proposed rule regarding failures of OTIs to update information under the current requirements is insufficient to support the need for a license renewal requirement applicable to all OTIs. NYNJFFF&BA suggests that the Commission issue a one-time request to all OTIs for the essential corporate information that the proposed rule's renewal process seeks on a triennial basis in order to determine the current level of unreported non-compliance. NCBFAA also comments that there is no indication in the Notice of Proposed Rulemaking that a vast majority of OTIs fail to comply with the current regulations.

As described in the proposed rule, BCL has 30 to 40 inquiries concerning the identity of a licensee's QI, officers, owners, or business affiliations at any given time, notwithstanding current requirements that such information be updated within 30 days of a change. Both BCL and the Commission's Bureau of Enforcement have experienced frequent failures over a two year period to timely report: changes of business address, QI retirements/resignations, failure to notify/increase OTI's surety bond, and operations under new trade names. This data included NVOCCs and Ocean Freight Forwarders (OFFs), large and small.

As indicated in the NOPR, the incidence of noncompliance by OTIs in timely reporting changes material to their license and bond revealed while dealing with the Commission on other matters has ranged between 14 and 24 percent. At the low end, that would translate into over 1,000 OTIs not having complied with the Commission's current updating requirements. Without implementing the renewal requirement, the Commission simply cannot adequately know which OTIs are not complying at any given time, nor adequately meet its statutory obligations to maintain effective oversight of the conduct and financial responsibility of the OTI industry, both in the U.S. and abroad. The need for the renewal process provided for in the rule is a reflection of the Commission's experience since 1999.

The suggestion that the Commission should instead pursue enforcement proceedings against offenders misses the fact that the Commission has worked diligently to bring the OTI industry into compliance without such proceedings and seeks to continue doing so once the renewal process is in place. It is unnecessary to abandon the Commission's current process in favor of one where enforcement proceedings seeking penalties are commenced each time the Commission discovers a failure to update information.

Neither will the renewal process, as configured, place a great burden on the OTI industry. This is borne out by the Commission's impact analysis required by the Regulatory Flexibility Act. Renewal does not involve OTIs having to re-qualify to continue its license to operate, nor does the process result in the expiration of a license beyond which date an OTI cannot operate.

NCBFAA, North American, J.W. Allen, John S. Connor, New Direx, Pride, C J International, Cargo-Link, Vanguard, Mohawk and Thunderbolt

expressed concerns that the renewal process may jeopardize their license where, for example, there are carrier or shipper claims against the OTI causing the Commission to withhold issuance of a renewed license. These parties fear that the OTI license would become ineffective in the interim, and the OTI left unable to operate.

Along the same lines, NYNJFFF&BA objects to reference in 515.14(d)(3) indicating that information provided by an OTI or another source may be reviewed by the Commission at any time, including at the time of renewal. The association expresses the reasonable concern that any OTI scrutinized by the Commission be given opportunity to respond and refute information that could jeopardize its license.

Even where the renewal process identifies changes in the licensee's information necessitating separate Commission approval, the NOPR makes clear the licensee may continue to operate during such review, 515.14(d)(2). Indeed, a license may be revoked or suspended only after the Commission gives notice and provides a hearing pursuant to § 515.16 (Revocation or suspension of license) and § 515.17 (Hearing procedures governing denial, revocation, suspension of OTI license). Among the reasons for revocation set out in § 515.16 is that the licensee is no longer qualified to render ocean transportation intermediary services. This would include where the licensee was found to no longer possess the character required by the Shipping Act.

The Commission emphasizes that § 515.14(d)(3) creates no new right or power of review of a licensee's character. Such reviews have historically been a function of credible information coming to the attention of the Commission irrespective of any timing relative to license renewal. Section 515.14(d)(3) simply alerts OTIs to that circumstance. In any event, the receipt of information potentially implicating a licensee's character will normally result in Commission staff first contacting the licensee regarding the information.

The OTI and the association commenters suggest that only a simple report, one that is submitted electronically, should be implemented in the event that the Commission goes forward with a requirement that all OTIs update information every three years. NCBFAA suggests a process consistent with the five-year registration renewal requirement included by in the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405 (MAP–21) or with the triennial broker report to CBP. TIA in turn refers to the MAP–21 renewal and to the Federal Motor Carrier Safety Administration's requirement that domestic transportation intermediaries renew their information every two years. TIA points out that the FMCSA biennial renewal can be completed on-line in less than an hour, and adds that the Commission and the FMCSA should work to harmonize their proposals so as to streamline regulations as between land-based domestic transport intermediaries and OTIs under the Shipping Act.

Responsive to comments by NCBFAA, NYNJFFF&BA and TIA, the Commission again states its intention that the renewal process will be on-line, user friendly and free. The Commission's objective is that licensed OTIs will verify on-line information such as the QI's identification and contact information, changes in business or organization, trade names, tariff publication information, physical address, and electronic contact data for purposes of notification. Only information that is no longer accurate must be updated. The process will result in a renewed license which specifies the date by which the next renewal is to be completed. An OTI license will not simply expire. In short, the process is less complicated than the status reports submitted to CBP by customs brokers. The consequences of late filing likewise are less onerous in that failure to submit the CBP broker report by the end of February of the reporting year results in a license suspension on March 1, by operation of law. If the status report is not filed within 60 days of the suspension notice, the license is revoked.

The renewal process required by MAP–21 appears similar to the renewal process established by this rule. While registration must be renewed on-line every five years, FMCSA's Unified Registration System (URS) requires updates within 30 days of a change in a registrant's legal name, form of business, or address, and transfers of operating authority. Docket No. FMCSA–1997–2349, *Unified Registration System,* 78 FR 52608 (2013). The registration form also requires an entity's principal address, mailing address, phone number, principal contact and email address, among other information specific to the type of the registrant's operating authority. Also, an update to a registration prompted by, for example, a change in business organization, does not alter the requirement for a registrant to meet the FMCSA's update schedule applicable to the registrant.

UPS expresses a concern that renewed licenses will expire on the date indicated on its license. UPS sees a danger that a license will not be renewed before it expires due to circumstances beyond an OTI's control or, perhaps, beyond the Commission's control, leading to its inability to lawfully accept bookings. In such circumstances, UPS suggests that the Commission's rule provide that the expiration date be automatically extended by ten days.

A failure to renew by the renewal date does not terminate the effectiveness of an OTI's license. Where an OTI has failed to renew, BCL will contact the OTI and remind it of their obligation, urge the OTI to complete the process promptly and offer such assistance as practicable. In the unusual instance where an OTI continually ignored or rebuffed the Commission's efforts to bring it into compliance, (and where such OTI's financial responsibility remains in effect), an enforcement proceeding for suspension or revocation of the OTI license will remain as options for the Commission's consideration. Even in such circumstances, the license remains in effect until revoked or suspended following notice and opportunity for a hearing as provided by the Commission's regulations.

UPS suggests that an update to an OTI's FMC–18 result in the OTI's renewal date being extended to three years from that update. The Commission considers that renewal dates fixed pursuant to § 515.14(d) (1) provides a more stable timeline for OTIs and the Commission. That section provides that a new license bear a renewal date on the same day and month as the date on which the license was originally issued, with the renewal day and month remaining the same for successive renewals. Also, the renewal date remains the same regardless of the date a renewal form is submitted or the date a renewed license is issued. Extending the date as suggested by UPS would require additional resources to accurately track data entry dates in order to establish a renewal date. It is foreseeable that in some instances multiple replacement licenses would have to be produced where there are multiple updates between renewals. In contrast, the rule will provide OTIs and the Commission with ongoing certainty as to the OTI's renewal date.

NCBFAA comments that the Commission should explain its authority to implement a renewal process as neither the specific authority

in MAP–21 for the FMCSA to ''renew'' their registrations nor CBP's status reporting provide a basis. Section 17 of the Shipping Act, 46 U.S.C. 305, provides broad authority to the Commission to ''prescribe regulations to carry out its duties and powers,'' which encompasses the authority to require OTIs to update information that is essential to the Commission's oversight of OTIs. The triennial license renewal requirement in this rule is an extension of its current rules that require OTIs to inform the Commission of changes in information for prior Commission approval for certain changes (*e.g.,* change in QI) or within 30 days after certain changes have occurred.

Since 1961, the Commission has had the responsibility for licensing independent ocean freight forwarders and, from the outset, included regulations requiring forwarders to update information supplied in its application, for example, 46 CFR 510.5(c) (1965). Upon passage of OSRA, the Commission implemented its statutory requirements by extending the prior approval and notification requirements to NVOCC licensees as well as to OFFs. Based upon the Commission's experience that OTIs too often do not update the required information, and the present inability to identify OTIs which should have reported changes under the current rules but have not, the Commission finds it necessary to require OTIs to update that information every three years, using today's technology to enable an on-line renewal process. The shared need of the public and the Commission for current, accurate and reliable information is best served by ensuring the Commission's OTI data base is updated by all licensees every three years to display current licensee information, rather than relying solely on the current requirements.

The Commission is mindful that there are approximately 4,700 OTIs that are currently licensed that have no expiration date. As a result the Commission will advise the public of the timetable and process that will be used to implement renewals for those licensees. That notice will be issued well in advance of the date by which any current licensees will need to renew their licenses. The process will allow current licensees to renew without being unreasonably burdened and should avoid processing delays by the Commission that could occur where too many renewals are submitted within a short time. The total number of current licensed OTIs may, for example, be divided up so that one third of licensees are notified to renew in the first year and one third for each of the following two years, and any renewal dates likewise scheduled on a monthly basis across the course of a given year. A phased schedule is necessary in order to make the workload achievable for Commission staff, without imposing undue or unnecessarily rigid deadlines for the OTI industry.

Section 515.17—Hearing Procedures Governing: Denial, Revocation, or Suspension of OTI Licenses

This section streamlines appeal procedures for denial of OTI license applications, and for revocation or suspension of OTI licenses. Currently, such appeals are conducted under the Commission's Rules of Practice and Procedure, published at 46 CFR part 502, and provide procedures ill-suited to reducing the burden, expense and delay attendant to such licensing determinations.

Upon being advised by the hearing officer that a hearing request has been made, BCL will deliver to the hearing officer a copy of the notice of intent given to the applicant/licensee along with materials supporting the notice under § 515.15 (license denials) or 515.16 (license revocations and suspensions). The hearing officer will provide the OTI or applicant with a copy of BCL's notice of intent and the materials, along with a written notice advising the party of its right to submit its written arguments, affidavits of fact, and documents within 30 days. BCL then would submit its response within 20 days of the OTI's submission. These records and submissions constitute the entire record for the hearing officer's decision. The hearing officer's decision must be issued within 40 days of the record being closed.

Section 515.17(d) provides that, for all revocation, termination or suspension proceedings that seek findings of Shipping Act violations, formal proceedings before an Administrative Law Judge are still required. The Commission's formal discovery rules are available in such instances.

NCBFAA expresses concern that revision of the hearing process for denials, suspensions and revocations deny a full evidentiary hearing. NYNJFFF&BA, UPS and Vanguard also suggest that the change in hearing process denies OTIs due process. UPS suggests that the new procedure be used only where an OTI does not appear or comply with the Commission's part 502 (Rules of Practice and Procedure).

As the comments indicate, this streamlined procedure will be of significant benefit where an OTI fails to appear, as such proceedings will consume significantly less time than typical show cause proceedings. The new procedure will take approximately 115 days. In contrast, in Docket No. 14–01, *Revocation of Ocean Transportation Intermediary License No. 022025—Cargologic USA LLC,* the matter was decided by the Commission over the course of approximately 170 days (initiated by Show Cause Order served February 18, 2014, 33 SRR 299, and resolved by its decision revoking Cargologic's license, served August 8, 2014, 33 SRR 666). While revocation proceedings remain infrequent, uncontested proceedings comprise by far the majority of such cases.

The new procedure will also serve to shorten denial, suspension and revocation proceedings where the OTI formally appears through counsel, thereby reducing the burden and expense even as to contested proceedings. At the outset of any proceedings, OTIs will receive a far broader disclosure of BCL's case in chief than that required for proceedings conducted under the procedures in part 502. See 46 CFR 502.201. Counsel for the OTI will be able to assess the factual basis of BCL's decision, participate fully in the hearing, and emerge readily equipped to seek Commission review in the event of an adverse decision. OTIs are not disadvantaged by the new procedure as it protects OTIs' due process rights at all stages. Section 515.17(c) provides that OTIs and applicants may seek Commission review of the hearing officer's adverse decision pursuant to 46 CFR 502.227 (applicable to the filing of exceptions). Such requests may include a request for further hearing under part 502 (Rules of Practice and Procedure), including appointment of an Administrative Law Judge. The Commission also may, on its own motion, require a part 502 hearing to review an adverse decision.

Finally, § 515.17(d) provides that, for all revocation, termination or suspension proceedings that seek assessment of civil penalties for Shipping Act violations, formal proceedings before an Administrative Law Judge are still required. The Commission's formal discovery rules remain available in such instances.

Section 515.19 (g)(1) also provides for the hearing process contained in § 515.17 with respect to terminations or suspensions of the effectiveness of foreign-based NVOCC registrations. The streamlined process similarly accords registered NVOCCs the due process required.

Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

Section 515.23—Claims Against an Ocean Transportation Intermediary

Section 515.23(c) requires financial responsibility providers to file with the Commission notices of each ''claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount [thereof]) by the [financial responsibility] provider.'' Section 515.23(c) provides that such notices be submitted only to the Commission.

NCBFAA, TIA, NYNJFFF&BA, North American, J.W. Allen, Customs Clearance, K&N, John S. Connor, New Direx, W.R. Zanes, Pride, John S. James, C J International, Cargo-Link, Vanguard, Mohawk and Thunderbolt object to the provision requiring financial responsibility providers having to file with the Commission notices of claims and claims paid against a financial responsibility. Although claim information is filed only with the Commission and not published, they assert such information could be damaging to an OTI as claims are often without merit.

NYNJFFF&BA asserts that the additional requirement in § 515.23(c)(3) that reporting of the claimant's name, the court, court case number, the OTI's name and license number may create an impression that such OTIs were irresponsible and cause the Commission to use the information against the OTI. The association suggests that if the Commission is interested in gathering data to better understand the claim experience of financial responsibility, it could request aggregate data without reference to specific claimants and OTIs. NCBFAA and TIA also question the relevance of such information to the fitness of an OTI, and seek assurances it will be kept confidential.

Financial responsibility providers have been required for many years to provide claim information to the Commission. While this requirement has long been a key component in the financial responsibility forms that providers must use in establishing the OTI's financial responsibility under the current regulations, the NOPR brings such requirements forward into its rules. The NOPR also revises the wording of the form's contractual requirements with regard to providing such claim information in order to make the wording more uniform across all four of the financial responsibility forms received by the Commission.

The Commission seeks this fuller claims information as a function of its oversight of OTI financial responsibility coverage. These changes will improve the detail and accuracy of claims information received, the regularity of its receipt from surety providers, and the timeliness by which the Commission may respond in the event the financial responsibility instrument is cancelled, becomes ineffective or is extinguished upon payment of one or more valid claims.

NYNJFFF&BA comments that it is unfair to require such information from OTIs and not from vessel operating carriers or terminal operators. The Commission does not seek this information from vessel operators or terminal operators because such entities are not required by the Shipping Act to obtain financial responsibility. The Commission collects the information for its internal use only and it will be protected to the extent provided by law.

Roanoke supports the inclusion in § 515.23(c) of requirements for financial responsibility providers to notify the Commission of claims and claim payments. Roanoke comments that it would prefer that § 515.23(c)(2) be modified so that notices could be reported within 45 days rather than reported ''promptly'' as provided in the rule. The Commission does not see a need to drop the word ''promptly'' and will retain § 515.23(c)(2) as proposed. However, the Commission considers it reasonable for financial responsibility providers to compile claims and claim payment information on a periodic basis and then promptly submit the information to the Commission, *e.g.*, monthly or more frequently.

Roanoke also suggests that the changes made to the financial responsibility forms that provide that such information be provided ''immediately'' be changed to refer to ''promptly.'' In light of the Commission's decision with respect to § 515.23(c)(2), the Commission will revise the financial responsibility forms to substitute ''promptly'' for ''immediately.'' Roanoke also refers to the need in Form FMC–48 (Bond Form) to change the two references to ''Insured'' to ''Principal.'' The Commission agrees and will make the substitution.

With respect to Bond Form FMC–48, Roanoke believes that the proviso in the second ''Whereas'' clause (that a group bond will pay-out claims only to the extent not covered by another surety bond) is unnecessary as it serves no purpose. This same proviso also appears in the Insurance and Guarantee forms. Roanoke asserts that the proviso is appropriately included only in Group Bond Form FMC–69, where it provides that a group bond pays against claims only after other surety bonds, insurance or guaranties have been exhausted. The Commission concurs that the proviso is unnecessary and will delete it from Forms FMC–48, FMC–67 and FMC–68.

Roanoke also proposes that the Commission provide guidance as to the schedule for incorporating the claim reporting changes to the financial responsibility forms and how to quickly make the rule effective in current financial responsibility contracts. Roanoke suggests that the changes be permitted, in the short term, by riders to current bonds. Roanoke also suggests the Commission give OTIs and financial responsibility providers twelve months after the proposed rule becomes effective for new bonds to be fully updated and executed.

Under OSRA, the Commission authorized use of riders so that OTIs and financial responsibility providers could more easily meet the new statutory requirements. This process worked well under OSRA and the Commission agrees that the use of riders here is also appropriate. The Commission also concurs that 12 months would be a reasonable period over which current financial responsibility contracts can be reworked and replaced using the new forms. The Commission will closely monitor this process and work with financial responsibility providers and OTIs following effectiveness of the proposed rule.

Section 515.27—Proof of Compliance—NVOCC.

Section 515.27(a) makes it clear that no common carrier shall ''knowingly and willfully'' transport cargo for an NVOCC unless the common carrier has determined that the NVOCC has: A license or registration; published a tariff; and provided proof of financial responsibility. Section 515.27(b)(2) sets forth the Commission's web address as the single-source location that common carriers can consult to verify an NVOCC's status. The Commission is working to ensure that common carriers can readily make the required verifications at a single, convenient location on the Commission's Web site.

The World Shipping Council suggests that the Commission also make a change to § 515.27(d) that would harmonize it with paragraph (b)(1) by using the same reference to ''applicable licensing, registration, tariff and financial responsibility requirements'' throughout this section. The Commission agrees that these conforming changes improve the section and revises § 515.27(d) to read as follows:

(d) The Commission will publish at its Web site, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries *who have met their applicable licensing, registration, tariff and financial responsibility requirements*, current as of the last date on which the list is updated. The Commission will update this list on a periodic basis.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

Section 515.31—General Duties

Section 515.31(g) places an obligation on all OTIs to promptly respond to requests for all records and books of accounts made by authorized Commission representatives. In addition, § 515.31(g) now clarifies that OTI principals are responsible for requiring that their agents promptly respond to requests directed to such OTI's agents.

NYNJFFF&BA comments that OTIs are not in a position to ensure that their agents make their corporate records available as those records are not legally the OTI's. The association also indicates that, if the agents resist requests by the OTI, the OTI should not experience the regulatory consequences.

Section 515.31(g) makes OTIs responsible to make available all records relating to ocean transportation intermediary service provided by or for the OTI. The Commission agrees with NYNJFFF&BA that the law of agency and contract govern the OTI's relationship with its agents. Accordingly, the regulation requires OTIs to obligate its agents to provide all records relating to its OTI principal's activities. The Commission's rule anticipates OTIs will be readily able to include provisions in their agency agreements so as to ensure compliance by their agents.

Section 515.31(j) embodies the Commission's decision in Docket No. 06–01, *Worldwide Relocations, Inc., et. al—Possible Violations*, 32 SRR 495, 503 (FMC 2012), in which the Commission found that persons or entities may hold themselves out to act as an NVOCC ''by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise.'' Section 515.31(j) applies to OFFs, as well as NVOCCs, insofar as they hold out to perform ocean freight forwarding services via advertising and solicitation.

TIA, NCBFAA, NYNJFFF&BA, North American, J.W. Allen, Customs Clearance, K&N, John S. Connor, New Direx, W.R. Zanes, Pride, John S. James, C J International, Cargo-Link, Mohawk, Vanguard, Thunderbolt express their concern that § 515.31(j) can be read to apply to agents that might advertise to perform an OTI service, as agent, for an OTI. TIA indicates that the use of ''OTI services'' in the rule is confusing because such services are not defined in the proposed rule. As a consequence, these commenters view § 515.31(j) as problematic. The Commission agrees that the section as proposed is imprecise and is revised as follows:

No person may advertise or hold out to act as an OTI unless that person holds a valid OTI license or is registered under this part.

The reference to ''OTI services'' is deleted and the words ''to act as an OTI'' are inserted to make it clear that only those advertising or holding out to act as an OTI are subject to the rule.

Subpart E—Freight Forwarding Fees and Compensation

Section 515.41—Forwarder and Principal; Fees

The current content of § 515.41(c) with respect to special contracts of ocean freight forwarders is deleted. The Commission has determined it is no longer needed. NCBFAA supports the elimination of the current content of § 515.41(c) as not relevant in light of the enactment of OSRA and the importance of individually negotiated rates.

Section 515.42—Forwarder and Carrier; Compensation

Section 515.42(c) is revised to specifically authorize electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (*e.g.*, an automated forwarder database) must identify the shipments for which compensation is made and provide for the forwarder's confirmation that the services for which forwarder compensation is to be paid have been provided. This provision will ensure, for example, that the forwarder will confirm that the carrier's list of shipments is correct, and, if not, the forwarder will advise the carrier of shipments that should be added or deleted. Certifications must be retained for a period of 5 years by the common carrier.

NCBFAA supports the authorization in section 515.42(c) of electronic certifications that forwarder services have been provided. However, it proposes that there is no need for any certification because vessel operating common carriers have largely eliminated forwarder compensation, in that compensation is only paid where forwarders bring substantial cargo to the carrier and provide significant services. J.W. Allen and W.R. Zanes support elimination of certifications.

NYNJFFF&BA also urges that certifications by forwarders and by vessel operators be dropped based on the paucity of compensation being paid by vessel operators. The association also expresses a concern that carriers may create their own systems requiring OFFs to provide verification of carrier lists. No comments were received from vessel operators or their associations on the change to § 515.42(c).

Vanguard suggests the Commission should allow for a one-time blanket certification by the OFF that services have been rendered on all future shipments, or eliminate certifications entirely. Vanguard questions why a vessel operator certification is necessary.

The Commission appreciates that the number of shipments on which forwarder compensation is paid have greatly diminished. However, the reasons for certification remain—to ensure that forwarder compensation is only paid and received for services actually rendered in accordance with vessel operators' service contracts and tariffs. It would appear that the provision of electronic certification exchanges, verified periodically by the forwarder and the vessel operator, together with the greatly reduced volume of compensation paid will reduce correspondingly the number of certifications required.

Regulatory Flexibility Act—Threshold Analysis and Chairman's Certification of No Significant Economic Impact

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will describe the impact of the proposed rule on small entities. (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In the NPRM, the Commission advised the public that the proposed rule directly affects all U.S. licensed OTIs, of which there were 4,648. The FMC estimated that approximately 97 percent of these OTIs are small entities. Therefore, the Commission determined that this proposed rule will affect a substantial number of small entities.

At that time, the Commission determined that the economic impact on entities affected by the proposed rule would not be significant. Most of the proposed changes were found to have either no economic impact or beneficial economic impacts. Concerning the one

change with the potential to generate economic disbenefit, *i.e.*, the license renewal requirement, the dollar magnitude of the economic impact was estimated to be less than one-tenth of one percent of average annual revenue for even the smallest of small entities. The Commission invited comment from members of the public who believe the rule will have a significant economic impact on the U.S.-based OTIs.

The NCBFAA comments asserted that the license renewal requirement would have a significant economic impact on a substantial number of small entities. Inasmuch as NCBFAA provided no data regarding the potential economic burden associated with this requirement, their assertion remains unsubstantiated. On the other hand, with respect to the rule's elimination of the $10,000 bonding requirement for each unincorporated branch office, a number of OTIs and associations stated that the elimination of that requirement would ease their regulatory burden, reduce their cost of operations and make their companies more competitive in the market for OTI services. These commenters offered no data to quantify their assertions.

NCBFAA asserts that the Commission likewise ignores the cost implications of small entities having to respond to follow-up requests or the need for such entities to defend against any action that might challenge the renewal of a license. As outlined, the on-line renewal process will be free, user-friendly and focused upon verifying factual issues material to the licensee's current status. Only information that is no longer accurate need be updated.

The Commission may revoke a license where an OTI no longer has the experience or character to act as an OTI. OTIs are in control of whether they meet those standards and, correspondingly, in control of whether they have engaged in activities that might lead to a revocation proceeding. The occurrence of such litigation is highly speculative and ultimately in the hands of the OTI. Similarly, the incidence of OTIs needing to respond to follow-up requests by the Commission staff is also speculative as the OTI is expected to provide accurate information in the first instance.

Accordingly, the Chairman of the FMC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FMC's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review under 5 U.S.C. 605(b).

This rule is not a ''major rule'' under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A—General

■ 2. In § 515.1, revise paragraph (b) to read as follows:

§ 515.1 Scope.

* * * * *

(b) Information obtained under this part is used to determine the qualifications of ocean transportation intermediaries and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of an ocean transportation intermediary license or registration. Persons operating without the proper license or registration may be subject to civil penalties not to exceed $9,000 for each such violation, unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $45,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $9,000 to $45,000 for each violation (46 U.S.C. 41107–41109). Each day of a continuing violation shall constitute a separate violation.

■ 3. Revise § 515.2 to read as follows:

§ 515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* or *Shipping Act* means the Shipping Act of 1984, as amended. 46 U.S.C. 40101–41309.

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term ''beneficial interest'' shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office.

(d) *Commission* means the Federal Maritime Commission.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities, and

(ii) Only with respect to those commodities.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 515.2(h).

(g) *Freight forwarding fee* means charges billed by an ocean freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing export documents, including the required 'electronic export information';

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing common carrier bills of lading or other shipping documents;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Assisting with clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.

(k) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

(1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;

(2) Payment of port-to-port or multimodal transportation charges;

(3) Entering into affreightment agreements with underlying shippers;

(4) Issuing bills of lading or other shipping documents;

(5) Assisting with clearing shipments in accordance with U.S. government regulations;

(6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;

(7) Paying lawful compensation to ocean freight forwarders;

(8) Coordinating the movement of shipments between origin or destination and vessel;

(9) Leasing containers;

(10) Entering into arrangements with origin or destination agents;

(11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

(l) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(m) *Ocean transportation intermediary* (OTI) means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term:

(1) *Ocean freight forwarder* (OFF) means a person that—

(i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) Processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(n) *Person* means individuals, corporations, companies, including limited liability companies, associations, firms, partnerships, societies and joint stock companies existing under or authorized by the laws of the United States or of a foreign country.

(o) *Principal* refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.

(p) *Qualifying individual* (QI) means an individual who meets the experience and character requirements of section 19 of the Shipping Act (46 U.S.C. 40901–40904) and this part.

(q) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensed ocean freight forwarder's usual charges for such services.

(r) *Registered non-vessel-operating common carrier (registered NVOCC)* means an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as provided in § 515.19, post a bond or other surety in the required amount, and publish a tariff as required by 46 CFR part 520.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(u) *Special contract* is a contract for ocean freight forwarding services which provides for a periodic lump sum fee.

(v) *Transportation-related activities* which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

(1) For an ocean transportation intermediary operating as an ocean freight forwarder, the freight forwarding services enumerated in paragraph (h) of this section, and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carrier services enumerated in § 515.2(k).

(w) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

■ 4. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries to provide NVOCC services in the United States. In the United States, only licensed OTIs may act as agents to provide OTI services for registered NVOCCs.

■ 5. Revise § 515.4 to read as follows:

§ 515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shippers.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Agents, employees, or branch offices of a licensed ocean transportation intermediary.* An agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC–18 or pursuant to § 515.20(e). A licensed ocean transportation intermediary shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.

(c) *Common carriers.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs.

(d) *Federal military and civilian household goods.* Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of subpart B of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense, or the General Services Administration.

■ 6. Revise § 515.5 to read as follows:

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC–18 Rev., Application for Renewal of Ocean Transportation Intermediary License Form–____, and Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC–65, are found at the Commission's Web site *www.fmc.gov* for completion on-line by applicants, licensees, and registrants. Financial responsibility Forms FMC–48, FMC–67, FMC–68, FMC–69 may be obtained from the Commission's Web site at *www.fmc.gov*, from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) *Filing of license applications and registration forms.* All applications and forms are to be filed electronically unless a waiver is granted to file in paper form. A waiver request must be submitted in writing to the Director, Bureau of Certification and Licensing, 800 North Capitol Street NW., Washington, DC 20573, and must demonstrate that electronic filing imposes an undue burden on the applicant or registrant. The director, or a designee, will render a decision on the request and notify the requestor within two (2) business days of receiving the request. If a waiver request is granted, the approval will provide instructions for submitting a paper application or registration. If the waiver request is denied, a statement of reasons for the denial will be provided.

(c) *Fees.* (1)(i) All fees shall be paid by:

(A) Money order, certified, cashier's, or personal check payable to the order of the ''Federal Maritime Commission;''

(B) *Pay.gov;*

(C) The Automated Clearing House system; or

(D) By other means authorized by the Director of the Commission's Office of Budget and Finance.

(ii) Applications or registrations shall be rejected unless the applicable fee and any bank charges assessed against the Commission are received by the Commission within ten (10) business days after submission of the application or registration. In any instance where an application has been processed in whole or in part, the fee will not be refunded.

(2) Fees under this part 515 shall be as follows:

(i) Application for new OTI license as required by § 515.12(a): Automated filing $250; paper filing pursuant to waiver $825.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Automated filing $125; paper filing pursuant to waiver $525.

Subpart B—Eligibility and Procedure for Licensing and Registration

■ 7. Revise the heading for subpart B to read as set forth above.

■ 8. Revise § 515.11 to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean transportation intermediary license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years' experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services. A foreign NVOCC seeking to be licensed under this part must demonstrate that its qualifying individual has a minimum 3 years' experience in ocean transportation intermediary activities, and the necessary character to render ocean transportation intermediary services. The required OTI experience of the QI of a foreign-based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be experience acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(2) In addition to information provided by the applicant and its references, the Commission may consider all information relevant to determining whether an applicant has the necessary character to render ocean transportation intermediary services, including but not limited to, information regarding: Violations of any shipping laws, or statutes relating to the import, export, or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; outstanding tax liens and other court and administrative judgments and proceedings; compliance with immigration status requirements described in 49 CFR 1572.105; denial, revocation, or suspension of a Transportation Worker Identification Credential under 49 CFR 1572; and the denial, revocation, or suspension of a customs broker's license under 19 CFR subpart B, section 111. The required OTI experience of the QI of a foreign-based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(b) *Qualifying individual.* The following individuals must qualify the applicant for a license:

(1) *Sole proprietorship.* The applicant sole proprietor.

(2) *Partnership.* At least one of the active managing partners.

(3) *Corporation.* At least one of the active corporate officers.

(4) *Limited liability company.* One of the members or managers, or an individual in an equivalent position in the LLC as expressly set forth in the LLC operating agreement.

(c) *Affiliates of intermediaries.* An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: A separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

(d) *Common carrier.* A common carrier or agent thereof which meets the requirements of this part may be licensed as an ocean freight forwarder to dispatch shipments moving on other than such carrier's own bills of lading subject to the provisions of § 515.42(g).

(e) *Foreign-based licensed NVOCC.* A foreign-based NVOCC that elects to obtain a license must establish a presence in the United States by opening an unincorporated office that is resident in the United States and is qualified to do business where it is located.

■ 9. Revise § 515.12 to read as follows:

§ 515.12 Application for license.

(a) *Application and forms.* (1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit electronically (absent a waiver pursuant to § 515.5(b)) a completed application Form FMC–18 Rev. (Application for a License as an Ocean Transportation Intermediary) in accordance with the automated FMC–18 filing system and corresponding instructions. A filing fee shall be paid, as required under § 515.5(c). Notice of filing of each application shall be published on the Commission's Web site *www.fmc.gov* and shall state the name and address of the applicant and the name of the QI. If the applicant is a corporation or partnership, the names of the officers or partners thereof may be published. For an LLC, the names of the managers, members or officers, as applicable, may be published.

(2) An individual who is applying for a license as a sole proprietor must complete the following certification:

I, ____ (Name)____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

(b) *Rejection.* Any application which appears upon its face to be incomplete or to indicate that the applicant fails to meet the licensing requirements of the Act, or the Commission's regulations, may be rejected and a notice shall be sent to the applicant, together with an explanation of the reasons for rejection, and the filing fee shall be refunded in full. Persons who have had their applications rejected may submit a new Form FMC–18 at any time, together with the required filing fee.

(c) *Failure to provide necessary information and documents.* In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 515.13.

(e) *Changes in fact.* Each applicant shall promptly advise the Commission of any material changes in the facts submitted in the application. Any unreported change may delay the processing and investigation of the application and result in rejection, closing, or denial of the application.

■ 10. In § 515.14, revise the section heading and paragraph (b) and add paragraphs (c) and (d) to read as follows:

§ 515.14 Issuance, renewal, and use of license.

* * * * *

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant is a sole proprietorship, a partnership, a corporation, or limited liability company. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business, and except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without prior Commission approval to another person.

(c) *Duration of license.* Licenses shall be issued for an initial period of three (3) years. Thereafter, licenses will be renewed for sequential three year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) *License renewal process.* (1) The licensee shall submit electronically to the Director of the Bureau of Certification and Licensing (BCL) a completed Form FMC-____ (Application for Renewal of Ocean Transportation Intermediary License) no later than sixty (60) days prior to the renewal date set forth on its license. Upon successful completion of the renewal process, the Commission shall issue a new license bearing a renewal date three (3) years later on the same day and month on which the license was originally issued. The renewal date will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewed license is issued by the Commission, unless another renewal date is assigned by the Commission.

(2) Where information provided in an OTI's renewal form, Form FMC-____, is changed from that set out in its current Form FMC–18 and requires Commission approval pursuant to § 515.20, the licensee must promptly submit a request for such approval on Form FMC–18 together with the required filing fee. The licensee may continue to operate as an ocean transportation intermediary during the pendency of the Commission's approval process.

(3) Though the foregoing license renewal process is not intended to result in a re-evaluation of a licensee's character, the Commission may review a licensee's character at any time, including at the time of renewal, based

upon information received from the licensee or other sources.

■ 11. In § 515.15, revise paragraph (c) to read as follows:

§ 515.15 Denial of license.

* * * * *

(c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application. The notice of intent to deny the application will provide, in detail, a statement of the facts supporting denial. An applicant may request a hearing on the proposed denial by submitting to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twenty (20) days of the date of the notice, a statement of reasons why the application should not be denied. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the denial of the application will become effective and the applicant shall be so notified.

■ 12. Revise § 515.16 to read as follows:

§ 515.16 Revocation or suspension of license.

(a) *Grounds.* Except for the automatic revocation for termination of proof of financial responsibility under § 515.26, a license may be revoked or suspended after notice and an opportunity for a hearing under the procedures of § 515.17. The notice of revocation or suspension will provide, in detail, a statement of the facts supporting the action. The licensee may request a hearing on the proposed revocation or suspension by submitting to the Commission's Secretary, within twenty (20) days of the date of the notice, a statement of reasons why the license should not be revoked or suspended. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the action regarding the license will become effective. A license may be revoked or suspended for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;

(4) A Commission determination that the licensee is not qualified to render intermediary services; or

(5) Failure to honor the licensee's financial obligations to the Commission.

(b) *Notice.* The Commission shall publish on the Commission's Web site *www.fmc.gov* notice of each revocation and suspension.

■ 13. Revise § 515.17 to read as follows:

§ 515.17 Hearing procedures governing denial, revocation, or suspension of OTI license.

(a) *Hearing requests.* All hearing requests under §§ 515.15 and 515.16 shall be submitted to the Commission's Secretary. The Secretary will designate a hearing officer for review and decision under the procedures established in this section. Upon receipt of a request for hearing, the hearing officer shall notify BCL, and BCL will provide to the hearing officer and applicant or licensee a copy of the notice given to the applicant or licensee and a copy of BCL materials supporting the notice. The hearing officer will then issue a notice advising the applicant or, in the case of a revocation or suspension of the license, the licensee of the right to submit information and documents, including affidavits of fact and written argument, in support of an OTI application or continuation of a current OTI license.

(b) *Notice.* The notice shall establish a date no later than thirty (30) days from the date of the notice for submission of all supporting materials by the applicant or licensee. The notice shall also provide that BCL may submit responsive materials no later than twenty (20) days from the date the applicant or licensee submitted its materials. BCL's notice and materials supporting its notice, the submission of the applicant or licensee, and the responsive submission of BCL shall constitute the entire record upon which the hearing officer's decision will be based. The hearing officer's decision must be issued within forty (40) days after the closing of the record.

(c) *Review by Commission.* An applicant or licensee may seek review of the hearing officer's decision by filing exceptions pursuant to 46 CFR 502.227, and within the time provided by 46 CFR 502.227(a)(1). Upon receipt of the exceptions, the Commission may conduct a hearing under Part 502.

(d) *Commission-initiated enforcement proceedings.* In proceedings for assessment of civil penalties for violations of the Shipping Act or Commission regulations, a license may be revoked or suspended after notice and an opportunity for hearing under Part 502 (Rules of Practice and Procedure).

§ 515.18 [Redesignated as § 515.20]

■ 14. Redesignate § 515.18 as § 515.20.

§ 515.17 [Redesignated as § 515.18]

■ 15. Redesignate § 515.17 as § 515.18.

■ 16. In § 515.19 add paragraph (g)(2) to read as follows:

§ 515.19 Registration of foreign-based non-vessel-operating common carriers.

* * * * *

(g) * * *

(2) *Hearing procedure.* Registrants may request a hearing for terminations or suspensions of the effectiveness of their registrations following the same procedures set forth in § 515.17 (governing hearing requests for denials, revocations and suspensions of licenses).

* * * * *

■ 17. Revise newly redesignated § 515.20 to read as follows:

§ 515.20 Changes in organization.

(a) *Licenses.* The following changes in an existing licensee's organization require prior approval of the Commission, and application for such status change or license transfer shall be made on Form FMC–18, filed with the Commission's Bureau of Certification and Licensing, and accompanied by the fee required under § 515.5(c):

(1) Transfer of a corporate license to another person;

(2) Change in ownership of a sole proprietorship;

(3) Any change in the business structure of a licensee from or to a sole proprietorship, partnership, limited liability company, or corporation, whether or not such change involves a change in ownership;

(4) Any change in a licensee's name; or

(5) Change in the identity or status of the designated QI, except as described in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event that the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean transportation intermediary pursuant to the existing license, if the death is reported within 30 days to the Commission and to all principals and shippers for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until

a new license has been issued. Applications for a new license by the executor, administrator, heir(s), or assign(s) shall be made on Form FMC–18, and shall be accompanied by the fee required under § 515.5(c).

(c) *Operation after retirement, resignation, or death of QI.* When a partnership, LLC, or corporation has been licensed on the basis of the qualifications of one or more of the partners, members, managers or officers thereof, and the QI no longer serves as a full-time employee with the OTI or is no longer responsible for the licensee's OTI activities, the licensee shall report such change to the Commission within thirty (30) days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed intermediary experience of any other active partner(s), member(s), manager(s) or officer(s) who may qualify the licensee. Such QI(s) must meet the applicable requirements set forth in § 515.11(a) through (c). The licensee may continue to operate as an ocean transportation intermediary while the Commission investigates the qualifications of the newly designated partner, member, manager, or officer.

(d) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such acquisition, including any change in ownership, within 30 days after such change occurs by submitting an amended Form FMC–18. No application fee is required when reporting this change.

(e) *Other changes.* Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Material changes include, but are not limited to: Changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes.

Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

■ 18. In § 515.21, revise paragraphs (a)(1) through (3), remove paragraph (a)(4), and revise paragraph (b).

The revisions read as follows:

§ 515.21 Financial responsibility requirements.

(a) * * *

(1) Any person operating in the United States as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of $50,000.

(2) Any person operating in the United States as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of $75,000.

(3) Any registered NVOCC, as defined in § 515.2(r), shall furnish evidence of financial responsibility in the amount of $150,000. Such registered NVOCC shall be strictly responsible for the acts and omissions of its employees and agents, wherever they are located.

(b) *Group financial responsibility.* When a group or association of ocean transportation intermediaries accepts liability for an ocean transportation intermediary's financial responsibility for such ocean transportation intermediary's transportation-related activities under the Act, the group or association of ocean transportation intermediaries shall file a group bond form, insurance form or guaranty form, clearly identifying each ocean transportation intermediary covered, before a covered ocean transportation intermediary may provide ocean transportation intermediary services. In such cases, a group or association must establish financial responsibility in an amount equal to the lesser of the amount required by paragraph (a) of this section for each member, or $3,000,000 in aggregate. A group or association of ocean transportation intermediaries may also file an optional bond rider as provided in § 515.25(b).

* * * * *

■ 19. Revise § 515.23 to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

(a) *Who may seek payment.* Shippers, common carriers, and other affected persons may seek payment from the bond, insurance, or other surety maintained by an ocean transportation intermediary for damages arising out of its ocean transportation-related activities. The Commission may also seek payment of civil penalties assessed under section 13 of the Shipping Act (46 U.S.C. 41107–41109).

(b) *Payment pursuant to a claim.* (1) If a person does not file a complaint with the Commission pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance, or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained. When a claimant seeks payment under this section, it simultaneously shall notify both the financial responsibility provider and the ocean transportation intermediary of the claim by mail or courier service. The bond, insurance, or other surety may be available to pay such claim if:

(i) The ocean transportation intermediary consents to payment, subject to review by the financial responsibility provider; or

(ii) The ocean transportation intermediary fails to respond within forty-five (45) days from the date of the notice of the claim to address the validity of the claim, and the financial responsibility provider deems the claim valid.

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for reparations ordered by the Commission or damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary, ordinarily within thirty (30) days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

(c) *Notices of court and other claims against OTIs by financial responsibility providers.* (1) As provided in each financial responsibility instrument between an OTI and its financial responsibility provider(s), the issuing financial responsibility provider shall submit a notice to the Commission of each claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount) by the provider.

(2) Notices described in paragraph (c)(1) of this section shall be promptly submitted in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.

(3) Notices required by this section shall include the name of the claimant, name of the court and case number assigned, and the name and license number of the OTI involved. Such notices may include or attach other information relevant to the claim.

(d) The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparation.

(e) *Optional bond riders.* The Federal Maritime Commission shall not serve as a depository or distributor to third parties of funds payable pursuant to optional bond riders described in § 515.25(b).

■ 20. Revise § 515.25 to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility*—(1) *Licenses.* Upon notification by the Commission that an applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility from the applicant. If, within 120 days of notification of approval for licensing by the Commission, the applicant does not file proof that its financial responsibility is in effect, the application will be invalid. Applicants whose applications have become invalid may submit a new Form FMC–18, together with the required filing fee, at any time.

(2) *Registrations.* A registration shall not become effective until the applicant has furnished proof of financial responsibility pursuant to § 515.21, has submitted a Form FMC–1, and its published tariff becomes effective pursuant to 46 CFR part 520.

(b) *Optional bond rider.* Any NVOCC as defined in § 515.2(m)(2), in addition to a bond meeting the requirements of § 515.21(a)(2) or (3), may obtain and file with the Commission proof of an optional bond rider, as provided in Appendix E or Appendix F of this part.

■ 21. Revise § 515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee, registrant, or registrant's legal agent in the United States, by mail, courier, or other method reasonably calculated to provide actual notice, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license or terminate the registration as of the termination date of the financial responsibility instrument, unless the licensee or registrant shall have submitted valid replacement proof of financial responsibility before such termination date. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility instrument.

■ 22. Revise § 515.27 to read as follows:

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier shall knowingly and willfully transport cargo for the account of an NVOCC unless the carrier has determined that the NVOCC has a license or registration, a tariff, and financial responsibility as required by sections 8 (46 U.S.C. 40501–40503) and 19 (46 U.S.C. 40901–40904) of the Shipping Act and this part.

(b) A common carrier can obtain proof of an NVOCC's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's Web site *www.fmc.gov* as provided in paragraph (d) below, to verify that the NVOCC has complied with the applicable licensing, registration, tariff, and financial responsibility requirements; or

(2) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff.

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under section 10(b)(11) of the Act (46 U.S.C. 41104(11)), unless the common carrier knew that such NVOCC was not in compliance with the applicable licensing, registration, tariff, and financial responsibility requirements.

(d) The Commission will publish at its Web site, *www.fmc.gov,* a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries (including a separate list for NVOCCs) who have met all of their applicable licensing, registration, tariff and financial responsibility requirements, current as of the last date on which the list is updated. The Commission will update this list on a periodic basis.

Appendices A–F [Removed]

■ 23. Remove appendices A through F to subpart C.

Subpart D—Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

■ 24. Revise § 515.31 to read as follows:

§ 515.31 General duties.

(a) *Licensees and registrants; names and numbers.* Each licensee and registrant shall carry on its business only under the name in which it was licensed or registered and only under its license or registration number as assigned by the Commission. When the licensee's or registrant's name appears on shipping documents, its Commission license or registration number shall also be included.

(b) *Stationery and billing forms.* The name and license or registration number of each OTI shall be permanently imprinted on the licensee's or registrant's office stationery and billing forms.

(c) *Use of license or registration by others; prohibition.* No OTI shall permit its name, license, license number, registration, or registration number to be used by any person who is not an employee or an agent of the OTI. An entity that also provides OTI services in its own name and not on behalf of a licensed or registered OTI must be separately licensed under this part and must provide proof of its own financial responsibility and publish a tariff, if applicable. A branch office of an OTI may use the license of the OTI, provided that the address of the branch office has been reported to the Commission in Form FMC–18 or pursuant to § 515.20(e).

(d) *Arrangements with ocean transportation intermediaries whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no OTI shall, directly or indirectly:

(1) Agree to perform ocean transportation intermediary services on shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to § 515.16, or registration terminated or suspended pursuant to § 515.19(g);

(2) Assist in the furtherance of any ocean transportation intermediary

business of an OTI whose license has been revoked;

(3) Share forwarding fees or freight compensation with any such person; or

(4) Permit any such person, directly or indirectly, to participate, through ownership or otherwise, in the control or direction of the ocean transportation intermediary business of the licensee or registrant.

(e) *False or fraudulent claims, false information.* No OTI shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning an ocean transportation intermediary transaction which it has reason to believe is false or fraudulent, nor shall any such OTI knowingly impart to a principal, shipper, common carrier or other person, false information relative to any ocean transportation intermediary transaction.

(f) *Errors and omissions of the principal or shipper.* An OTI who has reason to believe that its principal or shipper has not, with respect to a shipment to be handled by such OTI, complied with the laws of the United States, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other document which the principal or shipper executes in connection with such shipment, shall advise its principal or shipper promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, an OTI shall make available promptly for inspection or reproduction all records and books of account in connection with its ocean transportation intermediary business, and shall respond promptly to any lawful inquiries by such representative. All OTIs are responsible for requiring that, upon the request of any authorized Commission representative, their agents make available all records and books of account relating to ocean transportation intermediary service provided by or for their principals, and respond promptly to any lawful inquiries by such representative.

(h) *Express written authority.* No OTI shall endorse or negotiate any draft, check, or warrant drawn to the order of its OTI principal or shipper without the express written authority of such OTI principal or shipper.

(i) *Accounting to principal or shipper.* An OTI shall account to its principal(s) or shipper(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of C.O.D. shipments, drafts, letters of credit, and any other sums due such principal(s) or shipper(s).

(j) *Prohibition.* No person may advertise or hold out to act as an OTI unless that person holds a valid OTI license or is registered under this part.

§ 515.32 [Amended]

■ 25. In § 515.32, in paragraph (b), in the first sentence, remove the word ''sales''.

■ 26. In § 515.33, revise the introductory text and paragraph (d) to read as follows:

§ 515.33 Records required to be kept.

Each licensed or registered NVOCC and each licensed ocean freight forwarder shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its OTI business. The licensed or registered NVOCC and each licensed freight forwarder may maintain these records in either paper or electronic form, which shall be readily available in usable form to the Commission; the electronically maintained records shall be no less accessible than if they were maintained in paper form. These recordkeeping requirements are independent of the retention requirements of other federal agencies. In addition, each licensed freight forwarder must maintain the following records for a period of five years:

* * * * *

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract between a licensed freight forwarder and a principal, or modification or cancellation thereof.

§ 515.32 [Amended]

■ 27. Amend § 515.34 by removing the reference ''$108'' and adding the reference ''the fee set forth in § 515.5(c)'' in its place.

Subpart E—Freight Forwarding Fees and Compensation

■ 28. Amend § 515.41 as follows:

■ a. Remove paragraph (c);

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

■ c. Revise newly redesignated paragraph (d).

The revision reads as follows:

§ 515.41 Forwarder and principal; fees.

* * * * *

(d) *In-plant arrangements.* A licensed freight forwarder may place an employee or employees on the premises of its principal as part of the services rendered to such principal, provided:

(1) The in-plant forwarder arrangement is reduced to writing and identifies all services provided by either party (whether or not constituting a freight forwarding service); states the amount of compensation to be received by either party for such services; sets forth all details concerning the procurement, maintenance or sharing of office facilities, personnel, furnishings, equipment and supplies; describes all powers of supervision or oversight of the licensee's employee(s) to be exercised by the principal; and details all procedures for the administration or management of in-plant arrangements between the parties; and

(2) The arrangement is not an artifice for a payment or other unlawful benefit to the principal.

■ 29. In § 515.42, revise paragraphs (a), (b), (c), and (f) to read as follows:

§ 515.42 Forwarder and carrier compensation; fees.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensed freight forwarder's name may appear with the name of the shipper, but the forwarder must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

(c) *Form of certification.* When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary

statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. 2, issued by the Federal Maritime Commission and has performed the following services:

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

* * * * *

(f) *Compensation; services performed by underlying carrier; exemptions.* No licensed freight forwarder shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such forwarder, performed any of the forwarding services set forth in § 515.2(h), unless such carrier or agent is also a licensed freight forwarder, or unless no other licensed freight forwarder is willing and able to perform such services.

* * * * *

■ 30. Add appendices A, B, C, D, E, and F to part 515 to read as follows:

Appendix A to Part 515—Ocean Transportation Intermediary (OTI) Bond Form [Form 48]

Form FMC–48
Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Bond (Section 19, Shipping Act of 1984 (46 U.S.C. 40901–40904)) ____ [indicate whether NVOCC or Freight Forwarder], as Principal (hereinafter ''Principal''), and ____, as Surety (hereinafter ''Surety'') are held and firmly bound unto the United States of America in the sum of $____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, Principal operates as an OTI in the waterborne foreign commerce of the United States in accordance with the Shipping Act of 1984, 46 U.S.C. 40101–41309, and, if necessary, has a valid tariff published pursuant to 46 CFR part 515 and 520, and pursuant to section 19 of the Shipping Act (46 U.S.C. 40901–40904), files this bond with the Commission;

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from the Principal's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from the Principal's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

This bond shall inure to the benefit of any and all persons who have obtained a judgment or a settlement made pursuant to a claim under 46 CFR § 515.23 for damages against the Principal arising from its transportation-related activities or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty amount of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty amount, regardless of the number of claims or claimants.

This bond is effective the ____ day of ____, ____ and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any event occurring prior to the date when said termination becomes effective.

The Surety consents to be sued directly in respect of any bona fide claim owed by Principal for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety after a claimant has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Principal and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Surety's total obligation hereunder shall not exceed the amount set forth in 46 CFR 515.21, as applicable.

The underwriting Surety will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against this bond.

Signed and sealed this ____ day of ____, ____.
(Please type name of signer under each signature.)

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Trade Name, If Any

_____
Corporate Principal

_____
State of Incorporation

_____
Trade Name, If Any

_____
Business Address

_____
By

_____
Title

_____
(Affix Corporate Seal)

_____
Corporate Surety

_____

Business Address

_____

By

_____

Title
(Affix Corporate Seal)

Appendix B to Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form 67]

Form FMC–67
Federal Maritime Commission
Ocean Transportation Intermediary (OTI) Insurance
Form Furnished as Evidence of Financial Responsibility
Under 46 U.S.C. 40901–40904

This is to certify, that the (Name of Insurance Company), (hereinafter ''Insurer'') of (Home Office Address of Company) has issued to (OTI or Group or Association of OTIs [indicate whether NVOCC(s) or Freight Forwarder(s)]) (hereinafter ''Insured'') of (Address of OTI or Group or Association of OTIs) a policy or policies of insurance for purposes of complying with the provisions of Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904) and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984 (46 U.S.C. 40101–41309) (Shipping Act).

Whereas, the Insured is or may become an OTI subject to the Shipping Act and the rules and regulations of the Federal Maritime Commission, or is or may become a group or association of OTIs, and desires to establish financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 40901–40904), files with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, the Insurance is written to assure compliance by the Insured with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs, this Insurance shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

Whereas, the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured pursuant to 46 CFR 515.23 arising from its transportation-related activities under the Shipping Act, or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act, of Insured in the event that such legal liability has not been discharged by the Insured or Insurer after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured and/or Insurer pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Insurer is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance in the amount per member OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured. The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be ____ day of ____, ____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of the Insured after the expiration of the 30-day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

(Name of Agent) ____ domiciled in the United States, with offices located in the United States, at ____ is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against the Insurance.

Signed and sealed this ____ day of ____, ____.

_____

Signature of Official signing on behalf of Insurer

_____

Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

Appendix C to Part 515—Ocean Transportation Intermediary (OTI) Guaranty Form [Form 68]

Form FMC–68
Federal Maritime Commission

Guaranty in Respect of Ocean Transportation Intermediary (OTI) Liability for Damages, Reparations or Penalties Arising from Transportation-Related Activities Under the Shipping Act of 1984 (46 U.S.C. 40101–41309) (Shipping Act).

1. Whereas ____ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter ''Applicant'') is or may become an Ocean Transportation Intermediary (''OTI'') subject to the Shipping Act of 1984 (46 U.S.C. 40101–41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107–41109), then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current ''white list'' issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the Shipping Act.

2. Whereas, this Guaranty is written to ensure compliance by the Applicant with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Applicant pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

3. Now, Therefore, The condition of this obligation is that the penalty amount of this Guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

4. The undersigned Guarantor hereby consents to be sued directly in respect of any bona fide claim owed by Applicant for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act, in the event that such legal liability has not been discharged by the Applicant after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the FMC, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant and/or Guarantor pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Guarantor is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of OTIs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought.

5. The Guarantor's liability under this Guaranty in respect to any claimant shall not exceed the amount of the guaranty; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed the amount per OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate.

6. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date thirty (30) days after the date of receipt of mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

7. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

8. Guarantor shall pay, subject to the limit of the amount per OTI set forth in 46 CFR 515.21, directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act and the rules and regulations of the FMC, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

9. The Applicant or Guarantor will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made under the Guaranty.

10. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

11. This Guaranty shall be governed by the laws in the State of ____ to the extent not inconsistent with the rules and regulations of the FMC.

12. This Guaranty is effective the day of ____, ____, ____ 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

13. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States ____, with offices located in the United States at ____, for the purposes of enforcing the Guaranty described herein.

_____
(Place and Date of Execution)

_____
(Type Name of Guarantor)

_____
(Type Address of Guarantor)

_____
By

_____
(Signature and Title)

Appendix D to Part 515—Ocean Transportation Intermediary (OTI) Group Bond Form [FMC–69]

Form FMC–69
Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Group Supplemental Coverage Bond Form (Shipping Act of 1984 (46 U.S.C. 40101–41309)) (Shipping Act).

____ [indicate whether NVOCC or Freight Forwarder], as Principal (hereinafter ''Principal''), and ____ as Surety (hereinafter ''Surety'') are held and firmly bound unto the United States of America in the sum of $____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, (Principal) ____ operates as a group or association of OTIs in the waterborne foreign commerce of the United States and pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904), files this bond with the Federal Maritime Commission;

Whereas, this group bond is written to ensure compliance by the OTIs, enumerated in Appendix A of this bond, with section 19 of the Shipping Act (46 U.S.C. 40901–40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this group bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against such OTIs arising from OTI transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against one or more OTI members pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

Now, therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 against the OTIs enumerated in Appendix A of this bond for damages arising from any or all of the identified OTIs' transportation-related activities under the Shipping Act (46 U.S.C. 40101–41309), or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109), that are not covered by the identified OTIs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This group bond shall inure to the benefit of any and all persons who have obtained a judgment or made a settlement pursuant to a claim under 46 CFR 515.23 for damages against any or all of the OTIs identified in Appendix A not covered by said OTIs' insurance policy(ies), guaranty(ies) or surety bond(s) arising from said OTIs' transportation-related activities under the Shipping Act, or order for reparation issued pursuant to section 11 of the Shipping Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The Surety consents to be sued directly in respect of any bona fide claim owed by any or all of the OTIs identified in Appendix A for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of the OTIs in the event that such legal liability has not been discharged by the OTIs or Surety after a claimant has obtained a final judgment (after appeal, if any) against the OTIs from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the OTI(s) and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant(s).

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed the amount per member OTI set forth in 46 CFR 515.21, identified in Appendix A, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the number of OTIs, claims or claimants.

This bond is effective the ____, day of __ __, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (*bcl@.fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the OTIs identified in Appendix A as covered by the Principal after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities occurring prior to the date when said termination becomes effective.

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, by mail or email (*bcl@fmc.gov*), of any additions, deletions or changes to the OTIs enumerated in Appendix A. In the event of additions to Appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to Appendix A, termination of coverage for such OTI(s) shall become effective 30 days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the OTI(s) deleted from Appendix A that occur after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities of said OTI(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, in writing by mail or email (*bcl@fmc.gov*), of all claims made, lawsuits filed, judgments rendered, and payments made against this group bond.

Signed and sealed this ____ day of ____,
(Please type name of signer under each signature).

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Individual Principal or Partner

_____
Business Address

_____
Trade Name, if Any

_____
Corporate Principal

_____
Place of Incorporation

_____
Trade Name, if Any

_____
Business Address (Affix Corporate Seal)

_____
By

_____
Title

_____
Principal's Agent for Service of Process (Required if Principal is not a U.S. Corporation)

_____
Agent's Address

_____
Corporate Surety

_____
Business Address (Affix Corporate Seal)

_____
By

_____
Title

_____

Appendix E to Part 515—Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC–48) [FORM 48A]

FMC–48A, OMB No. 3072–0018, (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility [Optional Rider to Form FMC–48]

RIDER

The undersigned ____, as Principal and ____, as Surety do hereby agree that the existing Bond No. ____ to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $__((payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China (''MOC'') or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. The total amount of coverage available under this Bond and all of its riders, available pursuant to the terms of section 1(a.) of this rider, equals $__. The total amount of aggregate coverage equals or exceeds $125,000.

d. This Rider is effective the __d day of __, 20__, and shall continue in effect until discharged, terminated as herein

provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this day __ of _____, 20__,

[Principal],

By: _____

[Surety],

By: _____

Appendix F to Part 515—Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

FMC–69A, OMB No. 3072–0018 (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC–69]

RIDER

The undersigned __, as Principal and __, as Surety do hereby agree that the existing Bond No. __t to the United States of America and filed with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that $ _____(payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China (''MOC'') or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability. The Surety shall indicate that $50,000 is available to pay such fines and penalties for each NVOCC listed on appendix A to this Rider wishing to exercise this option.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. This Rider is effective the __d day of __, 20__, and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this _____day of _ _, 20__.

[Principal],

By: _____

[Surety],

By: _____

Privacy Act and Paperwork Reduction Act Notice

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904). This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001 or email: *secretary@fmc.gov*.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–27914 Filed 11–4–15; 8:45 am]

BILLING CODE 6731–AA–P

Reader Aids

Federal Register

Vol. 80, No. 214

Thursday, November 5, 2015

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

67261–67620 2
67621–68242 3
68243–68420 4
68421–68742 5

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR
3474 67261
Proposed Rules:
3474 67672

3 CFR
Proclamations:
9354 67615
9355 67617
9356 67619
9357 68237
9358 68239
9359 68241
9360 68413
9361 68415
9362 68417
9363 68419

7 CFR
925 68421
930 68424
944 68421
Proposed Rules:
920 68473

10 CFR
73 67264
Proposed Rules:
170 68268
171 68268
429 68274
430 68274

12 CFR
Ch. VI 67277
600 68427
606 68427
611 67277

14 CFR
25 ..... 67621, 67623
39 ..... 68429, 68432, 68434, 68437
71 ..... 68440, 68442
Proposed Rules:
23 68281
39 ..... 67348, 68284, 68475, 68477

15 CFR
4 68442

16 CFR
305 67285
Proposed Rules:
305 67351

17 CFR
Proposed Rules:
300 68286

18 CFR
157 67302
260 67302
284 67302

21 CFR
866 67313

22 CFR
41 67315

24 CFR
570 ..... 67626, 67634

26 CFR
1 ..... 68243, 68244
602 68244
Proposed Rules:
1 68288

32 CFR
273 68158
776 68388

33 CFR
100 67635
117 ..... 67316, 68444
165 ..... 67317, 67638, 68445
Proposed Rules:
117 67677

34 CFR
74 67261
75 67261
76 67261
77 67261
80 67261
101 67261
206 67261
222 67261
225 67261
226 67261
270 67261
280 67261
299 67261
300 67261
303 67261
350 67261
361 67261
363 67261
364 67261
365 67261
367 67261
369 67261
370 67261
373 67261
377 67261
380 67261
381 67261
385 67261
396 67261
400 67261
426 67261
460 67261

491 67261
535 67261
606 67261
607 67261
608 67261
609 67261
611 67261
614 67261
628 67261
636 67261
637 67261
642 67261
643 67261
644 67261
645 67261
646 67261
647 67261
648 67261
650 67261
654 67261
655 67261
661 67261
662 67261
663 67261
664 67261
682 67261
692 67261
694 67261
1100 67261

36 CFR

242 ....68245, 68249

37 CFR

Proposed Rules:
42 67680

38 CFR

17 68447

Proposed Rules:
17 68479

39 CFR

Proposed Rules:
3050 68480

40 CFR

52 ....67319, 67335, 67642, 67645, 67647, 67652, 68253, 68448, 68451, 68453, 68458
81 ....67652, 68253
170 67496
180 ....68257, 68261
423 67838

Proposed Rules:
52 ....67681, 67682, 68481, 68484, 68486
180 68289
260 68490
261 ....68490, 68491
262 ....68490, 68491
263 68490
264 68490
265 68490
266 68491
268 ....68490, 68491
270 68490
273 ....68490, 68491
279 68490

42 CFR

409 68624
424 68624
447 67576
484 68624

Proposed Rules:
447 67377
482 68126
484 68126
485 68126

43 CFR

10 68465

45 CFR

Proposed Rules:
95 68290
1355 68290
1356 68290

46 CFR

515 68722

47 CFR

1 67337
2 68471
73 ....67337, 67344

Proposed Rules:
1 67689
4 67689

50 CFR

100 ....68245, 68249
635 68265
648 67664
660 67664
679 ....67346, 68267

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 4, 2015

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.